

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

Clarence Darrow,)

Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 18

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Bert H. Franklin,		1346	1423	

June 8, 1912. 9:30 o'clock A.M.

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

4 Case resumed.

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B E R T H. F R A N K L I N, on the stand
8 for further recross examination:

9 THE COURT: Mr Franklin is on the stand. You may proceed
10 with the recross examination.

11 MR APPEL: Mr Franklin, you said -- they questioned you here
12 on redirect as to the time you had a conversation with Mr
13 Drain I believe you stated it was after the indictment in
14 this case had been returned. Am I correct about that?

15 A No sir, you are not correct.

16 Q Well, was it before or after the 25th day of January,
17 that will fix the time.

18 MR FREDERICKS: Objected to upon the ground it has already
19 been gone into on cross-examination.

20 THE COURT: I presume this is preliminary for fixing the
21 date.

22 MR FREDERICKS: Yes, I suppose so. I make my objection so
23 I can --

24 THE COURT: Objection overruled.

25 A To the best of my recollection it was before that time.

26 MR APPEL: Before that time? A Yes sir.

1 Q The reason I asked you, you spoke of a conversation
2 with Mr Drain and a conversation with Mr Dominguez. I did
3 not know which of the two conversations you referred to,
4 either being before or after that time. Was your conversa-
5 tion with Mr Drain after that conversation with Mr Dominguez?

6 A I had a conversation with Mr Dominguez and Mr Drain and
7 Mr Nichol at one time, and with Mr Dominguez at another time
8 in the presence of Mr Wheaton.

9 Q There were two conversations? A The conversation
10 with Mr Dominguez when Mr Wheaton was present was subsequent
11 to the time I talked to Mr Drain and Mr Nichol and Mr
12 Dominguez.

13 Q That was -- then the last conversation referred to with
14 Mr Dominguez and Mr Wheaton was about February 3rd?

15 A I think that was the exact date. I am not positive.
16 I think that is the date. If that is a Saturday that is the
17 date.

18 Q Now, at that conversation, if I am correct, I understood
19 you to say that you stated to Mr Dominguez something to the
20 effect that you didn't want to have Mr Darrow dragged in?

21 Q What conversation do you allude to?

22 A At the conversation with Mr Dominguez and Mr Wheaton.

23 (Last question read by the reporter)

24 MR FREDERICKS: Object to that upon the ground that it has
25 already been gone into on cross-examination.

26 THE COURT: Objection overruled.

1 A I didn't so testify.

2 MR APPEL: Well, I understood so, that is why I am asking;
3 I am trying to clear these things up.

4 A I suggest you read the record and then you can tell
5 what I testified to.

6 Q Well, I'd rather ask you. Now, what did you tell Mr
7 Dominguez, then, about Mr Darrow at that conversation?

8 MR FORD: Just a moment. We object to that as not proper
9 cross-examination. If counsel has its opportunity on
10 cross-examination to put all of its impeaching questions --
11 they didn't put any as to this second conversation on cross-
12 examination. We didn't go into what was said at the
13 second conversation ourselves, either, on redirect -- the
14 second conversation on redirect, consequently counsel has
15 no right at this time to go into that conversation. It is
16 incompetent, irrelevant and immaterial, and not recross
17 examination.

18 THE COURT: Objection overruled.

19 A What is the question please.

20 (Last question read by the reporter)

21 A I will give you the conversation as near as I remember,
22 if you want it.

23 MR APPEL: The conversation in reference to Mr Darrow, that
24 is all I am interested in. A The conversation was very
25 short. I can tell it very quickly.

26 Q Well, what did you say to him? A Mr Dominguez stepped

1 up to the bar and said, "Bert, you taught me in speaking
2 of Mr Darrow in our conversation with Mr Nichols and Mr
3 Drain, adjectives, in speaking of your liking for him,
4 adjectives that I have used in arguments in courts of law
5 since that time, and you also stated to me that Mr Darrow
6 never gave you one dollar of money." I said, "Mr Domin-
7 guez, the first part of your statement is correct, but the
8 last part of your statement is absolutely false." And I
9 turned and left him, not wishing to continue the conversa-
10 tion.

11 Q Wasn't Fred Spring there present at that conversation?

12 A I think Mr Spring was there, yes sir. You mean Spring
13 attached to Mr Rogers' office, I presume?

14 MR ROGERS: Pardon me, that is not hardly correct. Not at-
15 tached to my office, no, not in the psychological sense.

16 A That is the sense in which I am speaking.

17 MR APPEL: That is a volunteer statement of the witness.

18 THE COURT: The witness had a right to have the particular
19 Spring you spoke of identified. There may be a number he
20 knows, for all I know.

21 MR APPEL: We ask that the statement of the witness that
22 Mr Spring was attached to Mr Rogers' office be stricken out
23 as not responsive, and being a voluntary statement of the
24 witness and not responsive to the question.

25 MR FORD: Simply a remark identifying him.

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28 1 THE COURT. The court identifies this as a question from
2 the witness for the purpose of identifying who Mr. Spring
3 was, and for that reason it will be denied.

