

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.

---0---

The People of the State of California,

Plaintiff,

vs.

No. 7373.

Clarence Darrow,

Defendant.

---0---

REPORTERS' TRANSCRIPT.

VOL. 9

I N D E X.

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

Bert H. Franklin,

640

B. N. Smith,
Official Reporter.

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

2 Case resumed.

3 THE COURT. People against Darrow. You may proceed,
4 gentlemen.

5 MR. FOWLER. If the Court please, I desire to have the
6 opportunity of making a statement here to you; a matter
7 that was brought up on last Friday in which I was mentioned
8 in the case.

9 THE COURT. You mean in connection with the Darrow case?

10 MR. FOWLER. With the Darrow and McNamara cases.

11 THE COURT. You will have to make your application to the
12 proper department. I saw to it that a transcript in
13 regard to the matter was furnished to you in order that
14 you may be fully informed of what occurred, further than
15 that I think I cannot act.

16 MR. FOWLER. I think I should be allowed to make a state-
17 ment under the circumstances. I am a member of this Bar
18 and a resident of this county for 20 years and such a state-
19 ment as that kind is absolutely untrue.

20 THE COURT. You will have to seek such redress as you may
21 have in the proper court and at the proper time.

22 MR. FOWLER. Must I set back and take this before the jury
23 and every one present?

24 THE COURT. This is not the time or place to go into that
25 matter. The Court has sent you a transcript in full in order
26 that you may be fully advised of the circumstances, and the

1 proper time and the proper place will be afforded you to be
2 heard on that matter. I will not hear you at all, Mr.
3 Fowler.

4 MR. FOWLER. Very well.

5 MR. FORD. I ask that the jury be instructed at this time
6 to pay no attention to witnesses not under oath.

7 THE COURT. I do not understand that any statement has been
8 made, but if there has been any statement, I will admonish
9 the jury, as heretofore, you are to be governed solely by
10 the testimony of witnesses under oath who may be brought
11 here to take the witness stand and sworn. Any statement
12 that may be made outside of that is to be disregarded by
13 you as testimony.

14 MR. APPEL. I suppose Mr. Fowler thought your Honor, in as
15 much as that statement was sent to him, that he should
16 address your Honor.

17 THE COURT. That is not the purpose. I felt it proper that
18 any citizen should be informed on the matter, and he could
19 act accordingly, but not here and not now. Proceed.

20 MR. FOWLER. I wish to thank your Honor for any record he
21 has sent me.

22
23 BERT H. FRANKLIN,
24 on the stand for further cross-examination.

25 MR. ROGERS. Mr. Franklin, on Saturday as you were leaving
26 the court house here and crossing Temple Street, in the

1 presence of Frank M. Fowler, Mr. Carter, an attorney resid-
2 ing in Pasadena; the Clerk of Judge Summerfield's Court,
3 those being persons whose names I can give you, and other
4 persons whose names I am not able at this time to give
5 you, did you not to say to Mr. Fowler that you knew Kruger
6 and that you did not believe a word he said to you and that
7 you would not believe him under oath or under any circum-
8 stances or conditions, or words to that substance and effect?

9 MR. FORD. Just a moment--to that we object upon the ground
10 that the witness' opinion as to the credibility of Kruger
11 is absolutely incompetent, irrelevant and immaterial, not
12 cross-examination, and that the question, if asked at the
13 present time by way of impeachment of Mr. Franklin does not
14 in any wise impeach nor tend to impeach any testimony given
15 by Mr. Franklin on direct or cross-examination. If counsel
16 seeks to attack the credibility of Mr. Kruger there is a
17 proper method provided by law for the doing of that. If
18 counsel seeks to attack the effect of any testimony given
19 by this witness or any other witness, there is a way to do
20 it by swearing the witness on the stand where it may be
21 subject to cross-examination.

22 THE COURT. Objection overruled.

23 MR. FREDERICKS. May it please the court--I don't think the
24 Court understood that question.

25 THE COURT. Yes I did.

1 MR FREDERICKS: Why, ask this witness if he said he would
2 not believe Kreuger? Suppose he would not believe Kreu-
3 ger -- Kreuger is not a witness here yet. It isn't --
4 we are not in the condition -- if Kreuger takes the wit-
5 ness stand, the law provides for the manner in which his
6 testimony may be impeached. This is not the manner provid-
7 ed by law.

8 THE COURT: I do not assume this is for the purpose of
9 attacking Mr Kreuger's testimony if he should be a wit-
10 ness.

11 MR FREDERICKS: Then this witness saying that he did be-
12 lieve Kreuger or didn't believe him or would believe him,
13 or would not believe him, is not impeachment of this wit-
14 ness. If he has said he believed him or whether he didn't
15 believe him and he has recited what he ~~said~~ said Kreuger
16 told him, why, certainly, the question must be irrelevant
17 and immaterial, it seems to me.

18 MR APPEL: Your Honor, it is important in this respect:
19 if you permit me. If a witness comes upon the stand and
20 makes a statement, and in making that statement he quotes
21 Mr Kreuger and the District Attorney here draws it out of
22 him -- Mr Franklin here hesitated in naming Mr Fowler's
23 name, as your Honor will remember. Now, we say, too --
24 it goes to the good faith of this witness. It goes to the
25 good faith as to whether or not he attached any importance
26 to that statement that he alleged Mr Kreuger made to him.

1 It goes to the good faith of this witness in testifying
2 here. It goes to his manner and conduct on the stand.
3 Whether or not the witness will come here on the stand and
4 make a statement that he himself didn't believe, because
5 he would not believe the party from whom he got it.

6 MR FORD: If the court please, the only relevancy that
7 this question could have to any fact whatever that has
8 been testified to by this witness is this: this witness tes
9 tified on cross-examination -- on direct examination that
10 he had had conversation with one Kreuger, in which the
11 name of a detective employed by the defendant, Mr Fowler,
12 had been mentioned.

13 MR ROGERS: That is not true, and I assign it as misconduct.

14 MR FORD: By the defense in the McNamara case.

15 MR APPEL: That is not true. There is no evidence to justi
16 fy that statement.

17 MR FORD: In which the name of Mr Fowler, a detective had
18 been mentioned --

19 THE COURT: There was no reference to Mr Fowler being a
20 detective.

21 MR APPEL: Or employed by the defense.

22 MR FORD: I will strike out, then, any reference to his
23 being a detective, ^{or} _^ whether he was employed by. Counsel made a
24 statement what his occupation was, and I made a statement
25 what I thought it was --

26 MR ROGERS: I take an exception to that and assign it as

1 misconduct.

2 MR FORD: He mentioned the name of one Frank Fowler in
3 that conversation by saying Mr Kreuger had told him cer-
4 tain things, and that afterwards he reported those matters
5 to Darrow, saying he didn't think it was a good idea to
6 have more than one man approach a juror, and Mr Darrow had
7 said nothing. That is the relevancy of it. The relevancy
8 of it is Mr Darrow's conduct in reference to that conver-
9 sation, and the fact that he was a party to the conversa-
10 tion in which this witness was seeking to induce one Kruger
11 to accept a bribe as a juror. Now, the fact that the wit-
12 ness believed or disbelieved Kruger, has nothing whatever
13 to do with the factsthat he had such a conversation and
14 that he was trying to induce Kruger to take a place in the
15 jury box, absolutely no relevancy whatever. The fact as to
16 whether Mr Fowler is an honorable man or a dishonorable
17 man has no relevancy to that part of the conversation what-
18 soever. It is merely part of the conversation. Now, the
19 witness' opinion as to whether Kruger was telling the
20 truth or not, doesn't affect the question as to whether
21 Kruger had a conversation with him.

22

23

24

25

26

3s 1 He has testified to a conversation with Kruger, that is the
2 only relevant fact--the only fact before the Court. Now,
3 as to whether he believed Kruger was honest or dishonest
4 doesn't affect the fact that he had a conversation with
5 him in which he said those words. I might tell your Honor
6 that I talked with one of the most notorious liars in the
7 universe, and the fact that I thought he was a liar didn't
8 disprove the fact I had a conversation with him, and that
9 is the only point before the Court.

10 THE COURT. I see no occasion to change the ruling. Objec-
11 tion overruled.

12 (Last question read.)

13 A I said part of that, but not all of it, Mr. Rogers.

14 Q BY MR. ROGERS. Then I will put it to you, barring the
15 presence of the ladies, didn't you say, you would not believe
16 the damned old Dutch son-of-a-bitch on oath under any
17 circumstances or under any conditions? A No, sir, not
18 in that words, no, sir.

19 Q What words did you use? A I told him I would not
20 believe Kruger under oath and anything in which he was
21 personally interested, nor would I, and I repeat it here
22 and now. I didn't tell Mr. Fowler that Mr. Kruger was lying
23 when he told me that.

24 Q Didn't you tell him you would not believe the damned Old
25 Dutch son-of-a-bitch under any circumstances or conditions?

26 A No, sir.

1 Q Or anything like that? A Not in that language, not
2 under circumstances and conditions, you added that. I
3 didn't say that.

4 Q Didn't you say to Mr. Fowler, Mr. Carter, and the clerk of
5 Judge Summerfield's court present, you didn't believe
6 him when he said it?

7 MR. FREDERICKS. That is objected to as incompetent, irrele-
8 vant and immaterial, not cross-examination.

9 THE COURT. Objection overruled.

10 A I did not.

11 Q You know Mr. Carter, do you?

12 MR. FREDERICKS. That is objected to as incompetent, irrele-
13 vant and immaterial, not cross-examination.

14 A I think I do.

15 THE COURT. Objection overruled.

16 A There were two gentlemen there present with Mr. Fowler
17 at the time I was talking to Mr. Fowler.

18 Q Now, you say you did say that you would not believe him
19 under any circumstances where he was interested, is that
20 what you said? A Where he was personally interested.

21 MR. FREDERICKS. The same objection, the same reasons.

22 THE COURT. Objection overruled.

23 A Where he was personally interested.

24 Q BY MR. ROGERS. Do you know Walter Lips, one of the
25 deputy sheriffs?

26 MR. FREDERICKS. That is objected to as not cross-examina-

1 tion, incompetent, irrelevant and immaterial; hearsay.

2 THE COURT. Objection overruled.

3 A Very well, yes, sir.

4 Q BY MR. ROGERS. Do you know that he heard the same con-
5 versation, it was in his presence?

6 MR. FREDERICKS. That is objected to as calling for a con-
7 clusion and opinion of the witness, incompetent, irrelevant
8 and immaterial, not cross-examination; hearsay.

9 MR. FORD. No foundation laid for its introduction, it does
10 not impeach or tend to impeach any testimony given by this
11 witness either on direct or cross.

12 THE COURT. Objection overruled.

13 A I don't know anything about what Mr. Lips heard, I didn't
14 see him.

15 Q BY MR. ROGERS. Now, you have a pretty good recollection
16 for words, haven't you and just what you say?

17 A Very good, nothing extra.

18 Q Now, I show you something, you testified like this when
19 I started cross-examining you in answer to a question--

20 MR. FORD. Just a moment, we object to anything being read
21 to the witness until the witness has testified on some
22 matter concerning--

23 MR. ROGERS. We are cross-examining now and I have a right
24 to read the record of this court.

25 MR. FORD. What page?

26 MR. ROGERS. 599.

1 Q "You told Mr. Darrow if he had not showed upon the
2 scene at that unfortunate moment you would have pulled
3 off your stunt by turning Lockwood over to the police and
4 charging him with extortion, did you? A I didn't say
5 that. Q What did you say? A I didn't say anything
6 about a stunt. Q Let me have the record. Go ahead. You
7 didn't say anything about a stunt? A No, sir."
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 "Q -> Now, I call your attention to the official record of
2 this court at page 584, and I read you that part of your
3 answer which commences at line 15. I said, 'If you had not
4 happened to be there at that particular place my arrest
5 would not have taken place until I could have pulled off
6 my stunt at Second and Main.'" You so testified in the
7 case, didn't you?

8 MR FREDERICKS: That is objected to as incompetent, irrele-
9 vant and immaterial, not cross-examination, not tending to
10 impeach this witness on any material matter on which he
11 has testified.

12 THE COURT: Objection overruled.

13 A If that is in the record, Mr Rogers, that is what I said

14 MR ROGERS: Then, your recollection of what you said only
15 half an hour before, was not very good, was it? A Regard-
16 ing the stunt?

17 Q I am talking about your recollection. A Then, what
18 way?

19 Q You said here so positively that you had never said any
20 thing about a stunt and didn't mention it, when I read here
21 not half an hour before you had said it? A Because I
22 thought I had not, and I don't think yet I did.

23 Q Will you swear you did not?

24 MR FORD: We object to that on the ground the question
25 is improper for all the testimony he has been giving
26 is under oath and he is swearing to it.

1 THE COURT: Yes, objection sustained.

2 MR ROGERS: Is that your recollection about this Fowler
3 incident, and what you said there to Carter, Fowler and
4 the clerk of Judge Summerfield's court about your words
5 any better than it was here what I have just shown you?

6 MR FORD: We object to that as argumentative, irrelevant
7 and immaterial.

8 THE COURT: Objection overruled.

9 A I don't know; I remember fairly well what I said to Mr
10 Fowler.

11 Q Why didn't you remember this, if your memory is good?

12 MR FORD: We object to that as calling for a conclusion of
13 the witness; irrelevant and immaterial, argumentative.

14 THE COURT: Objection sustained.

15 MR ROGERS: What did you mean by "stunt"?

16 MR FREDERICKS: We object to that as incompetent, irrelevant
17 and immaterial, not cross-examination.

18 THE COURT: Objection overruled.

19 A If I used the word "stunt" at all, which I very much
20 doubt, -- if it is in the record, I presume I did -- I
21 meant that I would have Mr Lockwood arrested at Second and
22 Main street and turn him over to the police if Mr Darrow had
23 not happened there at the inopportune moment to cause my
24 arrest, and it otherwise would have been pulled off.

25 Q Then, by the word "stunt" you meant a trick, a fraud,
26 a deceit, didn't you?

MR FORD: We object to that on the ground it calls for a

1 conclusion of the witness, irrelevant and immaterial, not
2 cross-examination, argumentative.

3 THE COURT: Objection sustained.

4 MR ROGERS: What did you mean by "stunt" then, in the use
5 of that word, the true definition of it?

6 MR FREDERICKS: We object to that on the ground the wit-
7 ness has already answered just exactly what he meant.

8 THE COURT: I think that is already answered.

9 MR ROGERS: You meant that you would give the appearance of
10 something that was not true, of being a truthful thing,
11 didn't you?

12 MR FREDERICKS: We object to that on the ground the witness
13 has already answered just what he meant.

14 THE COURT: Objection sustained.

15 MR ROGERS: Exception.

16 MR ROGERS: You mean by the use of the word "stunt" and
17 what you said you were going to do, you meant by that that
18 you were going to perpetrate a fraud upon the officers and
19 save yourself, didn't you?

20 MR FREDERICKS: We object to that on the ground the witness
21 has already answered the same question.

22 MR ROGERS: I have a right to cross-examine him.

23 THE COURT: Objection overruled.

24 A I will answer that question by saying, Mr Rogers, that
25 if I had turned Mr Lockwood over to the police officers at
26 the corner of Second and Main and accused him of taking a

1 bribe, it would have been the truth to that extent, be-
2 cause he told me he had the \$500 that I sent to him.

3 Q And you would thereupon have drawn your innocent friend,
4 Captain White in on it, wouldn't you? A I don't know
5 what I might have done; it is what I did that counts in
6 this case.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q And you intended to draw your innocent friend Captain
2 White in on the charge you were going to make against
3 Lockwood, didn't you? A My intentions do not enter into
4 this case at all.

5 Q You answer my question. A I don't remember what my in-
6 tentions were at that time.

7 Q You don't remember whetheryou intended to put Lockwood
8 and White behind the bars, do you?

9 MR. FORD. That is objected to as incompetent, irrelevant
10 and Immaterial, not cross-examinatinn and does not--it is
11 not in evidence that the witness had formed any intention
12 with regard to anybody except Mr. Lockwood.

13 MR. ROGERS. Well, I am asking him.

14 MR. FORD. He has testified when he saw Lockwood at--

15 MR. ROGERS. I object, if your Honor pleases, to his telling
16 the witness how to answer the question.

17 MR. FORD_ I am not telling him.

18 MR. ROGERS. He is suggesting to him.

19 MR. FORD. I am objecting on the ground that the executed
20 intention--that the witness has testified only to the in-
21 tention formed with regard to Lockwood and has stated the
22 grounds upon which he formed that intention. Now, it is
23 not in evidence and he has not at any time testified that
24 he had formed any intention with regard to Captain White
25 and any examination upon that subject is not cross-examina-
26 tion.

1 THE COURT. Objection overruled.

2 MR. ROGERS. I take an exception, while I am about it, if
3 your Honor please--I take an exception to the statement of
4 counsel as instructive to the witness and intended so.

5 Q Now, go on and answer the question. A Read the question,
6 please.

7 (Question read.) A I had no intentions at all in regard
8 to Captain White, he never entered my mind at that time.

9 Q Well, ^{why} didn't you answer that before you heard counsel's
10 argument? A I never heard a word he said, I was not pay-
11 ing attention to it.

12 Q You didn't hear what Mr. Ford said right here and now?

13 A I did not. I was thinking of something else.

14 MR. FREDERICKS. I think the Court should instruct the wit-
15 ness, when counsel asks him a question he should give a
16 little time for an objection.

17 THE COURT. Yes Captain Fredericks, you are quite right
18 about that. Mr. Franklin, the Court does admonish you to
19 bear in mind the fact that counsel has a right to object
20 before you answer a question and you will give him time in
21 which to present an objection and it is your tudy to do so.
22 There is no great hurry about this matter. Proceed, Mr.
23 Rogers.