4 MR. APPEL. We except to the construction of the court upon
5 what the witness meant on the ground it is invading the pro-
6 vince of the jury in that respect.

7 Q Now, so you had told Dominguez before that time to the
8 effect, something to the effect that Mr. Darrow had nothing
9 to do with the question of bribery and at this time you said
10 to him that it was not true, substantially, what he said
11 in reference to Mr. Darrow's connection with it.

12 MR. FORD. We object to the first part of that question as
13 the record is the best evidence what was said on the former
14 occasion. That the proper form of putting an impeaching
15 question is in the very words that counsel desires to put it
16 upon cross-examination and that it was put upon cross-
17 examination and we object further upon the ground that the
18 question has been fully answered.

19 THE COURT. Objection sustained.

20 MR. APPEL. Exception.

21 Q Now, isn't it true that in the presence of Fred Spring,
22 Mr. Wheaton and others at the Hollenbeck on the 3rd day of
23 February, 1912, and the conversation occurring at Mr. Polaski's
24 bar room and not at the Hollenbeck, that you did say to Mr.
25 Dominguez in the presence of the persons I have named, and
26 others being there present, either within hearing or out of

1 hearing, whose names I do not know now, that Mr. Darrow
2 had absolutely nothing to do with the matter upon which you
3 had been arrested and indicted?

4 MR. FORD. I would like to have that question read just a
5 moment, the Court please.

6 THE COURT. Read the question.

7 (Last question read by the reporter.)

8 MR. FORD. No objection.

9 A I will have to answer that question, the first part of it,
10 by stating I think the conversation I alluded to was in the
11 Hollenbeck Bar; it may have been in Mr. Polaski's, they are
12 side by side, it might possibly be that is where it occurred.
13 The last part of your question I will answer by stating
14 it is not true, either in word or in effect.

15 Q Didn't you then say in substance, I being at this time
16 unable to quote the language then used by you at that time
17 and place, and the persons then present, that you didn't
18 propose to tolerate or to allow any one to drag in the name
19 of Mr. Darrow in connection with your case? A I think I did
20 state that, yes, sir; yes, sir. I was protecting Mr.
21 Darrow at that time.

22 Q That was after you had made the statement in writing to -
23 A it was.

24 Q --to Mr. Oscar Lawler and Mr. Ford? A It was; yes, sir.

25 MR. FORD I would like to have those questions and answers
26 read. I don't think I correctly understand them.

1 THE COURT. All right, read them.

2 (Last three questions and answers read.)

3 MR. FORD. As to which conversation? Read the preceding ques-
4 tion, I want the time he is alluding to.

5 A February 3rd.

6 BY MR. FORD. Q February 3rd? A yes sir.

7 MR. FORD. Go ahead.

8 (Record read.)

9 A I will state further, in answer to that question, it was
10 a matter of protection to myself, it was a question I didn't
11 care to discuss with anybody.

12 BY MR. APPEL. Q Yes, I understand that. Q Yes, sir.

13 Q Now you were trying to protect Mr. Darrow on February 3rd
14 by making the statement which you have testified to here to
15 the persons I have named. How did you expect to protect Mr.
16 Darrow when in fact you had already accused him of the things
17 you have testified to here in your statement to Mr. Ford?

18 A I had not at that time accused Mr. Darrow publicly of any
19 crime.

20 Q Hadn't you accused him to those in authority? A I had;
21 yes, sir.

22 Q And hadn't they said to you, that is those in authority
23 or their agents or intermediaries, or your agents and inter-
24 mediaries, it was better for you to tell the truth? A Mr
25 Adams told me that, yes, sir.

26 Q Yes, exactly. After the conversation with Mr-- A The

1 best thing for my family .

2 Q --after conversation with Mr. Ford? A You will have to
3 ask Mr. Adams what he conversed with Mr. Ford about, I cannot
4 testify to that .

5 Q yes. All right. Now, you were trying to protect Mr. Darrow
6 on February 3rd; I understood you yesterday to state that the
7 indictment against Mr. Darrow had been returned on January
8 29th, is that true?

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3p 1 A Well, you misunderstood it then, for I never testified
2 when any indictment was returned. I don't know now when it
3 was returned, I have not the least idea.

4 Q Didn't counsel on the other side say, "Assuming that this
5 indictment was returned in this case January 29th", in that
6 question, and didn't you approve of that statement here, or
7 substantially so? A An assumption does not make it a fact,
8 I don't know.

9 Q The indictment is part of the files in this case. Now,
10 let us see it and have the indictment.

11 MR. FORD. I think it was filed January 29th.

12 BY MR. APPEL. Q Here is the indictment filed January 29,
13 1912. You had been before the grand jury before to testify
14 against Mr. Darrow, had you not, that is, one or two questions
15 involving his name? A I don't remember the date in which
16 I appeared before the grand jury.

17 Q You appeared before the grand jury before the indictment
18 was returned? A I don't know when the indictment was
19 returned.

20 Q I am telling you January 29th, 1912. Don't you know
21 that, and isn't that a fact? A I don't know; I don't
22 remember what time I appeared before the grand jury. It is
23 a matter of record and easily ascertained.