24 MR. ROGERS. There is a question unanswered, sir.

25 (Last answer read.)

26 Q BY MR. ROGERS. And you were not listening to Mr. Ford and

1 didn't hear what he said when he spoke here a moment
2 ago in your presence some ten feet away from you?

3 MR. FORD. We object to that as incompetent, irrelevant
4 and immaterial, whether he heard me or not, not cross-
5 examination.

6 THE COURT. Objection overruled.

7 A I didn't hear a word he said. It didn't enter my mind at
8 all, I was thinking about something else. I don't know the
9 basis of his objection.

10 Q Now, speaking of your own intentions with respect to
11 Captain White, you knew, didn't you, when you turned Lock-
12 wood over to the police at Second and Main on the ground
13 that he had received a bribe, that it would be necessary for
14 you to show that Captain White had paid it to him and
15 that you thereby put Captain White in the penitentiary,
16 didn't you, to save yourself?

17 MR. FORD. That is objected to as incompetent, irrelevant
18 and immaterial, not cross-examination.

19 THE COURT. Objection overruled.

20 A I didn't quite understand your question, Mr. Rogers.

21 MR. ROGERS. Read it to him. (Question read.)

22 A As I told you in my answer before, Mr. Rogers, Captain
23 White didn't enter my mind at that time.

24 Q You had gotten Captain White into this scrape, hadn't
25 you? A I don't know whether I did or not.

26 Q You went to him and solicited him to act as stakeholder,

1 as you called it, didn't you? A Yes, sir, and he is
2 21 years of age.

3 Q Is that all? A That is as far as I know. I am sure he
4 is that old.

5 Q You offered him \$100 to commit a crime? A Yes, sir,
6 I did.

7 Q And after you had solicited him to commit a crime for
8 \$100, your old time friend, you say you never thought of
9 him when you were going to turn this stunt at Second and
10 Main?

11 MR. FREDERICKS. I object to that on the ground it is argu-
12 mentive, calls for a conclusion of the witness on the
13 testimony, as far as the facts are involved are concerned,
14 it has been answered, not cross-examination.

15 THE COURT. Objection overruled. Have you any answer to
16 the question?

17

18

19

20

21

22

23

24

25

26

1 A Mr Rogers, I cannot answer that question in any other
2 way except to say to you --

3 Q Say it to the jury, never mind me. A I am talking
4 to you.

5 Q Talk to the jury.

6 MR FREDERICKS: We insist that the witness should be ad-
7 monished by the court and not by counsel on either side.

8 A -- that I didn't think anything about Captain White
9 at that time.

10 Q The only man you were thinking of was Franklin?

11 A And Mr Darrow.

12 Q And Mr Darrow? A Yes sir.

13 Q He entered your head, but White did not? A No,
14 Mr Darrow entered my head.

15 Q You were carrying crepe on your arm for Mr Darrow right
16 then?

17 MR FORD: We object to that as incompetent, irrelevant
18 and immaterial, not cross-examination, and not the proper way
19 to address a witness.

20 THE COURT: I do not think that is proper, Mr Rogers.
21 Objection sustained.

22 MR ROGERS: You were exceedingly solicitous at that time
23 about Mr Darrow and not at all solicitous about Mr White
24 or Mr Lockwood, your friends of 12 years?

25 MR FORD: We object to that on the ground the question has
26 been answered and argumentative to repeat it.

1 THE COURT: It seems to me it has been fully answered. Ob-
2 jection sustained on that ground.

3 Q I will ask a question what you said the other day about
4 being ready for trial here in the other department. A All
5 right.

6 Q You said the other day as follows, did you not: "Q--
7 You knew that they were not going to try you that morning?

8 A -- I did not. Q -- As a matter of fact, do you mean to
9 tell us you didn't know whether you were going to trial in
10 there? A -- I did not, no sir. " And then, didn't you
11 answer as follows, at page 514: "Q -- Well, then, you
12 were ready the other morning with that statement in the
13 possession of the District Attorney, subscribed and sworn
14 to by you as the truth, to come in there and go to the
15 jury and say what you had said, the statement was not true.

16 A -- Mr Rogers, there is no use of you and I quibbling. I
17 was satisfied Mr Ford was busy in this court and it would
18 be impossible for him to try the case." Now, bearing in
19 mind those two answers, do you desire to explain them at
20 all?

21 MR FORD: I think the only object of that is to enable
22 counsel, in asking such a question --

23 MR APPEL: There is no objection.

24 MR FORD: I am going to object.

25 THE COURT: Make your objection and then argue it.

26 MR FORD: I object to it on the ground it is incompetent,

1 irrelevant and immaterial, argumentative, and the only ob-
2 ject in asking, is merely to enable counsel to make an argu-
3 ment at this time instead of waiting until the proper time
4 to address the jury, and the question now addressed to the
5 witness does not throw any light upon the subject whatever;
6 not cross-examination.

7 THE COURT: Objection overruled.

8 A Now, what is it you want to know?

9 MR ROGERS: I want to know if you are disposed to try to
10 reconcile those two statements? A I am not trying to
11 reconcile anything.

12 Q Which is the truth, then --

13 MR FREDERICKS: That is objected to --

14 A Both of them are true --

15 Q Both of them are true? A Yes sir.

16 THE COURT: Mr Franklin, once again, the District Attorney
17 tried to get in an objection and you answered too quick
18 for him. It is your duty to go a little bit slower.

19 MR ROGERS: I would like that blackboard, if I may have it.
20 Now, Mr Franklin, when you went in there the other morning,
21 that was not -- in the other court room -- that was not the
22 first time you had been there on trial? A I didn't go
23 there in the morning. It was in the afternoon.

24 Q That was not the first time you had been in there?

25 MR FREDERICKS: Objected to upon the ground it is incom-
26 petent, irrelevant and immaterial and not cross-examination.

1 We add the same objection to the question as amended.

2 MR ROGERS: Preliminary, entirely.

3 MR FREDERICKS: That is, if your Honor please -- it is a
4 question in itself which counsel can hardly maintain is pre
5 liminary, when he adds that is not the first time you have
6 been in there on trial. The law is very wellsettled just
7 what questions along that line counsel can ask.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 MR. ROGERS. On cross-examination of an accomplice I can
2 go into everything connected, and I purpose to go into
3 everything connected with his appearance in the court room.

4 MR. FREDERICKS. I think counsel has no right to go into
5 his appearance in the court room any more than anywhere
6 else. There is a question which counsel has a right to ask
7 and which if asked--

8 MR. ROGERS. Let me have People versus Reuff.

9 THE COURT. If this refers to some matter connected with
10 this alleged conspiracy or transaction then counsel has a
11 right to inquire. If it is a question out of and beyond
12 it then he would have no right.

13 MR. FREDERICKS. Counsel having so stated I will withdraw
14 the objection.

15 THE COURT. Answer the question.

16 A I appeared before Judge Cabaniss, I believe is his name,
17 and plead guilty to a certain charged filed against me by
18 the district attorney.

19 MR. ROGERS. Q What was it? A Just a moment until I
20 get through, Mr. Rogers, thank you.

21 Q What was the charge? A An information filed against me
22 in that department charging me with the crime of bribery
23 in the case of the people of the State of California vs
24 Robert S. Bain. I plead guilty and was fined the sum of
25 \$4,000.

26 Q At that time when you were fined the sum of \$4,000 was Mr

1 Ford present in the court room? A yes, sir .

2 Q Did Mr. Ford have a talk with Judge Cabaniss in his
3 chambers before you entered this plea?

4 MR. FREDERICKS. That is objected to upon the ground that
5 it is incompetent irrelevant and immaterial and not cross-
6 examination.

7 MR. ROGERS. It calls for his knowledge.

8 MR. FREDERICKS. Doesn't make any difference whether he
9 had that knowledge.

10 MR. ROGERS. Sure it does, Mr. Ford went in there and got
11 him fined \$4,000. It was Mr. Ford that did it.

12 MR. FREDERICKS. Is Mr. Rogers under oath?

13 MR. ROGERS. This is in the record, if that is true. It is
14 in the record. We have it right down here.

15 MR. FREDERICKS. Is Mr. Rogers under oath?

16 MR. ROGERS. Yes, I took my oath as an attorney and coun-
17 sellor at law and I am sticking strictly to my duty and I
18 am going to stay right up there.

19 THE COURT. Objection sustained.

20 MR. ROGERS. Q Did Mr. Ford make arrangements for you before
21 hand, with your knowledge, that you should be fined \$4,000
22 by Judge Cabaniss?

23 A I presume--

24 MR. FREDERICKS. Just a moment. The witness is asked for
25 an arrangement made with him, not with anybody else.

26 MR. APPEL. No, your Honor, we are asking whether or not

1 he is conscious of the fact.

2 THE COURT. Now let him answer the question.

3 MR. APPEL. Then we will ask him something else to connect
4 it.

5 THE COURT. At this time answer the question, nevertheless

6 MR. FREDERICKS. The question was if--

7 THE COURT. Let the reporter read the question.

8 (Question read.)

9 MR. FORD. To that question we object upon the ground that
10 it is incompetent, irrelevant and immaterial what Mr. Ford
11 said. The only thing that would be of value was if this
12 witness had an arrangement with Mr. Ford, why, he has got
13 a perfect right to go into that. If this witness accepted
14 immunity and accepted a fine, he has a right to go into
15 that, but what I did with Judge Cabaniss or anybody else
16 is incompetent, irrelevant and immaterial, and no founda-
17 tion laid. The thing before this court is the attitude
18 of this witness, not what I or anybody else may have done.

19 THE COURT. They are asking for his knowledge on the subject.
20 I think they are entitled to it. Objection overruled.

21 MR. APPEL. We will show prearrangement.

22 THE COURT. Now, Gentlemen, I don't want any argument.

23 MR. FORD. There isn't any attempt--

24 MR. FREDERICKS. May it please the Court, we have absolutely
25 no objection and are very anxious that everything should
26 come out which can legally come out, but if a thing comes

1 out illegally then we are barred from answering it because
2 it is illegal; that is the reason why we ask the forms
3 of procedure in introducing evidence should be followed.
4 We have no objection to anything coming out which can
5 legally come out.

6 THE COURT. I quite agree with you.

7 A Not to my knowledge.

8 MR. ROGERS. Q You mean to tell us that you didn't know
9 before you entered your plea there that Mr. Ford and Judge
10 Cabaniss went into the chambers and arranged that you should
11 be fined \$4,000? A I tell you--

12 MR. FREDERICKS. That is objected to upon the ground that
13 it has already been asked and answered and not cross-
14 examination.

15 THE COURT. Objection sustained on the ground it is already
16 asked and answered.

17

18

19

20

21

22

23

24

25

26

1 MR ROGERS: Wasn't the Conners case then on trial and didn't
2 Mr Ford come out of Judge Cabaniss's chambers and go over to
3 you and tell you that arrangement had been made while you
4 were sitting in that court room?

5 MR FORD: That doesn't impeach any testimony given by the
6 witness at this time. He has said not to his knowledge.
7 He is not a lawyer and cannot testify to hearsay and coun-
8 sel knows it. The only thing that is of value is what
9 this witness made or the arrangements that he made with the
10 District Attorney, or what this witness may have arranged
11 with Judge Cabaniss, ^{witness} no foundation laid. If
12 they want to show ^{witness} this testified under promise of
13 immunity, if they want to show that this witness in that
14 case plead guilty knowing that he should be fined \$4000,
15 let them go in and show it. They have a right to it. We
16 don't deny that. Let them show that he made his arrange-
17 ment, if he made his arrangement with Mr Ford, all right.
18 What Mr Ford did with the court has nothing to do with the
19 case.

20 MR APPEL: We want to show before Mr Franklin entered his
21 plea of guilty, he was advised by Mr Ford what the sen-
22 tence would be.

23 THE COURT: I am agreeing with you.

24 MR APPEL: Then we will go on and show what Mr Ford said
25 about it as an inducement to this man.

26 THE COURT: I think it is proper only -- A Read the

1 question. (Last question read by the reporter.) A He
2 did not.

3 MR ROGERS: Were not Mr Appel, Mr Davis and a great number
4 of persons there present in the court room when that happend?

5 A Not to -- pardon me.

6 MR FREDERICKS: Just a moment. That is objected to upon
7 the ground that it assumes a fact not --

8 MR ROGERS: When that statement was made.

9 MR FREDERICKS: We make the same objection. The witness
10 has said he did not make such a statement. That such
11 statement was not made, and therefore it would be impossi-
12 ble fo ask who was present when the statement was made.

13 MR ROGERS: I desire to be heard on this. I cannot and don't
14 intend to put every question flatly to this witness. He
15 is not the kind of a witness that we are obliged to do that
16 with. I think -- I have the right, though, to show, if
17 I may, that Mr Ford and he had an agreement beforehand
18 that he should be fined \$4000, and that the money which Mr
19 Ford had in his possession should be used to pay that
20 fine as an inducement to him to testify in this case.

21 MR FORD: Ask him that question.

22 MR ROGERS: I will ask any question leading thereto, but
23 I will not ask a direct question unless I see fit.

24 THE COURT: Read the question. (Last question read by
25 the reporter.)

26 MR FREDERICKS: That is our objection --

1 THE COURT: Objection sustained.

2 MR ROGERS: Didn't Mr Ford come out of Judge Cabaniss'
3 chambers before you were sentenced on that occasion and
4 come up to you and talk to you in the presence and hearing,
5 not only of Mr Appel and Mr Davis, but numberless other
6 persons? A He did not. I have answered that question be-
7 fore.

8 Q Now, were you present when Mr -- after you had stood
9 up and took your sentence when Mr Ford made his statement
10 to the court, you doubtless were, weren't you, and remember
11 it? A I remember it, yes sir.

12 Q Did you hear Mr Ford say on that occasion, "I ask your
13 Honor to impose a fine and I would say that we have in our
14 possession moneys which are sufficient to pay that fine be-
15 longing to Mr Franklin, and that the fine will be paid if
16 imposed." Did you hear Mr Ford say that standing by your
17 side? A No, he was not standing by my side.

18 MR FREDERICKS: Just a moment, Mr Franklin. We object
19 to the method of proving a statement, and also to the
20 materiality of the statement. We object to the question
21 further on the ground that it is hearsay and not material.

22 MR APPEL: Your Honor, we are trying to prove --

23 THE COURT: Overruled.

24 MR APPEL: -- the arrangement was discovered there.

25 MR FREDERICKS: We have no objection to the fact going in,
26 the method of it.

1 THE COURT: The objection is overruled. Proceed.

2 MR ROGERS: Go ahead.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 A I think Mr. Ford made a statement similar to the one
2 that you have apparently read from some record. I think
3 that he did, yes, sir.

4 Q You heard it, didn't you? A I did or I couldn't
5 testify to it now.

6 Q Did he further say at that time, "I would ask your
7 Honor to impose simply a fine in this matter, and I would
8 suggest that the amount of that fine be \$4,000. I would
9 ask your Honor to impose a fine and I would state that we
10 have in our possession moneys which are sufficient to pay
11 that fine belonging to Mr. Franklin, and that the fine will
12 be paid if imposed."

13 MR. FORD. Counsel has already read that.

14 MR. ROGERS. I read the first part of the sentence.

15 THE COURT I think you read the whole of it.

16 MR. ROGERS. I did not read all of it. I read now the first
17 part which preceded the other part which I did not read
18 before.

19 MR. FORD. We withdraw the objection to save time.

20 THE COURT. All right. It sounded very familiar.

21 MR. ROGERS. This last part I did read before, the first
22 part I did not.

23 A. I think, in fact, I am quite sure that Mr. Ford did make
24 a statement at that time at that place.

25 Q That was true then, was it, the statement that he made?

26 A I am not testifying as to what Mr. Ford said was true
or not.

1 Q Was it true or not?

2 MR. FORD. Which portion? We object upon the ground it is
3 incompetent, irrelevant and immaterial and calls for the
4 conclusion of the witness as to several matters.

5 THE COURT. Objection sustained.

6 MR. ROGERS. Q Was it true that he had in his possession
7 \$4,000 belonging to you to pay the fine?

8 MR. FORD. To that, if the Court please, we object upon the
9 ground that it calls for a conclusion of the witness as to
10 whom that \$4,000 belonged. Now, it may have been the
11 theory of the prosecutor that when the money was delivered
12 to this witness that the delivery constituted--

13 MR. ROGERS. I take an exception to the statement of counsel,
14 putting it in the mouth of the witness what his explanation
15 should be.

16 MR. FORD. We object to the witness testifying at all on
17 that subject. I am not trying to put anything in the mouth
18 of the witness. I am simply saying counsel may have had
19 in his mind, that if I made such a statement and I am here
20 to say I did, that when that statement was made in court
21 that the opinion of the person who was making it that that
22 money was the property of Mr. Franklin was a poor conclusion
23 on the part of the person who made the statement, myself,
24 and that while I had a right to make the statement based
25 on my own conclusions, this witness' conclusions as to who
26 was the owner of the money is absolutely incompetent for

1 this court. It may be true that when money is delivered to
2 another that the mere delivery of the money, the party whom
3 it is delivered to, is the owner of it, but that is a
4 question of law, a conclusion to which this witness cannot
5 testify, and upon that ground we object to the question
6 and on the further ground it is not cross-examination,
7 incompetent, irrelevant and immaterial.