24 MR. FREDERICKS. I would like to make an objection, that is,
25 that this matter was fully gone into on cross-examination and
26 what counsel is after now is simply a matter of argument

1 which they should argue at the time to the jury. It has
2 been fully covered on cross-examination as to what this
3 witness said before the grand jury and the time before them.

4 MR. APPEL. I do not think the time was before them,

5 THE COURT. There is no unanswered question at this time.

6 BY MR. APPEL. Q Now, Mr. Franklin, you were interested all
7 along during the month of January in protecting Mr. Parrow's
8 name and you were telling people what you say was not true--

9 MR. FORD. We object to that on the ground there is no such
10 evidence.

11 MR. APPEL. Now,--

12 THE COURT. Counsel has not finished his question.

13 MR. APPEL. There is such evidence and you brought it out
14 yourself.

15 MR. FORD. Go ahead.

16 BY MR. APPEL. Q Were you not interested in protecting
17 the gentleman whom you said treated you so kindly and
18 nicely sufficiently as to have noticed by the news in the
19 papers that the indictment was returned on January 29th?

20 MR. FORD. To that question we object upon the ground that
21 the comments attached to the question all through the ques-
22 tion make it of an argumentative character and it is argu-
23 mentative. We object further on the ground that that
24 matter has been fully gone into on cross-examination and
25 it is not recross-examination.

26 THE COURT. Objection sustained.

1 MR. APPEL. Take an exception.

2 Q Didn't you see in the paper that the indictment was
3 returned January 29th, 1912?

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

5 MR. FORD. Also, calls for hearsay as to what he saw in the
6 paper.

7 THE COURT. Objection overruled.

8 A I don,t remember; I presume that I did.

9 Q now, didn't you know then and don't you know now that
10 you gave your testimony before the grand jury and mentioned
11 Mr. Darrow as having given you the money to bribe Bain and
12 to bribe Mr. Lockwood before that indictment was re_turned?

13 A I don,t remember when I appeared before the grand jury.

14 MR. FORD. The testimony here, if the court please--

15 MR. APPEL. Q have you any idea when you appeared before it?

16 MR. FORD. I have a right--

17 THE COURT. Wait a minute.

18 MR. FORD. --the question is--

19 THE COURT. What is the objection?

20 MR. FORD. I wish to state the objection to it on the ground
21 it is irrelevant, immaterial and not recross-examination.

22 THE COURT. The witness has answered he doesn't remember.

23 MR. FORD. But, I wish to take an exception to counsel's
24 asking the question itself and ask that the answer be
25 stricken out in order that I may make my objection and in
26 order to stop further questioning along that line. The

1 records of the indictment show the name of Mr. Franklin
2 in the indictment itself, consequently he must have appeared
3 before the grand jury before that indictment was returned,
4 and so far as that, Mr. Franklin appeared before the grand
5 jury before the 29th day of January, 1912, and to try to
6 prove it in any other manner by the testimony of the
7 witness, when the witness says he doesn't remember, is idle
8 and speculative, and I object to it.

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-4-P 1 THE COURT: I think counsel is after a different point, and
2 the objection is overruled and the motion to strike out the
3 answer is denied.

4 MR ROGERS: I take an exception to counsel's remarks as in-
5 forming and enlightening the witness in order that he may
6 forestall the cross-examination on the question, that he
7 didn't remember he was before the grand jury before the
8 finding of the indictment, to inform and forestall the
9 cross-examination upon that, after the witness having said
10 he does ^{not} remember that ~~when~~ he was before the grand jury
11 before the filing of the indictment. We have a right to
12 show that he didn't state the truth.

13 MR FORD: The witness didn't so testify, and if I understood
14 it, he, the witness, said he didn't remember when he was
15 before the grand jury, and he doesn't know when the in-
16 dictment was returned, consequently he cannot answer; he
17 has no knowledge, and I submit the records are before the
18 Court, part of the records of the Court, and it is the
19 best evidence on the subject, and that it is an attempt to
Sm 20 get the witness to say something by reason of a lack
21 of memory, say something that does not coincide with the
22 facts of an absolutely immaterial point, as far as this
23 witness is concerned; as your Honor knows the law to be
24 that a witness cannot be impeached upon an immaterial
25 point. The law recognizes the psychological fact that on
26 immaterial matters the memory is not so accurate as it is

1 on more material matters; and for that reason the law does
2 not permit a witness to be impeached upon immaterial matters.

3 THE COURT: What motion or objection are you arguing?

4 MR FORD: I am objecting to the last question before the
5 Court, and I ask^{ed}/the Court that the answer be stricken out
6 until I could make my objection.

7 THE COURT: The Court has already ruled on it.

8 MR ROGERS: In view of counsel's statement what the witness
9 said, before Mr Petermichel leaves, I would like to have
10 that answer read.

11 MR FREDERICKS: Simply following the argument of the
12 defense, your Honor, that is all it was.

13 MR APPEL; We want it read, nevertheless.

14 (Last question and answer read by the reporter)

15 MR APPEL: Now, after hearing Mr. Ford state here in open
16 court that your name appears on the list of witnesses at-
17 tached to the indictment of this case, which was returned
18 January last, 1912, have you any|doubt now, Mr Franklin, as
19 to whether or not you appeared before the grand jury as a
20 witness for the people and there mentioned the name of
21 Mr Darrow before that grand jury, prior to the finding of
22 the indictment?

23 MR FORD: Now, we object to that question as absolutely
24 irrelevant and immaterial and as conveying in the very
25 question an insult to counsel of the opposite side that it
26 was for the purpose of apprising the witness. My contention

1 is that the witness has absolutely nothing to do with the
2 matter; that the records are there and are the best evidence
3 when the witness went before the grand jury and testified
4 before the return of the indictment, and it is absolutely
5 immaterial what this witness' recollection is about it.

6 It is not the best evidence; it is not recross-examination,
7 and incompetent, irrelevant and immaterial; and if counsel
8 is seeking to establish the fact that this witness appeared
9 before the grand jury before the finding of the indictment,
10 he has got it here in the very best evidence. If he is
11 asking the question for any other point we object to it
12 upon the ground it is argumentative.

13 THE COURT: Objection overruled.

14 A Read the question, please.

15 (Last question read by the reporter)

16 A I still say that I do not know when I appeared before
17 the grand jury; I do not know the date and I do not know
18 the date when the indictment was returned against Clarence
19 S Darrow, consequently it is impossible for me to answer
20 your question.

21 MR APPEL: If we tell you it was returned January 29th, 1912,
22 wouldn't that aid you? A Not coming from that source, no
23 sir.

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5s 1 MR. ROGERS. Now, if your Honor please, I think--

2 MR. FREDERICKS. I don't want your Honor--

3 A I didn't mean it in that way.

4 MR. FORD. The witness is entitled to make just exactly that
5 answer. Here are men trying to accuse him and trap him--

6 MR. ROGERS. I have the floor--

7 MR. FREDERICKS. The remark is proper and he has--this witness
8 is not being cross-examined.

9 THE COURT. This is a matter for court and not for counsel.

10 MR. FREDERICKS. Very well then.

11 A I will state--

12 THE COURT. Wait a moment, Mr. Franklin. The court is per-
13 fectly able to deal with any question of the present nature
14 that comes up here and doesn't require the aid of any counsel
15 in doing it. Mr. Franklin, your remark and language to counsel
16 is improper. It is a reflection upon counsel that ought
17 not to be made--

18 MR. FORD. If the court please--

19 THE COURT. Wait a moment--

20 MR. FORD. I desire to take an exception to the court comment
21 ing upon the witness--

22 THE COURT. You will have time when I get through, and I will
23 admonish you, Mr. Franklin, that language at this time must be
24 refrained from in the court room. Strike out the answer.

25 A I will state, your Honor, for my own benefit that the
26 language that I used was not intended as any reflection on

1 MR. Appel or anybody connected with the defense. I merely
2 meant that the record was the best evidence.

3 MR. FORD. Now, if the court please, I desire to take an
4 exception to the court commenting upon the attitude of any
5 witness upon the stand. The Code provides that the jury shall
6 be the sole and exclusive judges of the credibility of wit-
7 nesses; that they shall consider those things. I don't
8 think it is fair to the witness to criticise him without
9 asking the witness--giving the witness an opportunity to
10 explain it, and, furthermore, it appeared to me at the time,
11 I might be mistaken, but it appeared to me that the witness
12 simply realized the fact that counsel--adverse counsel--
13 was endeavoring to trap him, and he further recognized the
14 fact that under the law they had a right to assume things
15 that were not really in evidence, and perhaps other facts, and
16 that he had a right to suspect the question as to whether
17 certain things were true or not when propounded to him by
18 adverse counsel.

19 THE COURT. Gentlemen, we are spending too much time in
20 discussing these matters.

21 MR. ROGERS. I take exception to the last statement of counsel

22 THE COURT. Exception will be noted. Proceed with the next
23 question.

24 MR. APPEL. Q Now, Mr. Franklin, look at your memorandum
25 there and see if it don't state on what date you appeared
26 before the grand jury as a witness? A I refuse--

1 MR. FREDERICKS. Object upon the ground it is incompetent,
2 irrelevant and immaterial and not the best evidence and not
3 recross-examination.

4 MR. FORD. We desire to call your Honor's attention in
5 support of that objection to the fact that counsel asked them
6 on cross-examination about his appearing before the grand
7 jury and put the very question that was put.

8 THE COURT. Mr. Ford, I think the court thoroughly understands
9 your position in this matter and doesn't fully agree with you
10 Objection is overruled.

11 MR. APPEL. Read what the witness has said here.

12 MR. FREDERICKS. It is not a question, exactly, I think it
13 is an instruction.

14 THE COURT. I think, Mr. Appel, counsel is right in that
15 respect. It is not question but a direction. Counsel may
16 not direct the witness.