8 MR. APPEL. With all due respect to your Honor, we have the
9 highest opinion of Your Honor, and without meaning any dis-
10 respect to counsel we protest, your Honor, against the con-
11 duct of the district attorney getting in here and putting
12 in the mind of the witness what he should answer, what
13 explanation he should have. Now, he goes on to state,
14 your Honor, what might have been Mr. Franklin's idea of this
15 matter, and what would not be. Why is that done? He says
16 that it might have been the idea of the person who was
17 speaking that such and such a thing was a fact or that
18 such a thing was not the fact. Now, we are asking for his
19 knowledge. We want to know whether this man knew or did not
20 know whether he had \$4,000 in the hands of the district
21 attorney to pay his fine, your Honor. That is all that this
22 question virtually comes to. I should think that any man--
23 it isn't any conclusion--I should think any man knows whe-
24 ther he has got \$4,000 in the bank or not, and it doesn't
25 require a great deal of thinking to know that. We want
26 to know whether or not this statement made by the district

1 attorney when representing this man was the truth or not,
2 whether or not Mr. Franklin did pay, actually pay that fine
3 or whether it was paid for him in order to induce him to
4 testify here in this case against Mr. Darrow--that is all it
5 goes to.

6 MR. FREDERICKS. We have no objection to that question.

7 MR. APPEL. And, therefore, we are asking him if it is true.

8 Whatever explanation he has he has a right to give it in his
9 own way but I do protest, your Honor, against this manner of
10 trying a case and putting that language in the mouth of the
11 witness, what he should say, because it isn't fair, your
12 Honor.

1 It is suggestive to the mind of the witness. It isn't
2 right. We would not be allowed, your Honor, to get up
3 here and say the witness may have thought this or may have
4 thought that, because it ~~is~~ not right; it isn't fair; it
5 isn't fair to the defendant. The law requires that the de-
6 fendant and his counsel should be fair, but it requires
7 that the District Attorney at all hazards must and ought
8 by right to be fair. Now, I submit, your Honor, that with
9 all due respect and in the interests of justice, and with-
10 out any feeling whatsoever, that this is not a fair way
11 of presenting objections. Now, I beg your Honor that this
12 method should be stopped on their side, your Honor. Let
13 the witness answer for himself. We are trying to get at
14 his mind. It is his condition at the circumstances attend
15 ing his plea of guilty there, what he was fined, who paid
16 the fine, why that arrangement was made, what inducements
17 were made him to plead guilty, and on what conditions he
18 plead guilty, and we shall follow it up by showing, your
19 Honor --

20 MR FREDERICKS: We have no objection, your Honor, ^{to} the ques-
21 tions which counsel has been arguing about. We have no
22 objection to this witness showing the jurors as far as he
23 knows what money was being talked about by Mr Ford and where
24 that money was. We are simply objecting to this witness
25 stating a conclusion of law which is the ownership of
26 money. That is what makes all the lawsuits in the civil

1 courts in this county and other counties, as to who is
2 the owner of certain property, and that is all; simply ob-
3 jecting to the witness stating a conclusion of law, who was
4 the owner. We have no particular objection to counsel
5 bring out the things he said he wanted to bring out; what
6 money this was, whether this witness ever paid his fine
7 or not and all that.

8 MR ROGERS: If your Honor please, I ^{attempted} in all fairness
9 to show that Mr Ford went into the chambers of Judge Caba-
10 niss, before this matter came up in open court. They
11 refused to let me do it. Now, then, upon Judge Cabaniss
12 going on the bench, and it is a matter of common knowledge
13 that Judge Cabaniss is not one of our local judges, on the
14 contrary, he comes from San Francisco, and was sitting there
15 temporarily, and not conversant with local conditions.
16 When Judge Cabaniss, a stranger here, goes on the bench
17 and is importuned by the District Attorney to make a fine
18 instead of anything else that might be made, in open court,
19 with this witness sitting at his elbow, and not only is a
20 fine importuned for, but the amount of it is suggested to
21 the court, and agreed upon. It is a most unique situa-
22 tion; something I never heard of and I don't believe any-
23 body else ever heard of before, and then comes this state-
24 ment, in open court, with this witness sitting by and par-
25 ticipating in the benefit of it, a statement to the court
26 that "we have in our hands money belonging to Mr Franklin."

1 Now, what was that for? An attempt to show Judge Cabaniss
2 that this money was to be paid by Mr Franklin and out of
3 the money belonging to him. Now, I purpose to show that
4 ~~that~~ was a deception upon that court, and that the money
5 did not belong to Mr Franklin, although counsel said so
6 in open court, and induced the court to fine him \$4000,
7 paid for out of his own money; money belonging to him.
8 Not only the ignomy of it, according to their contention
9 here and according to his own testimony, a fine and punish-
10 ment -- not one iota of punishment; an absolute fraud upon a
11 foreign judge, because they stood in the court room and
12 told Judge Cabaniss, "We are paying his fine out of money
13 belonging to him." Punish him when he didn't have a cent ⁱⁿ
14 the hands of the District Attorney. Now, come on and ar-
15 gue and tell us if we haven't a right to show that fraud
16 upon that court, in inducing that court to fine this man
17 for his crime and pay it out of money which don't belong
18 to him, ^{not} one particle, which, if he tells the truth, was money
19 belonging to the state; property in the possession of
20 the county treasurer, and of no one else.
21
22
23
24
25
26

1
2 (Discussion.)

3 THE COURT. Let the reporter read the question. (Last
4 question read by the reporter.)

5 THE COURT. Objection sustained.

6 MR. APPEL. Exception.

7 MR. ROGERS. Q Did Mr. Ford have in his possession or did the
8 district attorney have in his possession \$4,000 belonging
9 to you to pay that fine?

10 MR. FORD. Objected to as calling for a conclusion of the
11 witness, the latter part of it, "Belonging to you".

12 THE COURT. Objection sustained.

13 MR. ROGERS. May I call your Honor's attention to this
14 sentence in People vs Schmidt, "If he had been promised complete
15 immunity, did not the defendant have the right to lay the
16 fact before the jury so that they may determine what weight
17 to give his evidence--" If I show he was not fined with
18 a cent of his own money but was fined and without being com-
19 pelled to pay his own fine, doesn't that show complete
20 immunity and no punishment?

21 MR. FREDERICKS. We have no objection to his showing that.

22 MR. ROGERS. I have asked it twice.

23 MR. FORD. Counsel wishes to show that the \$4,000--

24 MR. FREDERICKS. We are simply objecting to the statement
25 of ownership.

26 MR. ROGERS. This is cross-examination.

1 MR. APPEL. We want to know--

2 THE COURT. I will give a reason for the ruling. The ruling
3 is based upon the theory that you haven't the right to ask
4 this witness who owned that particular money. You can
5 show all the facts surrounding that, if you desire, but
6 his opinion who owned that money is not relevant.

7 MR. ROGERS. His opinion would be the principal thing. He
8 couldn't testify to the legal aspect of it but its effect
9 upon his mind, what he believed about it and what he thought
10 about is the principal thing.

11 MR. FREDERICKS. Now, without presuming to tell counsel
12 how to form his question, because he is amply able to
13 suggest his own questions, but for the sake of pre-
14 senting our objection clearly to the court we have no ob-
15 jection to this witness stating whether he ever paid any
16 fine or not; whether he ever paid that fine and where
17 that \$4,000 is.

18 THE COURT. The Court has already sustained your objection.

19 MR. ROGERS. Q Did you ever have any money in the possession
20 of the district attorney which belonged to you?

21 MR. FREDERICKS. We object upon the ground--

22 MR. ROGERS. or which you believed to be yours?

23 A You mean after my arrest?

24 Q yes, sir. A Well, that is a question, but I can't
25 answer. I can tell you what happened; willing and glad
26 to, but I can't tell you what he had.

1 Q Now, the \$4,000 then--

2 MR. FORD. Just a moment, if the Court please. I think
3 the witness is entitled to answer the question the best
4 way he can. He states the answer is unsatisfactory.

5 MR. APPEL. He has answered the best way he can.

6 THE COURT. Have you finished your answer? A Unless I
7 am allowed to tell what I know about it.

8 MR. APPEL. He says he can't answer that question.

9 MR. ROGERS. Q I ask you if you didn't have an arrangement
10 before hand about paying your fine and I understood you to
11 say no.

12 MR. FORD. There is no such testimony. The question was
13 whether or not he knew of his knowledge whether Mr. Ford
14 had such an arrangement with Judge Cabaniss. Let them ask
15 it between us.

16 THE COURT. I understand you are presenting a question
17 now, Mr. Rogers?

18 MR. ROGERS. Yes, sir.

19 A What is the question, Mr. Rogers, pardon me?

20 THE COURT. Read it.

21 (Last question read.) A Yes, sir, and I say now, No.

22 Q You didn't have any arrangement about paying your fine
23 beforehand? A No, sir; no, sir.

24 Q How did you expect to pay it? A I didn't expect to.

25 Q You expected the district attorney to pay it, didn't
26 you? A I didn't know anything about it.

Q You were carefree in the matter? A No, no; not by any

1 means .

2 Q Did you pack your suitcase and get ready to go to the
3 penitentiary when you walked up to get ready for sentence?

4 MR. FORD' We object to that on the ground it is not a
5 proper question.

6 THE COURT. Objection sustained.

7 MR. ROGERS. Q You knew you were going to be fined, didn't
8 you, when you went up there? A That is a different ques-
9 tion.

10 Q Well, you knew it, didn't you? A I knew the district
11 attorney would recommend it, yes, sir, he said he would.

12 Q He said he would and he said where he was going to get
13 the money to pay the fine with, didn't he? A No, sir.

14 Q Didn't tell you anything about that? A No, sir, he
15 would not ask for an alternative.

16

17

18

19

20

21

22

23

24

25

26

1 Q What do you mean by an "alternative"? A That I
2 wouldn't go to jail until the fine was paid --

3 Q Knowing -- A -- Pardon me until I get through.

4 Q Go ahead and get through. A That was my under-
5 standing of what he meant. What he meant, I don't know.
6 That was my understanding of it.

7 Q In other words, they would fine you \$4000 with no al-
8 ternative of so many days in jail, is that right? A That
9 is correct?

10 Q That is your arrangement with him? A No sir, I didn't
11 say that.

12 Q That is what he told you he was going to do? A Yes
13 sir.

14 Q Well, then, you don't call that an arrangement when
15 he told you he was going to do it beforehand? A No arrange-
16 ment, because I didn't ask him to.

17 Q He told you, then, voluntarily, he would? A Yes sir.

18 Q Out of the goodness of his heart, he just simply told
19 you that; you didn't ask him for it?

20 MR FREDERICKS: That is objected to as calling for a con-
21 clusion of the witness, as to the "goodness of the heart".

22 THE COURT: Objection sustained.

23 MR FORD: It assumes I have any goodness of heart.

24 THE COURT: Objection sustained.

25 MR ROGERS: Well, then, when he didn't give you any alter-
26 native of so many days in jail unless you would pay the

1 fine, you knew you would never have to pay it, did you?

2 A No, I didn't know that.

3 Q You didn't know it? A No sir.

4 Q Has your fine been paid? A Not by me.

5 Q Has it been paid? A I don't know.

6 Q Have you paid any attention to it to see whether it
7 was paid or not? A No sir; no sir.

8 Q Has it given you any worryment or trouble? A Yes,
9 it has.

10 Q You thought a gooddeal about it, how youwere going to
11 pay your fine? A I thought considerably about it, yes
12 sir.

13 Q And you heard him say in the court room then, after
14 you thought a gooddeal about it how youwere going to pay
15 your fine, you had heard him say in the court room, "I will
16 ask your Honor to impose simply a fine in this matter; I
17 would suggest that the amount of thatbe \$4000, and I will
18 ask your Honor to impose a fine and I will state we have
19 in our possession moneys which are sufficient to pay that
20 fine belonging to Mr Franklin, and that the fine will be
21 paid,-- " A Yes sir./

22 Q -- you heard that, and yet you state you worried how
23 it was going to be paid.

24 MR FREDERICKS: That is objected to as incompetent, irrele-
25 vant and immaterial.

26 THE COURT: Objection overruled.

A--
1 MR ROGERS; I heard him state that; I also know that making
2 statements do not pay a fine.

3 Q Don't you -- A Pardon me just a moment.

4 Q Go ahead. A And if that fine was not paid it would
5 stand as a judgment against me in the Superior Court of
6 this county, and I have worried about it, much to your
7 surprise, perhaps.

8 Q Didn't you believe Mr Ford when he said he had money
9 belonging to you and that he would pay your fine, in open
10 court?

11 MR FORD: I object to that as calling for a conclusion of
12 the witness, incompetent, irrelevant and immaterial, and I
13 have not testified yet.

14 THE COURT: The question is if this witness heard that
15 statement.

16 MR FORD: No; whether he believed me.

17 THE COURT: Read the question. (Question read.) Objec-
18 tion overruled.

19 A I believed that Mr Ford thought that he could pay it,
20 but I question it very much whether he could take money
21 that he claimed to have, that is, the money I got from
22 Clarence S. Darrow and pay my fine with it, and I very much
23 doubt it now.

24 Q Did you ever tell him that? A No, I never told him
25 that.

26 Q Did he ever tell you that? A No sir.

1 Q This is the first time you have ever enlightened him
2 as to the law on the subject? A Yes sir.

3 Q And you have never seen him and gave him your legal
4 opinion before that, that he couldn't do what he said he
5 would do, in open court in order to pay your fine?

6 A Not one dollar, it hasn't cost him anything to get it,
7 nor you.

8 Q When did you reach that opinion when you said you
9 thought it was illegal to do that? A Right away.

10 Q As soon as it was said? A Yes sir.

11 Q You didn't go up and tell him that and say "Mr Ford,
12 you cannot do that; that is not lawful" when he was talk-
13 ing to the judge; you didn't go up and tell Mr Ford, or
14 the Judge, that?

15 MR FORD: I object to that as irrelevant and immaterial,
16 argumentative, not cross-examination.

17 THE COURT: Objection sustained.

18

19

20

21

22

23

24

25

26

1 Q You didn't protest again when you thought Ford was
2 deceiving the Court?

3 MR. FORD. I object to that on the ground that there is
4 no foundation laid showing that I was deceiving the court,
5 calls for a conclusion of the witness whether I was
6 deceiving the court, it is not cross-examination, incom-
7 petent, irrelevant and immaterial.

8 THE COURT. Objection sustained.

9 MR. ROGERS. He has already said so.

10 Q Well, now, you say you have worried a good deal about
11 that judgment against yourself. Have you had any of your
12 property levied on? A No, I have not.

13 Q You have not any property? A No, sir.

14 Q Well, then, a judgment against you doesn't keep you awake
15 nights? A No, sir, only to this extent, I know if I ever
16 get any they would levy upon it.

17 Q Do you expect to get any shortly? A I expect to.

18 Q Are you going into the work again, Mr. Franklin? A I am
19 working now.

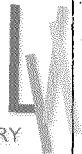
20 Q For the district attorney, I assume, as usual? A No,
21 sir, for you some of the time.

22 Q Not since this? A No, before.

23 Q Have you worked for the district attorney before? A When
24 do you mean?

25 Q Any time? A When?

26 Q Well, any time? A You say "before", before when?



1 Q Before now, we will say? A I never worked for him
2 in my life.

3 Q Didn't you say you were chief of the Bureau of Criminal
4 Investigation for five years? A In the sheriff's office,
5 not in the office of the district attorney.

6 Q You have investigated crimes and got evidence and produced
7 witnesses in court just the same as Sam Brown does now,
8 didn't you?

9 MR. FREDERICKS That is objected to as incompetent,
10 irrelevant and immaterial, not cross-examination, as to the
11 duties of the sheriff.

12 THE COURT. Objection overruled.

13 A Not so effectively as Mr. Brown does.

14 Q That stands admitted. But, as well as you might? You
15 did have that same position, didn't you? A I did not.

16 Q Didn't you have the position of looking up evidence in
17 all criminal cases of this county under sheriff White?

18 A Under sheriff White, yes, but not ^{under} the district attor-
19 ney.

20 Q You reported to the district attorney, did you not, for
21 the prosecution of these cases, gave him evidence and the
22 names of witnesses and all that sort of thing? A Oh, yes,
23 surely.

24 Q Who was district attorney then? A Captain John D.
25 Fredericks.

26 Q Then you did work in the matter of prosecutions with

1 Captain John D. Fredericks to some extent, although you
2 were deputy sheriff? A With him, but not for him, Mr.
3 Rogers.

4 Q You worked for the county, as a matter of fact, didn't
5 you, and were paid by the county? A I was paid by the
6 state, as I understand the law.

7 Q When was that you were working in the matter of prosecu-
8 tions alongside of Captain Fredericks, John D. Fredericks?
9 A During his first term.

10 Q Well, that is about four years ago now? A No, no.

11 Q How long ago did you cease to do that? A I started, I
12 think, the 7th day of January, 1903, if I remember it cor-
13 rectly--

14 Q When did you stop-- A --as a deputy under sheriff
15 W. A. White, and I stopped three years and seven months and
16 fifteen days later.

17 Q Your duties as head of the Bureau of Criminal Investiga-
18 tion of the County of Los Angeles, your duties were to in-
19 vestigate crimes and to get evidence, to serve subpoenas
20 and to procure witnesses, and that is what you did, wasn't
21 it?

22 MR. FREDERICKS. That is objected to as it assumes something
23 not in evidence, and that is that part is assumed, that
24 this witness was the head of the Bureau of Criminal Inves-
25 tigation for the County of Los Angeles.

26 MR. ROGERS. He was, that is the record--he says so.

1 MR. FREDERICKS. That is not the record. He says he was
2 working as a deputy sheriff under sheriff White and in
3 charge of the criminal investigations for Sheriff White,
4 reporting to Sheriff White, having absolutely no more to
5 do with the district attorney than any other deputy
6 sheriff employed by Sheriff White.

7 MR. ROGERS. I suppose you better take your testimony and
8 get on the stand and let him be examined, otherwise I am
9 conducting the examination of the witness now. Now, that
10 you have testified, I will tell you that I know better,
11 because I was in the county here trying cases and Mr.
12 Franklin is the same as Sam Brown is today, although he
13 was in the sheriff's office.

14 MR. FREDERICKS. Absolutely absurd. He was nothing of the
15 kind, he was working for the sheriff.

16
17
18
19
20
21
22
23
24
25
26

1 THE COURT: Gentlemen, I must admonish the jury again that
2 counsel on both sides when they undertake to testify from
3 their places at the table go beyond their duties, and that
4 the jury will disregard any statements of facts purport-
5 ing to be facts or purporting to be testimony from counsel
6 on either side. But, as to the question that is presented,
7 I think on my recollection of this witness' testimony on
8 last Friday, I think the question is correct. Objection
9 overruled.

10 A What is the question?

11 THE COURT: Read it. (Question read.)

12 A Yes sir.

13 MR ROGERS: Then, after you had been the head of the
14 Bureau of Criminal Investigations you became a deputy
15 United States Marshal, did you? A Yes sir.

16 Q And your duties there were in the detection of crimi-
17 nals, to some extent? A Very little.

18 THE COURT: What is the answer? A Very little.

19 MR ROGERS: They were in the criminal part of his office,
20 to some extent, were they not? A Whose?

21 Q In the part of the office devoted to criminal matters,
22 the Marshal's office? A The United States government
23 has special agents that do detective work and looking up
24 crimes and criminals. I arrested a few men while I was
25 there, but it is mostly civil work, Mr Rogers.

26 Q You had been in the employ of the city before you went

1 into the sheriff's office, had you not? A Sometime be-
2 fore, yes sir.

3 Q You had been a private detective at times, had you not?

4 A When?

5 Q Oh, before now? A Yes, I have been private detective
6 now for about a year.

7 Q Well, now, when you went out to the Bain house, you
8 went in an automobile? A Yes sir.

9 Q What kind of an automobile was that? A I don't know.

10 Q Covered, taxicab, limousine, or what? Or a plain, ordi-
11 nary touring car? A It was a covered machine, 7-passenger
12 machine.

13 Q It is not one of these limousines, it just had a top
14 on it, didn't it? A Yes sir.

15 Q That is right, isn't it? A Yes sir, correct.

16 Q When you got out there and inquired for Mrs Bain, you
17 went to a neighbor's house, didn't you? A Yes sir.

18 Q And spoke to the neighbor, and asked her about Mrs
19 Bain? A Yes sir.

20 Q Did you know her at all? A Mrs Bain?

21 Q This neighbor you spoke to? A No, I didn't.

22 Q Did you leave your name and card there? A No sir.

23 Q Did you at any time leave your name and card ^{at} any tele-
24 phone out there in the Bain neighborhood? A No sir.

25 Q Did you tell this lady what your name was when you
26 went out there? A I don't think so.

1 Q Will you say whether you did or not? A No sir, I
2 won't.

3 Q What is your recollection about it? A I don't
4 think I did.

5 Q Now, when you went out there again you went in an auto-
6 mibile? A Yes sir.

7 Q Where did you leave the automobile? A Pretty close
8 to the house.

9 Q Didn't leave it any distance away and walk? A No sir.

10 Q Went right up to the house? A Yes sir.

11 Q That is true of each visit you made out there? A Yes
12 sir.

13 Q When you went out to Lockwood's you went in an automobile

14 A Yes sir.

15 Q An open car? A The same machine.

16 Q When you went out there, just going back for a second --
17 when you went out there to see that woman, a near neighbor
18 of Mrs Bain's, you asked for Mrs Bain, did you? Asked
19 if she knew where Mrs Bain was? A I didn't go out to see
20 any neighbor of Mrs Bain's.

21 Q When you went to see Mrs Bain and went to see a near
22 neighbor to inquire about Mrs Bain? A I did what?

23 Q I am speaking about Mrs Farley, that is the near
24 neighbor you went to see, the near neighbor of Mrs Bain's ,
25 didn't you? A Right next door, yes sir, the first house
26 east.

1 Q That is what I am asking you about? A I said I
2 went.

3 Q Now, you said you didn't tell her your name or leave
4 your telephone number? A I don't think so. I might
5 have left the telephone number, but I don't think I told
6 her my name. I might have done it.

7 Q Then, when you went out to the Lockwood place you went
8 out in an open car, that is, a car with merely a top?

9 A Yes sir.

10 Q When you went out to Captain White's how did you go?

11 A Automobile. Which time do you mean?

12 Q Either time? A In an automobile.

13 Q The same one? A Yes sir.

14 Q Then, when you went out to Lockwood's on each oc-
15 casion you went in the same machine? A Yes sir. That is,
16 to the best of my knowledge. The same driver.

17 Q Take any people with you? A When?

18 A On any occasion when you went out to Lockwood's?

19 A Yes.

20 Q Took your wife and daughter? A Wife and daughter
21 and Keene Fitzpatrick.

22

23

24

25

26

sp 1 Q Anybody else on any other occasion? A Yes, sir.

2 Q Who? A I don't know her name.

3 Q Who was it? A A lady, a young lady.

4 Q What is her name? A I don't know.

5 Q Well, now, when you went down to Los Angeles street and
6 Third, you knew the street, did you, and knew the place and
7 knew the surroundings and the situation there? A Yes, sir

8 Q You knew that this was all happening right on the street?

9 A Knew what was happening?

10 Q This bribery business was going on, happened right on
11 the street? A That is what I was trying to pull off,
12 yes.

13 Q And you saw Campbell there and saw Home there? A Yes.

14 Q Well, now, Mr. Franklin, will you tell the jury which
15 it was, whether you was careless and was incompetent and
16 was lacking in judgment, was lacking in good sense as to
17 take people out on bribery expeditions, leaving a trail
18 painted right down the middle of the street behind you on
19 every occasion, taking a woman out on a bribery expedi-
20 tion whose name you didn't even know, meeting on a prominent
21 street in the daytime when people are all around you or,
22 whether, as a matter of fact, you were trying to get
23 caught under an arrangement? Which one of those is true?

24 A Mr. Rogers, I have not testified as yet that I took any
25 lady with me to Mr. Lockwood's on a bribery expedition.

26 That part of the question is not true.

1 Q I ask you if there was anybody else ever went out there
2 with you to Lockwood's? A Yes, sir, and I said a lady.

3 Q And you said whose name you didn't know. A But I
4 didn't say when I went out on a bribery expedition.

5 Q Did you ever go out to Lockwood's other than on a
6 bribery expedition? A I went out to get his decision on
7 the matter, yes, sir.

8 Q We wont quibble about that. Let us get back to the
9 other question. A I went to the corner of Third and Los
10 Angeles street there, Third and Main and met Captain White
11 and asked him to go to Third and Los Angeles street and
12 give to Mr. Lockwood the sum of \$500 and \$3,500 he was to
13 keep himself until he got my order to pay it to Mr. Lock-
14 wood. That is what I did.

15 Q Why don't you answer my question. A I don't know how
16 to answer it any other way. I don't know what you mean
17 by a "trail".

18 Q I thought you had been in the business of trailing.
19 What do you say about that? A Trailing and leaving a
20 trail is a different proposition. I evidently left one.

21 THE COURT. Gentlemen of the jury, bear in mind the admoni-
22 tions heretofore given you and do not talk about this case,
23 or let any one talk to you. We will take a recess for
24 ten minutes.

25 (After recess. Jury returned to court room.)

26

1 BERT H. FRANKLIN,

2 on the stand for further cross-examination by Mr. Rogers.

3
4 BY MR. ROGERS. Q Mr. Franklin, directing your attention to
5 the blackboard a moment--if I may have a piece of chalk--
6 now, I understood you to say the other day, and I think
7 the record bears it out, that this \$365 deposit was a part
8 of the receipt of \$500 from Mr. Darrow? A Yes, sir. I
9 would like to have my bank book while you are discussing
10 that.

11 Q Yes, sir. (Handing bank book to witness.) So that
12 would be \$500 instead of \$365? A Yes, sir.

13 Q And this \$500 here on October 28th, I will ask you to
14 tell me how much money you received in September from Mr.
15 Darrow, altogether? A In September?

16 Q Yes, sir. A I will have to add it up.

17 Q I will add it for you then, with your permission.

18 A No, I will add it out of the bank book, thank you.

19 Q It is \$2,000 isn't it? A I don't know.

20 Q \$2,050, I am leaving out that \$50 deposit you are not
21 certain of.

22 THE COURT. The witness wishes to total it himself.

23 MR. ROGERS. All right, sir. A During September?

24 Q BY MR. ROGERS. Yes, sir, I mean September into August.

25 MR. FORD. We think this matter is a matter of calculation
26 not a matter calling for any expert testimony.

1 MR. ROGERS. I am asking him to figure his total.

2 MR. FORD. That is true, you are asking him to figure his
3 total, we think it is immaterial and argumentative.

4 A \$2500, I believe.

5 Q I am not figuring in August, I mean September. A You
6 said August and September.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q That would be \$500 for August, \$2000 for September,
2 leaving out of this calculation this \$4000 you say you
3 got from Mr Darrow? A Which I got from Mr Darrow.

4 Q Which you say you got from Mr Darrow? A Yes sir.

5 Q How much else did you receive during the month of
6 October? Was it precisely \$2000? A During the Month of
7 October?

8 Q Yes sir, just the same as it was in September? A Ap-
9 parently so, yes sir; I think that i's correct.

10 Q Now, I will call your attention to the matter of your
11 going down to the Alexandria. You testified that you went
12 to the Alexandria on one occasion; you say it was the 25th
13 of November, did you not? A It was the 25th of November.

14 Q 25th of November? A Yes sir.

15 Q And did you go there by being sent for, or did you go
16 looking for Mr Darrow? A That is hard for me to answer
17 that question, for this reason, I got a message that was
18 supposed to have come from Mr Darrow -- I don't know
19 whether he did or not -- to meet him at the Alexandria
20 on important business.

21 Q Who gave you that message? A I think my oldest
22 daughter, Hazel, but I am not sure. I got it when I arriv-
23 ed at home.

24 Q In the evening? A Yes sir.

25 Q About what time? A At about 5:30, I should say,
26 in that neighborhood.

1 Q What time was it when you went to the Alexandria? A Oh,
2 perhaps 6 or 6:30, in that neighborhood.

3 Q You say you went to the grill Room? A Yes sir, I call
4 it the Grill Room. I am not sure whether it is the Grill
5 room or not, the dining room, at least.

6 Q You said so the other day? A Yes sir, and I say so -

7 Q Why is it you were certain the other day and ~~knew~~ un-
8 certain now whether it was the grill room? A That is what
9 the young man told me in the corridor of the hotel, Mr
10 Darrow was in the grill room. Now, whether that was the
11 grill room or not, I don't know.

12 Q The other day you testified as follows, did you not --
13 this is page 471 -- "I met Mr Darrow at what is known, I
14 think, as the grill room, at the Hotel Alexandria, at
15 the corner of Fifth and Spring in this city, in company
16 with Mr Lincoln Steffins. Mr Darrow asked me to sit down,
17 and introduced me to Mr Steffins." Now, isn't it a
18 fact, since you were on the stand you have been told that
19 which you think the grill room -- that the grill room was
20 closed? A No sir, I have not.

21 Q On the 25th day of November? A I have not spoken
22 a word to a person in regard to this case since I was
23 upon the stand and under examination by you, Mr Rogers, in
24 any way, shape or form.

25 Q You are a little doubtful about it now? A I have not
26 any doubt or anything else about it. I was instructed

1 that was the grill room by the young man in the hotel; I
2 don't know whether it was or not.

3 Q The grill room was closed at that time, supposing I
4 state that to you, do you change your testimony that you
5 saw him in the grill room? A Not on anything you said,
6 no sir.

7 Q On anything you might perchance go down and discover?

8 A I have not been down to discover it. I didn't know
9 of my own knowledge, whether that is the grill room or not.

10 Q Well, then, you went to some room there? A I went to a
11 room where Mr Darrow and Mr Steffins were dining.

12 Q Did anyone show you the place where they were dining?

13 A They did not.

14 Q You found it yourself? A No sir.

15 Q How did you go there? A They told me he was in the din-
16 ing room on the same floor in that direction, and I went
17 over there and saw Mr Darrow and Mr Steffins seated on the
18 west end, on a table on the west side of the large dining
19 room or grill room, whichever it may be.

20 Q A small table or large table? A Small table.

21 Q Anyone present but Mr Steffins? A Mr Darrow.

22 Q I mean -- I am speaking, besides Mr Darrow and your-
23 self. Mr Steffins you had met before? A Yes sir, once.

24 Q You know he was Editor of McClure's Magazine, do you,
25 and assistant editor of the American Magazine, and is an
26 author of distinction and celebrity.

1 MR FREDERICKS: That is objected to on the ground it is
2 incompetent, irrelevant and immaterial; calling for a con-
3 clusion of the witness, what he knew about him, it doesn't
4 prove he was that.

5 THE COURT: Objection overruled.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

7p1 A I don't know anything else, only I know he is supposed
2 to be a literary man of some kind. I never have read any
3 of his writings, I never had time.

4 Q And thereupon Mr. Darrow, when you came up to the table,
5 asked you to sit down and dine with them? A He did,
6 yes, sir.

7 Q You told him you had had your dinner? A I did; yes, sir.

8 Q He asked you if you would have a drink or something
9 else? A He did.

10 Q And you thereupon sat down and took one? A I did.

11 Q Now, the conversation was what, there? A While the
12 young man, the waiter, whoever he may be, was getting the
13 drink Mr. Darrow pulled from his pocket a paper, opening the
14 paper and pointed to two names and said, "That looks better"
15 and I answered him, "Yes, that looks better." The best of
16 my recollection is that is the exact words that were uttered-

17 Q What names do you say he pointed to? A George N. Lock-
18 wood and A. K. Kruger. I think the initials are A. K.

19 Q You have known Mr. Kruger for a great many years? A Quite
20 a number, yes, sir.

21 Q You knew he had been prosecuted by the district attorney
22 for running a blind pig? A Not at that time, no, sir.

23 Q Don't you think you were well aware of the fact that he
24 had been on the black book of the district attorney's
25 office as a blind pigger for a long time?

26 MR. FREDERICKS. We object to that as incompetent, irrelevant

1 and immaterial.

2 THE COURT. Objection overruled.

3 A I had no way of knowing that.

4 Q Well, you knew he was not to be believed when his inter-
5 ests were involved?

6 MR. FREDERICKS. That is objected to on the ground it is at-
7 tempting to impeach a prospective witness in a manner not
8 provided for by law, not cross-examination, incompetent,
9 irrelevant and immaterial.

10 THE COURT. Objection sustained.

11 BY MR. ROGERS. Q Don't you know, as a matter of fact, if
12 you had investigated the matter at all that the district
13 attorney would never have kept him on the jury under any
14 circumstances?

15 A Not at that time, I didn't think anything about it. I,
16 later, after Mr. Kruger had told me that Mr. Fredericks had
17 had him arrested and fined him \$300 for running a blind pig,
18 and I thought it was a serious question as to whether he
19 would or not, and I so informed Mr. parrow.

20 Q Well, after that you went back to him? A After when?

21 Q After you knew? A I did not. That was the last con-
22 versation I had with him.

23 Q You say you had but one conversation with Mr. Kruger?

24 A I don't say that; I had two conversations with Mr. Kruger,
25 at the last conversation he told me Captain Fredericks had
26 had him arrested or his office, fined him \$300 for running

1 a blind pig.

2 Q Was that before or after you say you made him the offer
3 to bribe him that he told you that? A If I remember cor-
4 rectly, and I think I do, it was afterwards.

5 Q After Mr. Kruger had told you that you made an offer to
6 bribe him? A No, sir, I didn't say that. I said after I
7 had made the offer to bribe him Mr. Kruger told me that
8 Captain Fredericks had had him arrested. That is the best
9 of my recollection and I think it is correct.

10 Q Now, isn't this the way you told it on direct examina-
11 tion, page 553: "A--After passing the time of day, I
12 asked Mr. Kruger how long he had lived at his present
13 residence. I have forgotten the length of time he told
14 me. I asked him how he was getting along and what he
15 was doing. He told me that he was raising a few chickens
16 and doing farming on a small scale. I asked him if he
17 would like to be placed in a position whereby he could
18 better his financial condition, and he said he certainly
19 would. I asked him if at some future date I should wish
20 to talk with him in regard to his services upon a certain
21 jury, if he would allow me to do so, and he said that he
22 would. That is about all of the conversation. I told
23 him that at a later date I might call upon him and to keep
24 what had been said between us a secret. Q--Did you at
25 any time thereafter report to Mr. Darrow what had passed
26 between yourself and Mr. Kruger? A--Yes, sir. Q--When

1 and where? A--On Monday morning, to the best of my
2 recollection. Q--What Monday morning? A--November
3 26th--27th. Q--Did you at any time prior to your
4 second visit to Mr. Kruger report your first visit to Mr.
5 Darrow? A--Yes, sir. Q--When and where? A--At his
6 office, but I don't recollect the time. Q--Fix it as
7 near as you can. A--Well, it was immediately following
8 the day that I visited there, whenever that was, within
9 a day or two. Q--Who else was present? A--I don't
10 remember. Q--State what was said? A--I told Mr.
11 Darrow that I had visited him, repeated the conversation
12 as I have related it here, as near as I remember. Mr.
13 Darrow asked me his disposition and what I knew about
14 him, and I told him that I questioned very much if the
15 district attorney would keep him if he was called upon,
16 and told him that the detectives--but Mr. Kruger had told
17 me that the detectives from the district attorney's
18 office had arrested him for running a blind pig, and Mr.
19 Fredericks would probably challenge him on that account."
20
21
22
23
24
25
26

indirectly

1 "Q--Now, what if anything did Mr. Darrow say in reply?