17 MR. APPEL. I said to look at it if he pleases and see if
18 it doesn't--

19 MR. FORD. To that direction we object upon the ground
20 that counsel has no right whatever--the right of using
21 memorandum is one that is conferred upon the witness in
22 case he desires to use it and cannot be used by way of
23 subterfuge to look into a private memorandum of the witness
24 on other subjects. He has not used it in regard to that
25 day, has not asked permission to look at it, and counsel
26 has no right to direct him to look at it.

1 MR. ROGERS. I suppose, your Honor please, what we desire
2 in this matter especially from a witness of this class is
3 the truth--

4 MR. FREDERICKS. We object to "this class"--

5 MR. ROGERS. At this time I have the floor. I suppose
6 we desire, if he has anything there that will enlighten
7 us, after he has said that he kept a memorandum of where
8 he was, and whom he saw after the 14th, which he produced
9 in court here and from which we have taken leaves, and
10 which he said he dictated every night, that in the interest
11 of truth and justice we would have the right to look at that
12 book which you have produced here in the court room, and
13 ascertain if it does not show the date when you were before
14 the grand jury.

6-S 1 He has tried a subterfuge to get out of it. He says he
 2 does not remember. We want to show that he does remember,
 3 and that he did know when he testified a moment ago that he
 4 didn't know that he had been before the grand jury and pub-
 5 licly denounced Mr Darrow in that behalf and in that
 6 presence; we want to show that he did not tell the truth.
 7 We have a right to do it. We have a right to show that he
 8 knew before that indictment was ever brought that he had ac-
 9 cused Mr Darrow, and thereafter he said that he didn't want
 10 to publicly accuse him, all of which is most inconsistent.
 11 We have a right to develop those inconsistencies, and he
 12 mentioned without question -- he volunteered that informa-
 13 tion that he had that memorandum in his pocket and for the
 14 purpose of endeavoring to frighten us, doubtless, by saying
 15 that he could account for his whereabouts on all occasions,
 16 he took the book out of his pocket, and in the presence of
 17 this jury, he has repeatedly gone over the leaves. He told
 18 us he dictated the memorandum every night. He run it over
 19 to see if it is true. He has it in his pocket. We asked
 20 him to look at it under his own statement that he made
 21 that memorandum to protect himself as to his whereabouts.
 22 Is that an unreasonable request? He said that is his private
 23 affair. It is not his private affair at all, if your Honor
 24 please, but the affairs that concern the liberty of an
 25 American citizen which are not private, and we have a right
 26 when he has information there in his pocket, here in the

1 Court, we have a right to it and we ought not to be ^{forestalled}
2 from it by any objection which of itself is a subterfuge,
3 that it is a private affair. It was not a private affair
4 when he was before the grand jury and when he went on the
5 stand. I insist, in the authority, the 18th Cal. and the
6 7th Appellate, (quoting authority). Those I can show
7 are the exact words of the decision, and therefore we have
8 a right to his statement he made himself, and which is
9 ostensibly made here.

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1 MR FREDERICKS: Please the Court, we object and assign
2 it as misconduct, if there is any such thing as misconduct
3 of the attorneys for the defense, for counsel to refer to
4 this witness, this kind of a witness; as to what kind of a
5 witness this is is a question for the jury and not for the
6 Court; as to whether this witness is an accomplice or not is
7 a question for the jury and not for the Court. It is a
8 question of facts, so decided in dozens and dozens of
9 cases. This witness has been on this witness stand, now,
10 solidly for a week and he has borne the brunt of the cross-
11 examination of two attorneys on the other side, both able
12 and competent, and we object to him being referred to as
13 "this kind of a witness", in the light of the manner in
14 which his testimony has stood their scrutiny --

15 MR ROGERS: We take an exception to the District Attorney
16 commenting upon the testimony of the witness or arguing on
17 the weight of the testimony, and the witness' credibility.

18 MR FREDERICKS: I see I have the floor. I don't see the
19 difference between that kind of a comment and the comment
20 of "this kind of a witness", as far as that is concerned.
21 The point which I wish, is just this: this witness has
22 testified to a conversation he says he had with Frank Dom-
23 inguez and Fred Spring down in a saloon on Spring Street
24 on the 3rd of February. The evidence in this case shows
25 that this defendant Darrow was indicted on the 29th of
26 January, four or five days before that, and it shows

1 Franklin's name is on there, and Franklin says he testified
2 before the grand jury, and he said so some time ago on
3 cross-examination. Now, that is all in the record, that has
4 all been testified to. Now, counsel wishes to have him go
5 into that same matter again which is simply a matter of
6 argument. We will show on redirect examination all that
7 occurred down there at Spring Street on the 3rd day of
8 February, possibly the whole transaction, if it hasn't
9 been brought out here, but it is absolutely not recross-
10 examination to go into this matter again, and to assume that
11 this witness is trying to dodge anything. That is the vice
12 of this, assuming that he is trying to dodge anything, when it
13 ~~he~~ is simply a matter of dates and those dates are already
14 in front of the Court and already in front of this jury and
15 this jury knows just what the dates are,

7s 1 and it is unfair to the witness that he is assuming to
2 dodge something. He simply says he didn't remember the date.
3 Trying to be technical--he may not, I didn't remember the
4 date of the indictment until it was read here.