2 A--I don't remember his reply. Q--Now, coming down to
3 your second visit to Mr. Kruger, when was that? A--On the
4 night of November 28th- Q--What day? A--On the night of
5 the 25th day of November. Q--Then you say it was not that
6 morning but it was Sunday morning? Then you fixed that
7 date, that was Sunday, the 25th day of November, 1911?

8 A--Yes, sir. Q At the Palms in Los Angeles County?

9 A--Near the Palms, yes, sir. Q--What was said and done
10 between you and Mr. Kruger at that time?"

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 A -- I told Mr Krug er that I had returned to take up the
2 matter with him that I had spoken to him about upon the
3 previous occasion and asked him if he would accept \$500 in
4 cash with the promise of 3500 more at the conclusion of
5 the McNamara case for his vote for acquittal of J.B. McNama-
6 ra." Now, do you see there that you testified that it was
7 on the first visit that you made to him that he told you
8 that Mr Fredericks would challenge him; he had been ar-
9 rested for running a blind-pig, and then it was on the sec-
10 ond visit that you talked to him about giving him \$500 in
11 cash? A No, I don't see that.

12 Q Look at it. A Pardon me just a moment. I understand
13 what you have read. I did testify that upon the first
14 visit, after the first visit that I told Mr Darrow that he
15 had been arrested for running a blind-pig, but, like other
16 persons, when you reconsider a matter of that kind, you are
17 apt to change your mind, and I think at this time it was
18 after the second visit that I told him.

19 Q What made you reconsider. You see where I was going,
20 didn't you? A Anybody could see that -- it was plain.

21 Q See where I was going. A Sure.

22 Q Anybody could see? A Sure.

23 Q Plain as day? A Yes.

24 Q And so you changed your testimony to avoid it, didn't
25 you? A No sir, I tell you -- I think I was mistaken.

26 Q Well, you didn't change it until I called your attention

1 to it? A No sir, I hadn't thought about it since.

2 Q You thought it most unreasonable that after you had
3 told Mr Darrow that a man could not be relied on and the
4 District Attorney was going to challenge him anyhow, that
5 he had been arrested for running a blind-pig, you thought
6 it was most unreasonable that Darrow would tell you to go
7 and give him \$500 incash just to come up there and get
8 challenged? A That part never entered my mind. It was
9 simply -- I thought after you had read it that I had made
10 a mistake in my former testimony.

11 Q You call that a mistake, do you? A Yes sir.

12 Q Isn't it a fact you tried to run out from under? A No
13 sir.

14 Q Well, then, what occurred to you after you saw how plain
15 it was where I was going?

16 MR FORD: Object upon the ground that it is argumentative
17 and been answered.

18 THE COURT: Objection sustained.

19 MR ROGERS: You thought it was most unreasonable, nobody
20 would believe you, that Mr Darrow told you to go down there
21 and give him \$500 incash to a man you had already said was
22 going to be challenged by the District Attorney because he
23 had been convicted of a crime himself?

24 MR FREDERICKS: It has already been asked and answered. It
25 is objectionable on that ground.

26 THE COURT: I think it is.

1 MR ROGERS: I don't think it has been answered in that
2 form or anything like it. I have partially gotten to it.

3 THE COURT: If there is any serious doubt about it, answer
4 the question.

5 A Read the question. (Question read by the reporter.)

6 Well, I think everybody believes that I went there to see Mr
7 Kruger; that I did offer him \$500 and that Mr Darrow gave it
8 to me.

9 Q Don't you think you are flattering yourself some?

10 A Perhaps.

11 Q Well, that is your reason for changing your testimony,
12 is it? A I haven't changed it particularly. I just say
13 that I think I was mistaken.

14 Q Oh, is that all? A Yes sir, as to the time of that
15 conversation.

16 Q Well, now, do you think that it is reasonable that Mr
17 Darrow would in the presence of Mr Lincoln Steffins start
18 the conversation leading to the bribing of two jurors?

19 A Why, I am not testifying to what I think is reasonable or
20 unreasonable; that is what took place.

21 Q In the presence of Mr Steffins? A Yes sir, Lincoln
22 Steffins --

23 Q Mr Darrow started the conversation leading to the brib-
24 ing of Lockwood and Kruger?

25 MR FREDERICKS: That is objected to as assuming a fact not
26 in evidence. He has not testified that he started any conver-

1 sation leading to the bribing of anybody. He said that
2 he took a roll of paper out of his pocket, and he pointed to
3 two names, and he said, "That looks better." That is en-
4 tirely a different thing from starting in on the bribing of
5 two jurors in the presence of a third party.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 MR. FORD. Whether the witness thinks that is reasonable or
2 unreasonable is a conclusion.

3 MR. APPEL. I submit the witness here said he didn't think
4 what it was all about. He said that is what he did, and
5 he struck your Honor's bench there in order to emphasize
6 the fact. He says that is what happened and struck the
7 bench, and in the face of that counsel says he didn't say
8 that.

9 MR. FREDERICKS. Oh, no.

10 MR. APPEL. That is just exactly what you said. The witness
11 said he was not indicating whether it is reasonable or un-
12 reasonable and said that is what happened and that was in
13 answer to the question that Mr. Darrow had started the con-
14 versation leading up to the bribing of two jurors.

15 MR. FREDERICKS. We are perfectly willing to leave it to
16 the jury as to what the witness meant by "That is what
17 happened."

18 MR. APPEL. And that is the continual conduct on the part
19 of the district attorney.

20 MR. FREDERICKS. We learned it from the defense.

21 MR. APPEL. I never traveled in your company and I hope to
22 God I never will.

23 MR. FORD. If the Court please I just desire--

24 THE COURT. I would like to have the question read before
25 I hear any further argument.

26 MR. FORD. I desire to put in the legal objection.

1 MR. ROGERS. I will reframe it to save time.

2 Q You left the presence of Mr. Steffens and Mr. Darrow and
3 went straight down to Kruger's, didn't you? A No, sir.

4 Q How long after you left him did you go down to Kruger?

5 A Started for there, you mean? A I left for there about
6 a quarter past eight from the office.

7 Q You went from the Alexandria to the office down to see
8 Kruger? A To my office, yes, sir.

9 Q Well, that is very shortly after you had this conversa-
10 tion with Mr. Darrow and Mr. Steffins? A Oh, no.

11 Q Not more than an hour? A I think it was, yes, sir.

12 Q What time did you go to the Alexandria? A I think I
13 got there about 6, 6:30--6:30 perhaps.

14 Q How long did you stay? A Very few minutes.

15 Q Well, how long? A Perhaps thirty minutes. I don't
16 think so. I think it was not over fifteen minutes.

17 Q What time did you say you started to go down to Kruger's?

18 A After eight.

19 Q How long after 8? A Oh, I don't remember.

20 Q Well, tell us as best you can. A Quarter or half past,
21 perhaps.

22 Q How long after you left the Alexandria in the presence
23 of Mr. Darrow and Mr. Steffins was it you went out to see
24 Lockwood? A How long after?

25 Q Yes. The next day, was it, or the same night? A I will
26 answer it without any suggestion, just a moment. 16,--17

1 hours .

2 Q You didn't notice, did you--I withdraw that- And you
3 went to see Kruger and to see Lockwood at the suggestion
4 and at the instance of Mr. Darrow to bribe them? A Yes,
5 sir .

6 Q You didn't know, did you, that on that night, the 25th
7 day of November, Mr. Darrow and Mr. Steffins already had
8 made an agreement for the McNamaras to plead guilty?

9 MR. FREDERICKS. That is objected to--

10 MR. ROGERS. And no more jurors to be needed.

11 MR. FREDERICKS. That is objected to upon the ground assum-
12 ing a fact which is not in evidence and which is not a
13 fact and is not a fact in any way, shape or form and there-
14 fore unfair to this witness.

15 MR. ROGERS. It is asking him for his knowledge.

16 MR. APPEL. We except to the conduct of the district attor-
17 ney .

18 THE COURT. Read the question.

19 MR. APPEL. Making a statement of fact here for the purpose
20 of prejudicing the jury against the defendant and it is
21 not under oath and it is a matter to be decided by the jury.

22 MR. FREDERICKS. Neither is counsel under oath.

23 MR. APPEL. We asked the question.

24 MR. FREDERICKS. Yes.

25 MR. Appel. We didn't state--

26 MR. FREDERICKS. We make the objection.

1 MR. APPEL. I did--

2 THE COURT. Gentlemen, whenever you get through with this
3 discussion I am going to have the reporter read the ques-
4 tion.

5 MR. APPEL. I am addressing the Court.

6 THE COURT. Now, you must address the Court, Mr. Appel, when
7 you have anything to say in this court room.

8 MR. APPEL. I did address the court and the gentleman inter-
9 rupted and your Honor ought to protect, us, protect the counsel
10 of defendant against them doing all these things, and we
11 cannot answer them, your Honor. I am willing to abide by
12 any rule that works both ways, but your Honor--

13 THE COURT. If you are addressing the Court, Mr. Appel, what
14 was the subject of your remark, I did not hear it.

15 MR. APPEL. I was taking exception to the conduct of the
16 district attorney in making statements of fact and not
17 objections and that was what I was doing.

18 THE COURT. All right.

19 MR. APPEL. But counsel on the other side addressed me and
20 I simply answered him, that is all.

21 THE COURT. Now, Mr. Reporter, read the question. (Last
22 question read by the reporter.)

23 THE COURT. Objection sustained.

24 MR. ROGERS. Q Did you know that--I withdraw that. Did
25 you know before that time, before the night of the 25th, Mr.
26 parrow already had agreed that he would have the McNamaras

1 plead guilty and that his agreement had been accepted?

2 A No, sir, I didn't have any such knowledge.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q You always got the jury list as soon as the panel was
2 drawn, didn't you? A They were given to me generally by
3 Mr Darrow.

4 Q Anybody else ever give you any? A Judge Bordwell
5 gave me the first one.

6 Q Outside of Judge Bordwell, Mr Darrow gave them to you?

7 A No sir.

8 Q Who did? A Mr Scott gave me one list.

9 Q Well, outside of Mr Scott and Judge Bordwell, who gave
10 you the lists? A I think Mr Davis gave me one.

11 Q And you usually got those lists as soon as they were
12 drawn, didn't you, or endeavored to? A As soon as they
13 could get them to me generally.

14 Q You got them as soon as you could. You were around
15 town that day, the 25th, were you not? A I don't rem-
16 ember.

17 Q Where were you on the 25th? A I don't know, except
18 that night.

19 Q Don't you know where you were at all? A Not now; I
20 might perhaps remember.

21 Q Well, don't you know that venire was drawn early in
22 the morning, along about 9 o'clock that day? A No sir, it
23 was not.

24 Q When was it drawn? A In the afternoon.

25 Q How do you know? A Mr Darrow told me.

26 Q Mr Darrow told you? A Yes sir, that night.

1 Q That night he told you it was in the afternoon it had
2 been drawn? A Yes.

3 Q Didn't you watch the progress of those drawings?
4 Wasn't that your business? A No sir.

5 Q Didn't you, as a matter of fact, watch the drawing?

6 A Whenever I could, unless I was otherwise engaged.

7 Q Were you otherwise engaged this day? A I don't remember
8 what I was doing that day until 5:30 o'clock I arrived home.
9 That is all I remember at this time. If it is material,
10 I will try to remember it to the best of my ability.

11 Q It will be material, so be kind enough to tell us.

12 A I don't remember at this time.

13 Q Now, studiously endeavor to refresh your recollection
14 and rehabilitate your memory and tell us. A That is a
15 good word. I have heard it before.

16 Q Then you know what it means? A Yes sir. I don't
17 remember.

18 Q Well, sir, did it occur to you as a singular thing
19 that Mr Harriman would come and give you or give Mr Darrow
20 \$4000 that morning cash?

21 MR FREDERICKS: That is objected to as incompetent, irre-
22 levant and immaterial, and assuming a fact not in evidence,
23 that Mr Harriman gave Mr Darrow \$4000 in cash. That is not
24 in evidence, and therefore being, and is assuming that.

25 THE COURT: Objection sustained.

26 MR ROGERS: Did it occur to you, as a singular thing that

1 Mr Harriman brought the currency up there that morning?

2 MR FREDERICKS: That is objected to on the same ground,
3 assuming a fact not in evidence.

4 THE COURT: Objection sustained.

5 MR ROGERS: Exception. Did it occur to you as a singular
6 thing that Mr Darrow when you told him that you had to have
7 it, one hour after another, didn't get it until Mr Harriman
8 came up there that morning? A No. If you want to know
9 what my thoughts were, I will tell you.

10 Q Answer my question: did it occur to you as a singular
11 thing that Mr Harriman had his overcoat on his left arm?

12 A No, it is a fact that he did, though.

13 Q How do you come to recollect that it could not possibly
14 have been his right arm over which his overcoat was being
15 carried? A I will never forget that occurrence that
16 day.

17 Q You remember distinctly that it was over his right arm?

18 A No sir, it was over his left arm.

19 Q You remember distinctly it was over his left arm.

20 You don't know why it was there? A Carrying it, I pre-
21 sume.

22 Q You don't know why he was carrying it there on his left
23 arm, particularly? Was it for any purpose? A I don't
24 know. You will have to ask him about that; I don't know.

25 Q We will. Your idea in saying that was to give the jury
26 the idea that Mr Harriman was concealing something

1 under that overcoat. A Oh, no such thought ever entered
2 my mind.

3 Q Never entered your head? A No.

4 Q That the overcoat being over his left arm doubtless
5 concealed the roll of bills? A It would not have been
6 necessary. He could have put it in his vest pocket.

7 Q When Mr Harriman came in he came in response to a tele-
8 phone or after being telephoned to, did he? A I don't know
9 anything about it.

10 MRFREDERICKS: Objected to as assuming a fact not in evi-
11 dence.

12 MR ROGERS: He testified to it.

13 MRFREDERICKS: No, he never testified that anybody tele-
14 phoned to Mr Harriman. He said what Mr Darrow said, He
15 was telephoning about and whom he was telephoning to. He
16 never testified that anyone ever telephoned to Mr Harriman.

17 THE COURT: Overruled.

18 (Last question read by the reporter.)

19 MR ROGERS: Didn't you hear Mr Darrow try to telephone to
20 Mr Harriman? A I heard Mr Darrow call a number.

21 Q Say who it was? A After he hung up the phone he said -
22 you are speaking now about the morning of the 28th?

23 Q Why, you certainly know that? A I want you to say.

24 Q I am. A Thank you.

25 Q Go ahead on all fours, and let's see. A He said -- he
26 hung up the phone, and he said "Job will be here in about

1 ten minutes." In about five minutes he came.

2 Q Go ahead.

3 MR FREDERICKS: We submit the question was answered.

4 MR ROGERS: Read the answer. (Last answer read by the
5 reporter.)

6 Q Returning for a moment, you say Mr Darrow told you
7 that the drawing of that jury of the 25th occurred on the
8 afternoon? A Yes sir, and that the clerk of the court had
9 sent it to him or brought it to him, I have forgotten
10 which.

11 Q Do you know how Mr Darrow happened to tell you that
12 they drew that on the afternoon of a holiday, when they
13 couldn't draw it at all? A I don't know anything about
14 that. I know that is what he said.

15 Q If you had known that that was Saturday, and that they
16 couldn't have drawn it in the afternoon, you would not have
17 said Mr Darrow told you? A I knew it was Saturday, and I
18 thought about it at the time, and how they could draw a jury
19 after 12 o'clock, but that was Mr Darrow's statement to me.

20 Q You thought about that when I was asking you? A No sir
21 I thought about it at the time.

22 Q You remember now that you thought then? A Oh, yes.

23 Q That it was strange that they would draw it on Saturday
24 afternoon? A Yes sir.

25 Q Did you say anything about it? A No sir; it was not
26 material.

1 Q Was not material? A The business we had in hand.

2 Q You have been up to the District Attorney's office and
3 know enough what that means "material", don't you; that
4 that jury was drawn during the forenoon, and had to be, be-
5 cause the day was Saturday? A I don't know anything
6 about it, but I should say yes, that it must have been
7 drawn before noon, that being a holiday, but I am telling
8 you the statement that Mr Darrow made to me.

9 Q Do you know why Mr Darrow would say such a fool-
10 thing to you, now, that the jury was drawn on the afternoon,
11 and tell you that when it was drawn in the morning and
12 could not have been drawn in the afternoon?

13 MR FREDERICKS: We object to counsel assuming that this was
14 a fool thing, when the record shows when that jury was
15 drawn. His statements would -- there will be time enough
16 to determine when it was drawn. The question before the
17 court now is what Mr Darrow said.

18 THE COURT: Objection sustained.

19 MR ROGERS: Now, when Mr Harriman came in that morning,
20 did he speak to you besides, "How do you do"? A How do
21 you do; good morning, Mr Franklin", words to that effect.
22 Spoke to me and Mr Darrow.

23 Q Stepped into the adjoining room? A Yes sir.

24 Q What room was this of that suite of rooms up there?

25 A Which one do you mean, the one we were in or the one
26 they stepped into?

1 Q The one you were in? A I don't know the number. It
2 was Mr Darrow's private office, supposed to be.

3 Q Which side of the hall was it on? A West side.

4 Q The west side of the hall in the corner room in the
5 Higgins building? A I think it was the room in the south-
6 west corner of the Higgins Building.

7 Q On what floor? A Ninth.

8 Q Mr Harriman went straight there in the adjoining room?

9 A He came in and turned to the right and went into the
10 consultation room, which is immediately upon the north
11 of Mr Darrow's private office, and between his office and
12 the office of his stenographer.

13 Q He was gone how long in this adjoining room? A About
14 10 or 15 seconds.

15 Q Came right out again? A Yes sir.

16 Q Went out the door? A You are speaking now --

17 Q Of Mr Harriman.

18 MR FREDERICKS: Which is it, Mr Harriman or Mr Darrow?

19 MR ROGERS: Mr Harriman, that is who I have been talking
20 about all the time. A Mr Harriman didn't come out of
21 that room to my knowledge. I didn't see him come out.
22 Mr Darrow did.