5 THE COURT. Objection overruled.

6 MR. APPEL. Just read the question.

7 (Last question read by the reporter.)

8 A That is a demand, your Honor, I can hardly answer.

9 Q You understand what that means? A Very well, yes, sir.

10 Q In view of the fact that I understood you to state that you
11 did not remember the date when you appeared before the grand
12 jury I simply requested you to look at your memorandum and
13 see if it didn't state the date. Now, will you do it or
14 not? A No, I refuse to look, it is my private affair.

15 MR. APPEL. Now, we ask the court to order him to look at
16 that memorandum and see if it don't state the date.

17 MR. FREDERICKS. We maintain the court hasn't a right to
18 order the witness to look at the memorandum and especially
19 on matter that is immaterial and trivial already estab-
20 lished before the court.

21 THE COURT. Mr. Franklin, are you able to refresh your memory
22 by looking at that book?

23 A I don't know whether that appears in my book or not, frankly
24 state it may and may not. I presume that it does; I don't
25 know, and that is absolutely true.

26 THE COURT. The court regards it as your duty then to

1 examine the book as requested and inform the court whether
2 or not the examination of the book will refresh your
3 memory .

4 MR. FREDERICKS. If you have got it with you go ahead and
5 look at it.

6 A About what date was that?

7 MR. ROGERS. Your Honor please, we take an exception of
8 this method--the court has directed the witness and has
9 assumed charge of the matter by his interrogation. The witness
10 refused and thereupon the district attorney says, "Oh, well,
11 go ahead and look at it", if your Honor please.

12 THE COURT. I did not hear the district attorney make any
13 remark.

14 MR. ROGERS. I did hear him, if your Honor did not hear
15 him I did.

16 MR. FREDERICKS. We are getting into a matter of temper
17 between the witness and the other side and it was simply a
18 matter of temper, that is all.

19 ME. APPEL. That is another instruction.

20 THE COURT. Just a moment, Mr. Appel, the witness is looking--

21 MR APPEL. And he asked me to furnish him a date about
22 what date he says. I was going to suggest to the witness
23 for his convenience that the indictment here, as we all
24 know and as we all agree, is dated January 29, 1912.

25 THE COURT. Let me have the indictment. I think the witness
26 is entitled to look at it.

1 A pardon me, what is the question, the indictment as to
2 the date or the date I appeared before the grand jury?

3 MR. FORD. The question is the time you appeared before the
4 grand jury.

5 MR. APPEL. I am asking it very mildly and nicely.

6 A That is very kind of you, I am sure I appreciate it.

7 THE COURT. Now, gentlemen, this is a serious matter.

8 A I have a memorandum here which says I appeared before
9 the grand jury on January 20, 1912.

10 THE COURT. Now, gentlemen, we will suspend proceedings
11 in this case for just one moment. There is another matter
12 on the calendar that requires attention at this time, so the
13 jury may remain in their seats.

14 (After recess.)

15 MR. APPEL. Q Mr. Franklin, will you do me a favor to let
16 me see that memorandum, just the one referred to. Only
17 one part of this would be material, your Honor, with your
18 Honor's permission and counsel here, that part that refers
19 to the date of going before the grand jury. A I have no
20 objection to it all being read.

p 21 MR. APPEL. I understand. I offer this in evidence, your
22 Honor. I will read it with your Honor's permission:
23 "January 20, 1912. Home in the morning. In the afternoon
24 went before the grand jury, later to track meet." and the
25 other I will read, if you so desire.

26 MR. FORD. We don't care anything about it.

1 MR. APPEL. Only I want to leave it out.

2 MR. FORD. Leave it out if you want to.

3 MR. APPEL. All right, we will leave it out. And on the
4 margin of the slip there is "January 20, 1912".

5 THE CLERK. Defendant's Exhibit E.

6 BY MR. APPEL. Q Now, Mr. Franklin, did you or did you not
7 in the course of your testimony on redirect state that the
8 time that you had made up your mind to tell the truth was
9 the day when you and Mr. Ford went over to Oscar Lawler's
10 office and made the written statement on January 25, 1912,
11 and that you had not prior to that time made up your mind
12 to say anything against Mr. Darrow? A That is not a
13 statement of my testimony at all, no, sir.

14 Q Now, so that you had been before the grand jury and con-
15 nected Darrow's name with the bribery in question before
16 you made the statement to Mr. Ford or to Mr. Lawler in writing
17 on January 25, 1912? A I didn't make a statement in writing,
18 it was taken down, I understand, I made a statement.

19 Q I am talking about the time, that is all. A I made a
20 statement.

21 Q On January 25? A Yes, sir.
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-P-8

1 Q Did ^{n't} you testify here in substance, upon one or two
2 occasions that you had not told the truth in respect to Mr
3 Darrow's connection with the bribery in question until you
4 made the statement to Mr Oscar Lawler and Mr Ford in Mr
5 Oscar Lawler's office, which was taken down by Mr Petermichel?

6 A I did not.

7 MR FORD: Just a moment, if the Court please; that matter was
8 fully gone into on cross-examination.

9 MR APPEL: He has answered the question and there is no
10 discussion.

11 MR FORD: I have the floor, or not?

12 THE COURT: Mr Ford has the floor. Do you want the answer
13 stricken out for the purpose of argument?

14 MR FORD: I would like to have the answer stricken out for
15 the purpose of argument.

16 THE COURT: The motion is denied. This question has been
17 fully argued.

18 Q If you had gone before the grand jury on January 20 to
19 mention Mr Darrow's name, and if you had made a statement
20 before Mr Lawler and Mr Ford on January 25, 1912, and men-
21 tioned Mr Darrow's name, what motive or object did you have
22 in telling an untruth to Dominguez, in the presence of
23 Spring and Wheaton on the 3rd day of February, 1912, about
24 the matter?

25 MR FORD: We object to that as not a proper question, not
26 recross-examination, and stating something that is not a
fact. The thing that was said by Mr Franklin in that bar-

1 room as I recall it, the testimony on February 3rd, as far
2 as Mr Darrow is concerned is: He said he didn't want to
3 discuss him publicly at that time Now the statement to
4 Ford and to Lawler or to the grand jury is not a public
5 statement. I think he did state he was protecting Darrow
6 on that date. However, I withdraw the objection.

7 MR APPEL: He states matters or facts here that is in the
8 record, and when it comes before the jury it will show it.

9 THE COURT: The objection is withdrawn. Answer the question.

10 A Read the question, please.

11 (Question read) A Simply for this reason, that I hoped
12 against hope that Mr Darrow would be able to clear himself
13 of the charge without the truth being made known to the pub-
14 lic in general.

15 Q After you had been -- A And I stuck to it up to the
16 time I took this stand.

17 Q Oh. A Yes, that is true.

18 Q You went before the grand jury and said "Darrow gave
19 me the money" ? A That is not public; that is private,
20 and private matters entirely.

21 Q And you went to Mr Ford and Mr Lawler and told them the
22 same thing, didn't you? A I made a statement on the 25th
23 day of January to Mr Ford.

24 Q Well, I say, you told them the same thing? A The same
25 thing what?

26 Q That he had given you the money? A I did, yes sir;
that is the truth.

1 Q And you hoped against hope that notwithstanding you
2 had sworn already before the grand jury that he had given you
3 the money, and had sworn to the same things in a statement
4 taken down by Petermichel before Lawler and before Ford, you
5 still thought there might be a possibility of another jury
6 trying Mr Darrow and believing that statement; is that it?

7 A No sir, that is not the truth.

8 Q And first you told this untruth to the reporters and
9 others because you wanted to keep Darrow's name out of the
10 trouble? A I never testified I told an untruth to a
11 reporter, and I never did.

12 Q You say that whatever you told the reporters in refer-
13 ence to this matter prior to your coming before the grand
14 jury was the truth?

15 MR FORD: To that we object on the ground that the matter
16 has been gone into fully, on cross-examination. I think it
17 is clearly apparent from the witness' answer what he means
18 is that whatever he has testified to he told the reporters
19 is the truth and he may not agree to something that they may
20 testify to here subsequently -- counsel has laid certain
21 foundations for impeaching questions from which I presume
22 he will later on introduce reporters to show Mr Franklin
23 said certain things to them, and he now wants to get a
24 statement from this witness to the effect that whatever he
25 told the reporters was the truth in order that he may argue
26 later on that whatever these reporters testified to is the

1 truth. That is not the question at all. What the witness
2 intends, and this is not a matter of giving any suggestion
3 to the witness at all, it is a matter of simply arguing to
4 the Court, what the witness clearly means is whatever he has
5 testified to he told the reporters was the truth, and that
6 he has told nothing but the truth to the reporters, an no
7 way equivalent to a statement that he has told the whole
8 of the truth to the reporters. The matter of what he said
9 to the newspaper reporters was gone into on cross-examination
10 and we didn't even touch it, the subject of those newspaper
11 reporters, the conversation, or anyting on redirect examina-
12 tion, and it certainly is not recross-examination at the
13 present time.

14 THE COURT: Objection overruled.

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1 A. Read the question, please.

2 (Question read.)

3 A. Read it again.

4 (Question read again.)

5 A. I do not understand it now. I do not quite catch that
6 question yet.

7 MR. APPEL. Q. No. You don't catch it after you heard Mr.
8 Ford's statement, what we wanted to show, what he thought
9 we wanted to show, isn't that it? You became confused about
10 it? A. I never listen to what Mr. Ford or you say.

11 MR. FORD. Just a minute--

12 BY MR. APPEL. Q. Didn't listen to Mr. Ford? A. No.

13 THE COURT. Strike out the answer.

14 MR. FORD. We object to the question whether he heard me
15 and what conclusion he drew after I got through as being
16 absolutely irrelevant and immaterial, not recross-examina-
17 tion, and I object to the question further on the ground
18 he already answered it. The witness said, "Whatever I told
19 the reporters was the truth." It has been already answered.