23 Q Mr Darrow did, and Mr Harriman did not? A Not while
24 I was there.

25 Q Now, what was the subject of discussion between you
26 just before Mr Darrow and Mr Harriman went into that ad-

1 joining room? A Discussion on that particular visit at
2 that particular time?

3 Q Of course? A Was as --

4 Q I said just before they went into that room? A We
5 didn't have any just before, if you mean immediately be-
6 fore.

7 Q By that, I mean, what was the talk between you closest
8 to it, then? A "Job will be here in about ten minutes,"
9 was the last thing that I remember now.

10 Q How long was that after anything else had been said be-
11 tween you? Was it a kind of continuous conversation along
12 there? A Very few minutes.

13 Q What was that conversation. A In regard to the money.

14 Q Well, what was it?
15
16
17
18
19
20
21
22
23
24
25
26

1 A I told him that it would be necessary to have the
2 money at once if possible; that I had made an engagement
3 to meet Captain C E White at the corner of Third and Main:
4 that he was to be there a quarter of twelve. He said,
5 "All right, I will ring up--"

6 Q You don't mean a quarter of 12? A I mean a quarter
7 of nine, pardon me.

8 Q Go ahead. A And he then took down the 'phone and
9 rang up and said, "Job will be here in a few minutes--
10 ten minutes."

11 Q What did he say over the 'phone? A I don't know.

12 Q Had you asked Mr. Darrow for that money before? A Yes,
13 sir.

14 Q When and where? A On Monday the day previous.

15 Q What did you tell him then? A I told Mr. Darrow --I
16 want to get these dates straight in my mind--Sunday, I went
17 to Mr. Lockwood--Monday morning I saw Mr. Darrow and told
18 him that I had made arrangements for Captain-- for Mr.
19 Lockwood to come to Los Angeles; that he would 'phone to
20 me at about half past four o'clock, four or half past, and
21 told him all the arrangements made.

22 Q Why did you have to take a running start at it that
23 way? Couldn't answer the question?

24 MR. FREDERICKS' Object upon the ground it assumes a
25 fact which is not in evidence: That the witness had to
26 take a running start.

1 THE COURT. Objection sustained.

2 MR. ROGERS. How many times did you ask Mr. Parrow for that
3 money?

4 A Four times, I think.

5 Q Four times in all, beginning when? A Monday morning,
6 Monday noon, Monday night and Tuesday morning, to the best
7 of my recollection.

8 Q What did he say to you Monday morning when you asked
9 him for it? A Said he would try to get it for me and
10 give it to me between 12 and 2.

11 Q When you went to him at noon what did he say? A He
12 said he didn't have it.

13 Q When you went to him at night what did he tell you?
14 A Said he would try to get it. Rang up to see if the
15 safety department was open and said it was not. Said he
16 would see me next morning.

17 Q What did he say over the telephone at that time? A I
18 don't know.

19 Q Who did he telephone to? A I don't know.

20 Q Was the telephone on his desk? A When he was 'phoning?

21 Q Yes. A I don't know.

22 Q Where was the telephone? A I don't know; in his room.

23 Q Was it up against the wall or was it a telephone that is
24 handy on the desk? A Table 'phone.

25 Q Where was it, how close to you? A Oh, I should say
26 five feet.

1 Q Did he have to get up to go and telephone? A No, sir.

2 Q Then when you said you didn't know where the telephone
3 was you don't quite mean that, do you?

4 MR. FREDERICKS. Object to that as assuming a fact not in
5 evidence. The witness has not said he did not know where
6 the telephone was.

7 THE COURT. Objection overruled.

8 (Last question read by the reporter.)

9 A I didn't say that. You asked me if the telephone was
10 on the table. I said I didn't know. He might have had
11 it in his hand.

12 MR. ROGERS. Q You are endeavoring to say whether it was
13 in his hand or on the table? A Yes, sir.

14 Q What I meant, was it in the corner of the room;
15 was it on the wall or on the table? What I am trying to find
16 out is his recollection in reference to the location of
17 that table. A I can't read your mind. The 'phone was
18 a table 'phone, the Sunset and Home 'phones were both upon
19 his table. At that particular second it may have been
20 off of the table, I don't know.

21 Q Which 'phone did he use? A I don't know.

22 Q Can you tell me any one that I can find out who the
23 man was you claim he telephoned to? A No, I can't. I
24 wish I could. I would try to help you.

25 Q Can you tell me anything about what he said or anything
26 about the number that he called? A No, I could not. .1

1 have my opinion but I don't want to give that.

2 Q I am asking you for your recollection? A I don't
3 know.

4 Q Then the next morning you went there and asked for the
5 money and what did he tell you? A Told me he didn't have
6 it. He said that he would try to get Job on the 'phone and
7 took down the 'phone and rung up and said Job would be
8 there in about ten minutes.

9 Q Had he told you just before that he didn't have the
10 money or shortly before that? A I think so. That is
11 what I went there after and I didn't get it.

12 Q So you are trying to give the idea, then, aren't you,
13 he got the money from Mr. Harriman?

14 MR. FREDERICKS. That is objected to upon the ground that
15 it is asking the witness for a conclusion as to the effect
16 of testimony and is not cross-examination and is a matter
17 for the jury to determine upon the fact that the witness
18 has testified to.

19 MR. FORD. Calls for a conclusion from the witness whether
20 he got it from Harriman or not. He simply testified as
21 to what the defendant said

22 THE COURT. Objection sustained.

23 MR. APPEL. Exception.

24 MR. ROGERS. Q Did you tell him that it was necessary
25 to act quickly that morning? A Yes, sir. I don't know
26 that I used those exact words but I told him that Mr.

1 White would be at the corner of Third and Main street at
2 a quarter of nine to receive the money to give to Mr. Lock-
3 wood.

4 Q Have you any means of the times that morning as to
5 whether you were on time or not? A I was ontime. Mr.
6 Darrow was not.

7 Q What time were you there? A I arrived there at about
8 25 minutes, I think, of 9 o'clock.

9 Q And will you tell us about how long it was before Mr.
10 Harriman came? A Mr. Harriman?

11 Q Yes, sir. A Oh, I should say 12 minutes perhaps.

12 Q When you went down the hall to the elevator--down to
13 the elevator did you see any one that you remember? A
14 Speaking now of the morning of the 28th?

15 Q Yes. A I don,t remember of seeing anybody.

16 Q Speaking about the overcoat matter and your remembering
17 that: Did you say on the left arm and say you don't
18 remember the telephone conversation, how do you account
19 for that? You don,t remember the telephone conversation at
20 all, do you? A No, sir, I have testified that I did not.

21 Q Don't know what he said over the 'phone or what it was
22 about? A I may have heard it at that time but I don't
23 remember it now; I don't think I paid any particular
24 attention to it.

25 Q But the overcoat matter sticks to you and what was
26 said and the fact of the telephone does not? A The over-

1 coat stuck to him. He was carrying it on his arm. I saw
2 him as he came in the door. I have a mental picture of it
3 as he came in the door.

4 Q I will ask you if you didn't testify this way the
5 other day. "I then said it is almost time for me to
6 meet Captain White and it was necessary to act quickly.
7 He then took down the 'phone and rang up somebody unknown
8 to me, I don't know who it was, but after hanging it up he
9 said 'Job will be here in about ten minutes', as I recall
10 it at that time that is all the conversation we had." "Q Did
11 you hear what Mr. Darrow said in the telephone? A Yes.
12 Q--Just repeat that. A-- He asked if Job was there and
13 then hung up the 'phone."? A Yes, that is correct.

14 Q Which is true? A That is what he said.

15 Q Did you hear the telephone conversation or what you
16 swore a minute ago that you didn't. A That is correct.

17 Q Why did you answer that way before? A I didn't rem-
18 ember.

19 Q But you did remember the overcoat thing and couldn't
20 remember this, is that right? A Nothing singular about
21 that at all.

22 MR. FORD. I think counsel misunderstood the answer.
23 Just read the answer.

24 MR. ROGERS. No, I didn't misunderstand the answer.

25 MR. FORD. Maybe I misunderstood the witness.

26 MR. ROGERS. He said it four or five times before.

1 MR. FORD. I mean the last one.

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

3 MR. ROGERS. Q How did you remember the other day and
4 not remember this afternoon when I gave you four chances?

5 A Well, that would be a hard question for me to answer.

6 Q Because it never happened, is that right? A No, sir,
7 it is not.

8 Q Didn't you say a while ago that what occurred that
9 morning was photographed on your mind, or something of
10 that kind? Didn't you say a while ago that everything you
11 remembered, couldn't help it, and all that sort of thing?

12 A No, sir, I did not.

13 Q Couldn't forget it? A I said the picture of Mr. Harri-
14 man coming in the door with the overcoat upon his arm,
15 that I had a mental picture of it.

16 Q Didn't you say a while ago that you remembered everything
17 that morning vividly? A I do.

18 Q Then how is it that you fell down on that important
19 thing there about whether Mr. parrow called Mr. Harriman or
20 called for Job or anything of that sort?

21 MR. FREDERICKS. Just a moment--we object upon the ground
22 that it is assuming a fact not in evidence; that is, that is
23 that was the most important thing.

24 MR. ROGERS. That is the most important thing if you are
25 going to find out whether Mr. warriman is guilty of
26 bribery.

1 THE COURT. Overruled.

2 MR. FREDERICKS. We are not trying Mr. Harriman.

3 MR. ROGERS. You don't dare to.

4 MR. FREDERICKS. Yes, we dare to.

5 THE COURT. Do not discuss the question. Answer the ques-
6 tion.

7 (Last question read by the reporter.)

8 MR. FREDERICKS. My objection was to the use of the word
9 important.

10 THE COURT. The objection has been overruled.

11 MR. FREDERICKS. I didn't know the Court had ruled.

12 A I couldn't say as to that, Mr. Rogers. The fact
13 remains that is what took place.

14

15

16

17

18

19

20

21

22

23

24

25

26

1 MR ROGERS: What took place? A Just what I have related.

2 Q Which way you related? A He called and asked if Job
3 was there, and I think I know where he phoned to.

4 Q Where do you think he phoned? A I think that he told
5 me at that time but I am not sure, and I didn't want to
6 say so unless I was positive. If you want it, I will tell
7 you.

8 Q Go ahead and tell us what you know about that morning,
9 about where you think he telephoned to.

10 MR FREDERICKS: Just a moment, Mr Witness. We have no ob-
11 jections to the memory of events, but we don't think the
12 witness should speculate; he is not sure and we therefore
13 object to the witness answering questions unless he is
14 reasonably sure; at any rate, we don't know where it
15 may lead. If it is only a speculation, why --

16 THE COURT: I will admonish the witness his answer should
17 be to his best recollection and not any speculation.

18 A I don't know.

19 MR ROGERS: You think you know what Mr Darrow said, don't
20 you? A I know what I know.

21 Q Go ahead and state what you know where he said Mr Har-
22 riman was. A I don't remember that he said, but to the
23 best of my recollection, I think that he said a certain
24 place.

25 Q Where? That is, your best recollection.

26 THE COURT: Your best recollection? A That he said he

1 would call Mr Harriman up down at the Socialist Head-
2 quarters.

3 Q Where was that? A That was on Main street, I think
4 between Fourth and Fifth, somewhere down there.

5 Q Between Third and Fourth, wasn't it, pretty near the
6 corner of Third, wasn't it? A No, I think it was on the
7 corner of Winston and Main.

8 Q Well, is that your idea that he called up -- your idea
9 is that it was the Socialist Headquarters. Was it your
10 idea that he talked with Harriman himself or with somebody
11 else? A My impression is that he talked to somebody
12 else. You want my impression? I don't know anything about
13 it.

14 Q You think it would take 5 or 10 minutes to walk
15 down there? A I don't know. about that. He might be
16 going somewhere else. I don't know anything about it.
17 I am just telling you what happened. He was busy, he was
18 running for office, and he might have stopped and talked
19 on the way.

20 Q Coming back to the incident at the Alexandria for a
21 moment, will you state whether Mr Steffins remained at
22 the table all through this conversation that you had with
23 Mr Darrow about Kruger and Lockwood and the venire and all
24 that business?

25 MR FREDERICKS: That is objected to as assuming a fact not
26 in evidence. It is assuming that he had a conversation

1 about Kruger and Lockwood whereas the evidence is he ~~had~~
2 did not have a conversation about Kruger and Lockwood.

3 MR ROGERS: There it goes again, your Honor.

4 MR FREDERICKS: And will keep on going.

5 MR ROGERS: There is a suggestion to this witness, a straight
6 suggestion as ever was made, just as straight as it can be
7 to tell him practically, what to answer.

8 MR FREDERICKS: No, your Honor, it simply prevents this
9 witness from --

10 THE COURT: Objection sustained.

11 MR APPEL: Exception.

12 MR ROGERS: Go on and relate what was said, while Mr Steffins
13 was at that table at the Alexandria. A I came in, went
14 to the table where Mr Darrow and Mr Steffins were seated,
15 spoke to Mr Darrow; he asked me to sit down, which I did.
16 He asked me if I had had my dinner, or asked me to have
17 dinner, rather. I told him I had been to dinner. I then
18 sat down and Mr Darrow asked me if I would have a drink.
19 I told him that I would. He called the waiter. The waiter
20 came to the table and took my order and left. Mr Darrow
21 then pulled from his pocket a paper, opening the paper and
22 pointing to the name of Lockwood and Kruger, he said, "That
23 looks better." I said, "Yes, that looks better." At
24 that time the waiter came and sat the drink down, and if
25 I remember correctly, we all drank -- I am not sure about
26 the rest of them. I know I did.

1 Q Well, that is the important feature. A Was at
2 that time, yes sir. Mr Darrow then told me -- instructed
3 me, rather, to take that venire, or that paper to my office
4 and compare it with my reports. I told Mr Darrow that at
5 his suggestion or his request, I had taken all of the
6 originals and copies of those reports, as fast as they were
7 made to his office, and had turned them over to -- I don't
8 think I told him anything about that -- to his office.
9 He then instructed me to call Mr Russell at Glendale up
10 on the phone and have him come down to the office and
11 have those reports compared and get busy, that Mr Fitz-
12 patrick -- Kean Fitzpatrick, Mr Cooney were there at
13 his office or at my office, waiting; I don't know which,
14 and he wanted me to get busy.

15 Q Now, Mr Steffins didn't leave the table at any time
16 while that conversation was going on? A He did not. He
17 was there during all that conversation.

18 Q Was the table against the wall? A Yes sir, against
19 the west wall.

20 Q Against the west wall. Consequently, you would be
21 sitting, I take it, on the east side of the table? A Yes
22 sir.

23 Q Mr Darrow and Mr Steffins on the north and south, one
24 way or the other? A Mr Steffins on the north side facing
25 south, and Mr Darrow on the south side facing north.

26 Q Whatever Mr Darrow said toward you was said also in

1 the general direction of Mr Steffins? A Yes, but Mr
2 Darrow's style is such that he can speak without being
3 heard very far.

4 Q Mr Darrow's style is such that he can speak without be-
5 ing heard very far? A When he wants to, yes.

6 Q You mean to say he whispered it to you? A Not exact-
7 ly.

8 Q You mean to say that he evidently leaned over and con-
9 versed with you? A In just about the way he is sitting
10 now; perhaps leaning over a little more. I think by the
11 way, if that is what you are getting at, Mr Steffins could
12 have heard what was said.

13 Q You think he could have heard what was said? A Yes
14 sir.

15 Q And he seemed to be going along with the ordinary af-
16 fairs of the dinner, didn't seem to be reading or anything
17 of that sort? A Who was that?

18 Q Steffin? A I didn't pay very much attention. He seem-
19 ed to be eating his dinner.

20 Q So you think Mr Steffin most likely heard this whole
21 business, if it ever happened? A I think he could have
22 if he paid any attention. I don't know whether he did or
23 not.

24 Q Now, another matter. You say you have lived in this
25 city quite a number of years -- pretty well acquainted
26 with people in the city? A 26 years the 13th day of last

1 April.

2 Q And are fairly wellacquainted with people in and about
3 the city? A Yes, I think I have a broad acquaintance.

4 Q Know something about the First National Bank? A Some-
5 thing, yes sir.

6 Q Know some of the directors, officers, one thing and
7 another? A Yes sir, I think I know some of them.

8 Q Mr Darrow, when you got these checks from Mr Darrow you
9 deposited it in the First National Bank? A Yes sir.

10 Q They, in the ordinary course of things, would return
11 to Mr Darrow through the bank? A I presume so, yes sir.

12 Q You told Mr Darrow you were keeping your account there,
13 didn't you? A I don't think so.

14 Q Well, at any rate, the checks would disclose it or did
15 disclose it, where you kept your account? A I don't know
16 whether they did or not. I don't know whether he got them
17 or not.

18 Q You ^{knew} where you were keeping it, anyhow? A Oh, yes.

19 Q Now, didn't you know at that time that the First
20 National Bank was the depository of the Merchants & Man-
21 ufacturers Association and that they have several co-di-
22 rectors; that is, the directors of the Merchants & Man-
23 ufacturers Association, are also directors of the First
24 National Bank? A No.

25 MR FORD: We object to that on the ground it is not a cross-
26 examination, irrelevant and immaterial.

1 THE COURT: Objection overruled.

2 A I have not any such knowledge, no sir.

3 Q Don't you know that the Merchants & Manufacturers
4 Association's office is right up over the First National
5 Bank, just on the floor above? A I think it is, yes sir,
6 been there for a number of years.

7 Q You know that the Pinkerton office is up in the same
8 building, or that is, practically the same building, they
9 use the same entrance? A No, I do not know that, Mr Rogers.

10 Q Well, it is directly there at hand, isn't it? A If
11 you say so, I do not question it. I don't know anything
12 about it.

13 Q In the detective business and don't know where the
14 Pinkerton office is? A Yes sir, that is correct.

15 Q You said you had had a great deal of experience in the
16 detection of criminals and one thing and another, and
17 their arrest, and so forth. A I didn't say that.

18 MR FREDERICKS: That is objected to, may it please the court
19 -- withdraw the objection.

20 MR ROGERS: At any rate, you had several years as chief of
21 the bureau of criminal investigation. Let it go at that.
22 Do you mean to say you went down there into the First
23 National Bank with Stoddard Jess, Fred Baker and the whole
24 of the Merchants & Manufacturers directorate in that bank,
25 and on that Board, and cashed a check in that bank and took
26 the currency out to bribe a juror with in the McNamara case?

1 MR. FREDERICKS. That is objected to on the ground it is
2 incompetent, irrelevant and immaterial, assumes a fact
3 which is the contrary to what the evidence shows, that is,
4 that this witness did not know that any of these people
5 were codirectors in the Merchants' And Manufacturers'
6 Association and the First National Bank, whereas the ques-
7 tion assumes that the witness did know it.

8 THE COURT. Objection sustained.

9 MR. Rogers. Q You have lived here 26 years. Do you
10 know anything about what the Merchants' And Manufacturers'
11 Association is? A Oh, yes.

12 Q You knew the part they were taking in the fight of the
13 McNamara case, didn't you? A I had understood that the
14 Merchants and Manufacturers' Association-- I will tell you
15 all I know about it, if you want to know.

16 Q I want to know what you understood at that time.

17 A What particular time do you allude to?

18 Q I mean to say, didn't you know that the Merchants and
19 manufacturers' Association was, to use a mild word, interest-
20 ed in the prosecution of the McNamara case? A At what
21 time do you mean?

22 Q At all times since the blowing up of The Times?

23 A No, sir, I didn't know any such thing. I know this, it
24 was common report that you were working for the M & M Asso-
25 ciation gathering evidence against the McNamaras, or, not
26 against the McNamaras, but gathering evidence as to what

1 caused the explosion of the Los Angeles Times; that is all
2 I ever heard about it.

3 Q Do you mean to say you did not discuss the eligibility
4 of members of the Merchants' and Manufacturers' Associa-
5 tion as jurors when you were looking up jurors for the
6 McNamara case? A I did, yes, sir.

7 Q You did discuss it? A Yes, sir, with Mr. Darrow.

8 Q And you did start out to find out who were the members?

9 A Oh, yes--pardon me a moment. You mean the members of the
10 jury that were members of the M & M?

11 Q yes. A Yes, sir.

12 Q You knew then, generally, that the members of the M & M
13 were not satisfactory as jurors in the McNamara case, to
14 the defense? A Yes. Mr. Darrow told me that. I do not
15 think there is any question about that.

16 Q Did you know that yourself when you were looking up
17 jurors? A Yes, I don't think there was any question
18 about that.

19 Q Why are you dodging it now, Mr. Franklin? A I am not
20 trying to dodge it.

21 MR. FORD. We object to that, I don't think the witness is
22 dodging anything.

23 THE COURT. Objection sustained.

24 BY MR. ROGERS. Q Isn't it a fact, you knew perfectly well
25 that the Merchants' and Manufacturers' Association was
26 interested, and very properly so, in the prosecution of the

1 McNamara case and that all their members were supposed to
2 be against the defense of that case?

3 MR. FREDERICKS. That is objected to on the ground that the
4 matter has been fully covered by questions and answers
5 of this witness, if the Court will call to mind the apparent
6 value of any such testimony is in the fact that the Merchants
7 and Manufacturers Association and the First National Bank
8 had the same directors, and the witness has said he didn't
9 know that.

10 MR. ROGERS. I will show in a few minutes that he did.

11 THE COURT. Objection overruled.

12 A What is the question, now?

13 (Question read.) A I know this, Mr. Rogers, that it was com-
14 monly reported at that time that Mr. Llewellyn of the
15 Llewellyn Brothers, Mr. Fred Baker of the Baker Iron Works,
16 were doing all they could, as you say, to say the least,
17 to bring about and establish the facts concerned in the
18 blowing up of the Los Angeles Times and the Llewellyn Iron
19 works. I know that Mr. Darrow and I talked the matter
20 over and Mr. Darrow didn't want any member of the M & M
21 Association upon that jury if he could prevent it, and we
22 discussed that and compared the book with the roster of
23 members of the M & M Association with the copy of the names
24 of the jurors as I had them.

25 Q Well, then, you did see a book of the members of the
26 Merchants and Manufacturers Association? A Yes, sir, I did.

1 Q And you, in your pursuit of the personality of these
2 various jurors, compared it with the list of talesmen?

3 A On most occasions I think I did, yes, sir.

4 Q And how long do you think you had that book in your
5 possession? A Until I gave it to a lady at the sugges-
6 tion of Mr. parrow .

7 Q And how long was that? A I don,t know. I think it
8 was perhaps two weeks after the case had opened.

9 Q When did you get it first, then? A Oh, it is a book
10 I have had for a long time.

11 Q It was your own book, then? A Oh, yes.

12 Q And you had had it a long time? A Yes; yes, sir.

13 Q pretty familiar with its contents? A No, not par-
14 ticularly so.

15 Q You had it and studied it over and compared it with your
16 records and one thing and another of that sort? A Yes, I
17 think so.

18 Q Well, now, knowing the membership of the Merchants &
19 Manufacturers Association by their roster, knowing the
20 directors of the First National Bank, do you mean to say
21 you cashed a check there at the First National Bank and
22 took the currency out and took that very same currency
23 from that bank without changing it, out to bribe a juror
24 with it?

25 MR. FORD. We object to that on the ground it assumes the
26 witness ever compared the directors of the First National

1 Bank with the Merchants and Manufacturers Association and
2 that he knew that the officers of the First National Bank,
3 any of them, belonged to the Merchants and Manufacturers
4 Association. On the second ground--will you read that
5 question again? There was another thing I wanted to
6 object to in it. (Question read.) I object to that on
7 the ground it is argumentative, also not cross-examination
8 and as assuming, as a part of the argument, simply that the
9 witness has not at any time testified he knew or testified
10 he was acquainted with some of the officers of the bank,
11 and he has not at any time stated that he knew who the
12 officers of the bank were or the directors of the bank, who
13 they were.

14 THE COURT. Objection sustained.

15 MR. ROGERS. Note an exception.

16 Q Didn't you ever make any inquiry about that, about
17 who the directors of the First National Bank were? A Did
18 I ever make any inquiry?

19 Q Yes. A I do not think so.

20 Q In what window did you get this \$500 in currency?

21 A In the F window.

22 Q Who was the teller there? A I don't remember. I think
23 Mr. Young, but I am not sure.

24 Q What was the size of the bills you got? A I don't
25 remember.

26 Q Well, can you tell us approximately? A I would not

1 attempt to.

2 Q What? A I would not attempt to, no, sir.

3 Q You got \$500. Did you get it in one hundred dollar
4 bills, fifties, fives, or was it made up in packages, or
5 how? A I don't remember.

6 Q Well, were there any hundreds in it? A I don't
7 remember.

8 Q Were there any fifties in it? A I don't remember.

9 Q Were there any tens? A I don't remember.

10 MR. FREDERICKS. That is objected to on the ground the ques-
11 tion has been asked and answered. The witness has stated
12 he doesn't remember the denominations of the bills, so to
13 go over it and ask him ^{ad} seriatim simply repeats the
14 question.

15 THE COURT. There is no question before the Court. The
16 witness has already answered the last question.

17 MR. FREDERICKS. I started my objection before the answer--
18 withdraw the objection.

19 BY MR - ROGERS. Q Were there any twenties?

20 MR. FREDERICKS. We make the same objection to the previous
21 question.

22 THE COURT. Overruled.

23 A I don't remember.

24 Q Were there any fives? A I don't remember.

25 Q You took a hundred of that five hundred and spent it,
26 didn't you, for something else? A I presume that I did.

1 Q You opened the package anyhow, didn't you? A I didn't
2 say it was a package, I don't remember.

3 Q Do you say it was wrapped up with a little surcingle
4 around it, one of those little papers? A I don't remember.

5 Q How did you carry it away from there? A In my pocket.

6 Q Have a pocketbook or porte-^{monnaie,} bill book or anything
7 of that kind? A I think I did, yes, sir. I am not sure
8 about that.

9 Q When did you spend the money, the hundred, before you
10 went out to Bain's or not? A I think I gave part of it
11 to Mrs. Franklin, I am not sure.

12 Q How much? A I don't remember.

13 Q Did you have any other money in your pockets at this
14 time that you put this money in? A I don't remember.

15 Q Do you remember whether you had any currency at all
16 about your person when you put this \$500 in your pocket?

17 A I don't remember.

18 Q You don't remember? A No, sir.

19 Q Did you pay any bills? A I don't remember. I have
20 got my receipts here, if you want to see them, that will
21 tell.

22 Q You would remember what time you gave that money to
23 your wife, ^{out of} that \$500. A I don't say that I did. I
24 said that I thought I did. I am not sure. I may or I
25 may not have done so.

26 Q Well, then, you would not be able to tell us anything

1 about what you did with that other hundred? A No, I
2 don't remember now.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q Was it your original idea when you took the \$500 out
2 of the bank you were going to use the \$500 for the purpose
3 of bribing Bain? A Yes sir.

4 Q Well, then, why didn't you carry it out? A It didn't
5 make any difference as long as I got him whether I got
6 him for 400 or 500.

7 Q So you could take a little commission out of that 500?

8 A No sir, it was not necessary at all.

9 Q Taking a white chip off of the stack for that two pair,
10 is that the idea? A No sir.

11 MR FORD: I object to that; I don't understand that.

12 THE COURT: It is improper, at any rate.

13 MR FREDERICKS: I think this is entirely too serious a mat-
14 ter to indulge in such liberty.

15 THE COURT: I quite agree with you. I have instructed the
16 bailiff to remove any person from the court room who in-
17 dulgences in levity, and this is not the place for that at
18 all, and the bailiff will carry out those instructions.

19 MR ROGERS: That other \$500 you say was in that \$1000 check
20 that remained in the bank, I understand you? A Yes sir,
21 until I checked it out.

22 Q Have you got your checks? A I have, yes sir.

23 Q Where are they? A ^hWhat checks do you mean, those
24 particular checks of that 500?

25 Q All the checks on your account? A I have; I have
26 them all, I think, at the office.

Q At the office? A Y^es sir, all excepting this \$500

1 check that is in evidence.

2 Q \$500 check that is in evidence? A Yes sir.

3 Q That one up here? A Yes sir. I say, I think I have;
4 I am not sure. I think I have, though.

5 Q What was that \$500 for which consisted in a part of
6 it cash and part a check of Davis? A I don't remember.

7 Q What did you do with it? A I don't remember that. I
8 may have deposited it in the bank. I am not sure. I may
9 have spent it outside of the bank and I may have kept it
10 myself. I don't remember.

11 Q Was it got for any special purpose? A I don't rem-
12 ember.

13 Q Were you present when Davis wrote that check? A I
14 was not.

15 Q Do you remember for how much it was?

16 MR FREDERICKS: That is objected to on the ground it is
17 not cross-examination, incompetent, irrelevant and immater-
18 ial as to any money that he got from Mr Davis; that is
19 not material to any issue in this case.

20 THE COURT: Objection overruled.

21 A I don't remember.

22 Q Do you know how you happened to get Davis' check?

23 A I don't know a thing about it. Mr Darrow gave it to me
24 together with some money.

25 Q Do you know how much of that amount consisted of
26 money, and how much of Davis' check? A I do not.

1 Q And do you know what kind of money that was? A I do
2 not.

3 Q Do you know whether it was currency or what it was?

4 A I do not remember.

5 Q Was any statement made to you why the payment was made
6 and
7 in currency, by Davis' check instead of by Mr Darrow's check

8 MR FREDERICKS: That is objected to, may it please the
9 court unless the question refers to a statement which
10 might have been made by the defendant.

11 MR ROGERS: Absolutely, no sir. Now, if your Honor pleases,
12 this witness is an accomplice --

13 THE COURT: I agree with you. I am ruling your way. Objec-
14 tion overruled.

15 A What is the question?

16 MR ROGERS: Read it. (Question read.)

17 A It is my impression, Mr Rogers, at this time, that Mr
18 Darrow said he didn't have sufficient money, and Mr Davis
19 gave him a check. Now, I am not positive; I do not pre-
20 tend to be, but I think that is correct.

21 MR FREDERICKS: May it please the court, I am a little at
22 a loss to get the date of that payment he is now talking
23 about, the check of Mr Davis.

24 MR ROGERS: If I had done that I would have been told to
25 wait until I got a chance to cross-examine, but you are wel-
26 come to ask him.

MR FREDERICKS: Thank you.

1 THE COURT: Would you like to have thereoord read?

2 MR FREDERICKS: We have a blackboard chart up there -- oh,
3 I see -- I thought there was a D on there.

4 MR ROGERS: No, that is another. That \$50 check he said he
5 didn't know.

6 A I can explain that \$50 check to you now; I remember it.

7 Q BY MR ROGERS: All right; what is that \$50 check?

8 A That \$50 check was a check I got from Mr Davis person-
9 ally when Mr Darrow, I think, as I remember it correctly now
10 was in San Francisco -- I needed some money and I gave Mr
11 Davis my personal check and took his check with instruc-
12 tions to Mr Davis, that he told it until Mr Darrow had paid
13 me some more money, which he did.

14 Q Then it was really a kind of a loan? A In a way, yes
15 sir. yes sir. I should call that a loan.

16 Q Now, Mr Fredericks desires to know what is the date of
17 that transaction when you got Davis' check and some cur-
18 rency.

19 MR FORD: It was on the blackboard the other day.

20 MR ROGERS: No, it was not. He said -- I won't tell him--

21 A You don't need to. I don't remember the date of that.

22 Q You don't know what you did with it, whether you ever
23 deposited it or anything about it, do you? A I don't
24 remember.

25 Q How about that check of Harriman's, how did you come
26 to get Harriman's check? A Mr Darrow was not there and I

1 needed the money to pay my men, and I got a check for \$250
2 from Mr Harriman. He said he would collect it from Mr
3 Darrow.

4 Q Directing your mind, now, to the incident of getting
5 a fine in the next department here imposed upon you, which
6 Mr Ford said he would pay, directing your attention to that
7 incident, before that, had you made a statement to Mr Ford?

8 A Yes sir.

9 Q Had it been taken down? A I don't know.

10 Q Had you signed any? A I had.

11 Q Well, then, you knew it had been taken down, didn't
12 you, if you had signed it? A I can't read shorthand notes.
13 Mr Petermichel was there writing; I presume he took it
14 down.

15 Q Was it in shorthand when you signed it? A No sir.

16 Q It had been written out? A Yes sir, typewritten.

17 Q Well, then, you knew it was taken down? A I presume
18 it had; it was correct when I read it, anyway.

19 Q Why didn't you say so when I first asked you? A Be-
20 cause I am going to be technical with you so that --

21 Q Answer my question. You knew it was taken down and
22 knew it was written out and signed and swore to it? A I
23 signed a statement in the office of the District Attorney
24 in this county, which I presumed was the statement I made,
25 which you mention.

26 Q You read it over? A Oh, yes, I think it was -- I don't

1 think there is any question about it.

2 Q At that time you signed that statement and swore to
3 it, and you were told you were going to be a witness,
4 weren't you? A No sir, I was not.

5 Q When were you told you were going to be a witness?

6 A I have forgotten when I was served with a subpoena.

7 Q When were you told your services as a witness in this
8 prosecution were going to be needed? A When I received
9 a subpoena from Mr Duni, in the District Attorney's of-
10 fice, in my office, about ten days or two weeks ago.

11 Q They never talked to you about testifying before?

12 A I didn't say that.

13 Q What did you mean when you said you didn't know you
14 were going to be a witness? A I didn't know I would be
15 until I was subpoenaed to be a witness.

16 Q You had an indefinite and vague notion you might be?

17 A As you say, I had a hunch.

18 Q You had a hunch? A Yes sir.

19 Q So you had a hunch you were going to be a witness be-
20 fore you went in there to get your fine? A Oh, I didn't
21 there was any question about that.

22 Q You had a hunch when you made your statement, didn't
23 you? A I did not.

24 Q Did you have any understanding that you were to render
25 the prosecution any assistance, any cooperation?

26 A When?

1 MR FORD: At the time the statement was made? A When?

2 MR ROGERS: At the time you were fined, or that is, that
3 kind of a fine you get over there Mr Ford is going to pay
4 for you? A Now, read that question again. (Question
5 read.)

6 MR FORD: That is the inquiry, I was the one that interpo-
7 lated the words, "at the time the statement was made", isn't
8 that correct?

9 MR ROGERS: I think so.

10 MR FORD: I don't think Mr Rogers included that in his
11 question. Will you read the question now. A Do I
12 understand you, Mr Rogers, now, to mean, was I offered im-
13 munity?

14 Q What I am driving at is this: before you were fined,
15 did you agree, or was it understood that you were to give
16 your assistance and cooperation in this case, to the Dis-
17 trict Attorney, as well as be a witness? A It was not --

18 MR FREDERICKS: We object to that as calling for a conclu-
19 sion of the witness what was understood.

20 MR ROGERS: By him.

21 MR FREDERICKS: We think, your Honor, that the question
22 is objectionable, as calling for a conclusion of the wit-
23 ness, and he can be asked to state what was said and done
24 by either party and let the jury conclude whether there
25 was any agreement.

26 THE COURT: Objection sustained.

1 MR ROGERS: An exception.

2 Q Did you understand at the time of your fine, that
3 you were expected to render assistance and cooperation to
4 the District Attorney's office in this case as well as to
5 be a witness? A I did not.

6 Q Didn't Mr Ford say this in your presence, at the time
7 you got this alleged fine, before you got it?

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Op

1 "At this time the prosecution desires to make a recommen-
2 dation to the Court,--I might say to your Honor that there
3 is another prosecution involving the same matters now
4 pending in the courts of this county and it will be neces-
5 sary during the progress of that trial to have the assis-
6 tance and cooperation of Mr. Franklin and also probably to
7 use him as a witness?" A That statement was made,
8 absolutely, yes, sir; but you asked me when I went in did
9 I understand that.

10 Q No, I asked you if you, when you were over there getting
11 fined if you understood-- A That is the statement as I
12 remember it, yes, sir.

13 Q Then you understood that is what you were up against?
14 A I understood it after he said it.

15 Q Did you understand you were to be a cooperator with
16 Ford and Captain Fredericks in sending Mr. Darrow to the
17 penitentiary and assist Mr. Ford, did you so understand?

18 A No, I didn't so understand. I don't understand now I
19 am trying to send Mr. Darrow to the penitentiary. I have
20 no such intention. I am telling the truth as I understand
21 it.

22 Q You understand you are a cooperator and assistant
23 of Mr. Ford as well as a witness in this case, don't you?

24 A No, sir, I don't.

25 MR. FREDERICKS . That is objected to on the ground that it
26 calls for a conclusion of the witness as to what cooperator

1 and assistant are.

2 MR. ROGERS. I don't know, but I am just taking what Mr.
3 Ford said in open court, Mr. Franklin was his cooperator
4 and assistant.

5 THE COURT. Do you want the answer stricken out?

6 MR. FREDERICKS. Yes, your Honor, we wish the answer
7 stricken out.

8 THE COURT. Strike it out for the purpose of objection.

9 MR. ROGERS. For the purpose of the objection?

10 THE COURT. Yes for the purpose of the objection. Now,
11 read the question again, Mr. Reporter and let us get an
12 orderly ruling on it. (Question read.)

13 MR. FREDERICKS. We withdraw the objection, your Honor.

14 THE COURT. The objection is withdrawn.

15 A No, sir, I do not.

16 Q What did you think Ford meant when he said it in your
17 presence and told Judge Cabaniss, before Judge Cabaniss
18 fined you, and speaking in your behalf, what did you
19 understand him to mean when he said this: "At this
20 time the prosecution desires to make a recommendation to
21 the court--I might state to your Honor that there is
22 another prosecuting involving the same matters now pending
23 in the court of this county and it will be necessary, during
24 the progress of that trial, to have the assistance and
25 cooperation of Mr. Franklin and also probably use him as a
26 witness." What did you understand? A Well, I didn't

1 think there was any question or doubt but what I was to
2 be called as a witness, but what he meant by "cooperation"
3 and assistance, is more than I know. He certainly never
4 got any.

5 Q Well, then, did you think that Ford got you fined and
6 paid your fine and got buncoed on it, didn't get the
7 assistance and cooperation that he paid for? A I don't
8 know.

9 MR- FORD. We object to the form of the question as not
10 being coached in good english.

11 MR. ROGERS. The Supreme Court in this state, by Mr. Garoutte
12 has said that the word bunco is a well known word and he
13 construes it.

14 THE COURT. If that is the only objection, overruled.

15 MR. ROGERS. As meaning a game wherein one expects to
16 get something which he does not get.

17 THE COURT. The objection has been overruled, Mr. Rogers.

18 MR. FORD. Mr. Rogers belongs to the class that uses it,
19 probably.

20 THE COURT. Perhaps it is not formal court language, but
21 it is understood by all concerned. Objection overruled.

22 MR. ROGERS. Go ahead and answer. A Read the question,
23 please.

24 (Question and answer read.)

25 Q BY MR. ROGERS. Was that the first time you ever knew
26 you were enlisted as an assistant and cooperater of the

1 district attorney, when you heard this statement in
2 open court? A I don't know it yet.

3 Q You don't believe what Mr. Ford said there, it would
4 be necessary during the progress of this trial to have
5 your assistance and cooperation?

6 MR. FORD. That is objected to on the ground it is absolute-
7 ly immaterial what the witness believes about me.

8 MR. ROGERS. It certainly shows his every motive, and
9 everything he has.

10 THE COURT. Objection overruled.

11 A If you will kindly explain to me just what you mean
12 by help and assistance and cooperation, I can answer
13 that question.

14 Q Didn't you understand what Mr. Ford was talking about
15 when he said this-- A Wait a minute--

16 Q Go ahead-- A If you mean I was to assist the dis-
17 trict attorney to the extent of going out and getting other
18 evidence, to corroborate mine, or corroborate any other
19 witnesses and convict Mr. Darrow, I say to you, that I didn't
20 do it, nor I wouldn't do it. I came here as a witness
21 because I thought it was my duty that I owed to my family.

22 Q Well, will you tell me then if you didn't understand
23 that at the time you were getting fined in there Mr. Ford
24 was saying he was going to pay your fine, didn't you
25 understand it would be necessary, as Mr. Ford said, that
26 you should assist and cooperate, as well as to use you as
a witness--

1 MR. FREDERICKS. I object to that--

2 A I know if Mr. Ford had asked me to assist him in any
3 manner whatever other than to act as a witness in this
4 case I would have absolutely refused to have done it.

5 Q Why didn't you refuse right then before your sentence
6 was passed then, and the \$4,000 fine was imposed, which Mr.
7 Ford was going to pay for you, why didn't you say then,
8 "Hold on, Ford, you don't understand me. It will not be
9 necessary during the progress of Mr. parrow's trial for
10 me to assist you or cooperate with you and also be used
11 as a witness"? Why didn't you say so then? A If Mr.
12 Ford wanted to fool himself to that extent that is his
13 business, not mine.

14 Q Do you think he has fooled himself any? A I don't
15 know.

16 Q Have you not assisted and cooperated as well as testi-
17 fied and done everything you could to earn your immunity?

18 A I have not.

19 Q Do you think, then, that is what is the matter with this
20 law suit, that they have not had your necessary assistance
21 and cooperation?

22 MR. FREDERICKS. That is objected to as assuming a fact
23 not in evidence, that is, that there is anything the
24 matter with this law suit.

25 THE COURT. Objection sustained.

26 MR. ROGERS. Q Now, was that the first time you ever

1 heard you were to be a witness, when Mr. Ford said that?

2 A The first time I knew I was to be a witness was when
3 I was subpoenaed.

4 Q So that the first time you heard you were to be a wit-
5 ness was when Mr. Ford said this which I read to you a
6 moment ago, it would be necessary to have your cooperation
7 and assistance, also probably use you as a witness? Is
8 that the first time you ever heard you were going to be a
9 witness? A That is a difficult question to answer.

10 Q Well, I am not going to withdraw it on that account.

11 A I have not asked you to.

12 Q What is that? A I have not requested you to.

13 Q Do you want it read? A No, sir, thank you.

14 Q Go ahead and answer it. A I think, upon reflection,
15 that at the time I made my statement--and I am not so sure
16 of this--that I told them that if called upon that I would
17 testify in court to that effect--but I am not so sure of
18 that statement, I think I did.

19 Q Isn't that a part of the statement you wrote out?

20 A I didn't write out a statement.

21 MR. FORD. We object to that on the ground it is assuming--

22 MR. ROGERS. Q Is that statement here? A I don't know
23 where it is.

24 MR. ROGERS. Gentlemen, have you that statement?

25 MR. FREDERICKS. If we have it is our own affair and our
26 own notes and our own matter.

1 MR. ROGERS. We demand of the district attorney the
2 statement to which the witness has referred as being
3 written out and in their possession, and I will ask the
4 date of it in order to specify it.

5 Q About what date is that?

6 MR. FREDERICKS. We object to that, the question of date
7 is not material, not cross-examination.

8 MR. FORD. Not sufficient foundation laid for the introduc-
9 tion of secondary testimony. We stipulate that.

10 BY MR. ROGERS. Q Do you know the date?

11 A I can approximate it.

12 Q What is it? A About the last--towards the latter part
13 of January, I think.

14 Q Well, now, you were a witness before the grand jury,
15 weren't you? A I was.

16 Q They sent the reporter out when you came in, didn't
17 they, --was that by an understanding with you? A I took
18 my oath at that time not to repeat what took place before
19 the grand jury.

20 Q Except in a court of justice. Now, go on and tell.

21 MR. FREDERICKS. Now, that is objected to upon the ground
22 that it is not competent, relevant or material.

23 A I don't know that there was a reporter there other than
24 Mr. Keetch, if you call him one, he was there.

25

26

1 Q Now, on that occasion, didn't you go in there on an
2 agreement that you would answer just one question and that
3 is all? A No sir, I didn't, no sir.

4 Q When you went in there, out of all this alleged story
5 and whatnot, you merely were asked to answer one question,
6 isn't that true?

7 MR FREDERICKS: That is objected to on the ground it is
8 incompetent, irrelevant and immaterial, no foundation laid,
9 violative of the secrecy of the grand jury?

10 MR ROGERS: No sir, not on your life.

11 MR FORD: The only time that the testimony of a witness
12 in court before the grand jury may be inquired into is
13 when he has committed perjury, either at that time or at
14 some other time, or for the purpose of showing that he tes-
15 tified to a different state of facts before the grand jury
16 than what he did in court or otherwise.

17 MR ROGERS: What is the transcript of the testimony for,
18 anyhow?

19 MR FREDERICKS: We don't care. We withdraw it.

20 MR ROGERS: Why are you howling about it?

21 MR FREDERICKS: Simply because it is not in accordance
22 with the good practice. We withdraw the objection.

23 THE COURT: All right, let us have the question, then.
24 (Question read.) A No sir, it is not true.

25 Q You answered more than one question? A I think so,
26 yes sir.

1 Q How many? A I think two.

2 Q Two. Do you remember what they were? A I think I
3 do.

4 Q What were they? A "Did you, on the 6th day of Octob-
5 er, 19011, pay to Robert F. Bain the sum of \$400 to in-
6 fluence his vote in the McNamara case at the suggestion of
7 Clarence S. Darrow?" As I remember it, the same question
8 was asked in regard to Lockwood, and I answered in both
9 cases, "Yes".

10 Q Did they read to you section 1324 of the Penal Code
11 then? A They did, yes sir.

12 Q And thereupon you testified? A Yes sir.

13 Q And out of all this story they didn't dare to have you
14 try to repeat it twice and asked you just those two little
15 questions, one about Bain and one about Lockwood, and didn't
16 dare ask you what it was and how it was, and have it taken
17 down, even.

18 MR FORD: The question as to whether we dared or dared not
19 do, may it please the court, would be, so far as the wit-
20 ness is concerned, purely a conclusion, and upon that
21 ground we object to it as calling for a conclusion of the
22 witness, whether we dared or did not dare?

23 THE COURT: Objection sustained.

24 MR ROGERS: Do you know why it was that they asked you
25 just one question about Bain and not another one, just
26 another question about Lockwood, and not another one, and

1 didn't permit you nor ask you to tell anything but just
2 those two questions?

3 MR FORD: I can tell, if you want me to. A I know what
4 Mr Ford said the reason was afterwards.

5 MR ROGERS: Yes, go ahead and tell what Mr Ford was try-
6 ing to do to us. A Mr Ford told me afterwards that he
7 didn't want the reporters of the daily newspapers of
8 the city to get onto the fact that I had made a statement,
9 consequently, he kept me there just as short a time as
10 possible, so they might think I hadn't made one, that is
11 the fact of the matter, as far as --

12 Q Do you mean to say that was his reason for not daring
13 to have you tell your story? A I say that is the reason
14 he gave me.

15 MR FREDERICKS: Just a moment. That is objected to as
16 calling for a conclusion of this witness, referring to
17 the "note daring" part.

18 THE COURT: Objection sustained.

19 MR ROGERS: You thought it was a mighty good trick,
20 didn't you?

21 MR FORD: We object to that as absolutely irrelevant and
22 immaterial, whether the witness thought it was a trick or
23 otherwise.

24 THE COURT: Objection sustained.

25 Q Now, will you swear, Mr Franklin, that you didn't
26 know, didn't understand that you were receiving immunity

1 as a consideration for making that statement in the Dis-
2 trict Attorney's office.

3 MR FORD: We object to that, to the form of the question as
4 being improper in that every bit of this testimony of this
5 witness is given under oath and he swears to all of it.

6 THE COURT: It is improper in that respect, but harmless.
7 Let him answer. A I didn't make my statement in the
8 District Attorney's office in the first place.

9 Q Wherever you made it? A No sir, I didn't so under-
10 stand.

11 Q Did you understand that your agreement to testify
12 and that operation of that code section automatically as
13 you said the other day, absolutely released you?

14 MR FORD: That is not true. A I understand that, yes
15 sir.

16 Q BY MR ROGERS: Did you understand, moreover, that
17 the mere asking of the questions concerning Yonkin and
18 Underwood and Smith and White released you from the prose-
19 cution in attempting to bribe Yonkin, for attempting to
20 bribe Underwood, for attempting to bribe Smith and Kruger,
21 did you understand that? A Yes sir, I understand that is
22 the law.

23 Q And wasn't that a play between you and Ford put up
24 in advance, that you were to be reluctant, r luctant to
25 testify about these matters? A No sir, it was not.

26 Q Did you have an agreement with him if you went on this

1 witness stand, you were to be asked these questions in
2 order that you might automatically have immunity and have
3 nothing more hanging over you? A No sir, there was no
4 such agreement or any other kind of agreement between Mr
5 Ford and I on any question of testimony I might or might
6 not give in this court, I want you to understand that tho-
7 roughly, now. Never was.

8 Q And you sat in the court room and heard him say that
9 he recommended to the court that you be fined a cer-
10 tain amount, namely, \$4000, which he would pay, and that
11 it was necessary to have your assistance and cooperation
12 and use you as a witness, and you tell us you never had
13 any notion that you were to be called as a witness and
14 no agreement, when he was right in the court room recommend-
15 ing your fine? A I still say --

16 MR FREDERICKS: Wait a moment. That is objected to as
17 assuming a fact not in evidence, that he didn't have any
18 notion he was to be a witness, whereas the witness has
19 testified heretofore when he made the statement, he sup-
20 posed he was to be called as a witness.

21 THE COURT: Objection sustained.

22 MR ROGERS: Did you also hear him say on that occasion
23 "If this defendant stood alone, we would not have made the
24 recommendation", namely, the recommendation that you be
25 fined and that he pay your fine? A I don't remember that,
26 Mr Rogers.

1 Q You didn't hear him say it?

2 MR FORD: He didn't say that, and I think the witness is
3 entitled to look at the record.

4 MR ROGERS: I will let him look at it some time.

5 THE COURT: You may look at it now, before you answer the
6 question; you need not answer the question.

7 MR ROGERS: Did you hear him say it -- A I did not --

8 MR FORD: Wait a minute. We ask --

9 MR ROGERS: Well, sir, then, you do contend that you had
10 not any sort of an agreement or understanding that you were
11 to be used as a witness when Mr Ford said so in open court,
12 at the time you were to be fined? A Mr Ford never said
13 in open court to my knowledge, within my hearing, that
14 there was any agreement between him and I as to what I
15 would testify to, and the record does not show it.

16 Q But he had your statement before he ever said that,
17 didn't he? A Oh, yes.

18 Q And you knew he was going to use you as a witness?

19 A Oh, I presume I thought so, certainly.

20 Q Well, you didn't tell each other those things, but
21 you thoroughly understood them, didn't you?

22 MR FREDERICKS: We object to that, may it please the
23 court, being indefinite., "those things". Those things
24 might mean ~~the~~ most anything.

25 THE COURT: Objection sustained.

26 MR ROGERS: Then you knew, when you came up there, so far

1 as Ford could arrange it, you were not going to prison and
2 not going to have to pay one cent of money yourself, didn't
3 you?

4 MR FREDERICKS: That is objected to on the ground it is
5 fully covered by questions and answers, of this witness.

6 MR ROGERS: No sir, it has not, after repeated and tech-
7 nical and small objections.

8 MR FREDERICKS: I will withdraw it, if it has not been.

9 THE COURT: Let him answer.

10 A The only statement Mr Ford ever made to me that you
11 could possibly, in my way of thinking, at least, construe
12 to mean anything of that kind was this. "Bert, we
13 don't want you, we want those behind you".

14 Q When did he say that? A I don't remember the date.

15 Q Before you went up? A Before I went up where?

16 Q To the court house to the court room? A When?

17 Q At the time that this play fine was put on you? A It
18 was not a play with me, I can assure you.

19 Q You never had to pay a dollar of it, Ford is going
20 to pay it; he says he is. Go ahead. At that time.

21 A I think it was -- oh, yes, it was before that time,
22 sure.

23

24

25

26

1 Q Before the time you made your statement? A I am not
2 so sure about that.

3 Q How long since you have seen that statement? A Since
4 the day I signed it, about three days after I made it,
5 about three or four months.

6 Q Mr. Keetch wrote it down for you, did he? A Wrote
7 what down?

8 Q That statement--or Mr. Petermichel? A Mr. Petermichel
9 was there at the time I made the statement.

10 THE COURT. This seems to be a good time to adjourn.

11
12 (Jury admonished.) Instead of adjourning until
13 9:30 tomorrow morning the court will adjourn until 10:00
14 o'clock. 10:00 o'clock tomorrow morning.

15
16 (Here the Court took an adjournment until Tuesday,
17 June 4, 1912, 10 o'clock A.M.)

18 -----
19
20
21
22
23
24
25
26