20 THE COURT. Objection overruled.

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

22 THE COURT. Restore the answer.

23 MR. APPEL. The answer will stand so as not to repeat it,
24 I suppose?

25 THE COURT. Yes, sir.

26 BY MR. APPEL. Q. You tell this jury you do not hear what

1 Mr. Ford says?

2 MR. FREDERICKS. I object to that as incompetent, irrelevant
3 and immaterial, not recross-examination.

4 THE COURT. Objection overruled.

5 A I don't pay any attention to the argument of either
6 Mr. Ford, yourself or Mr. Rogers. I am resting my mind and
7 not thinking about the case while you are talking.

8 Q Answer the question. You say you don't hear what he
9 says? A I don't pay any attention, I don't say I didn't
10 hear it, but I don't pay any attention to what he says.

11 MR. FREDERICKS. We object to that upon the ground the ques-
12 tion has been fully answered.

13 THE COURT. The objection is sustained. I think it is fully
14 answered.

15 MR. APPEL. We take an exception.

16 Q Now, how many men in all, what is the greatest number of
17 men that you had employed at any one time when you commenced
18 the investigation of the jurors referred to by you in your
19 redirect examination, which commenced, as I believe you
20 stated, somewhere about August the 19th or thereabouts.
21 What is the greatest number of men that you had at one
22 time after that?

23 MR. FORD. If this question is the number of men employed in
24 this case, I have no objection.

25 MR. APPEL. That is all that we are concerned in, your Honor.

26 MR. FORD. It is understood it is limited to that?

1 THE COURT It is so understood?

2 MR. APPEL. Why, certainly.

3 THE COURT. All right, go ahead.

4 A I don't remember.

5 BY MR. APPEL. Q Well, did you have at least ten at any
6 one time? A Yes, sir.

7 Q Did you have twenty at any one time? A I question
8 that very much.

9 Q Well, did you have fifteen? A Yes, sir; I think so.

10 Q Did you have more than fifteen? A I don't know.

11 Q And how much a day were you paying them? A Some of them
12 five and some four, some four and a half, some four and a
13 quarter.

14 Q A day? A Yes, sir, a day.

15 Q And their expenses? A Yes, sir.

16 Q Automobiles? A I beg your pardon?

17 Q Automobiles? A Automobiles?

18 Q Yes. A For them?

19 Q yes. A Whatever it was necessary for them to have,
20 yes, sir.

21 Q And automobiles for you? A Yes, sir.

22 Q Now, on October 29 you got \$500 in cash, you said, from
23 Mr. Darrow. Do you remember having stated that? A October
24 29th? I think it was the 28th.

25 Q Well, say October 28th. I don't care for one day more or

26 less now. A--
A I don't think I stated I got it in cash.

1 Q You didn't, eh? A I don't think I did; no, sir.

2 Q Are you certain you did not? A I testified to that at
3 the time.

4 MR. FREDERICKS. We object to that as not recross-examina-
5 tion, matter fully gone into by questions and answers of
6 this witness

7 THE COURT. yes.

8 BY MR. APPEL. Q You got it partly in cash and partly by
9 check, so as to identify the particular \$500? A I didn't
10 so testify.

11 MR. FORD. Will you let us make an objection?

12 A Yes, sir.

13 THE COURT. Strike out the answer.

14 MR. FORD. I don't care to argue it now.

15 BY MR. APPEL. Q How was it paid to you?

16 MR. FORD. We object to that on the ground counsel fully
17 went into these payments on cross-examination, had a black
18 board here and drew figures and examined it fully.

19 MR. APPEL. He attempted on his redirect examination, because
20 of the very appropriate questions of the juror here, to leave
21 the impression, at least upon me, that the figures which were
22 put upon the blackboard did not contain all of the payments
23 made to him by Mr. Darrow but that in fact he had received
24 other moneys and it is a question of the \$500.

10-P 1 THE COURT: Let me interrupt you. I have refreshed my
2 recollection by examining the transcript. Your question
3 is proper. Objection overruled.

4 MR APPEL: Read the question.

5 (Question read)

6 A To the best of my recollection it was paid to me by
7 check and I cashed the check and put the money in my pocket,
8 to the best of my recollection.

9 MR FREDERICKS: What was the date of that; I didn't get
10 that question.

11 A I think you will find that was on Saturday, October
12 28th.

13 Q By Mr Appel: Are you sure about the amount that he
14 gave you on that date? A Yes sir, I am.

15 Q And you put it in the bank, you say? A I didn't so
16 state, no sir.

17 Q What did you do with it? A I just testified, to the
18 best of my recollection I cashed the check at the bank and
19 put the money in my pocket and paid my men that afternoon
20 with the cash, so that they could get their money that
21 afternoon after the bank closed; that is my best recollection.
22 My checks will show, if you want them.

23 Q Anyhow, it was money given to you for expenses and for
24 the purpose of paying your men; or you used it for that
25 purpose, anyway? A To the best of my recollection, I did,
26 yes sir.

1 Q You asked for the money as you were in the habit of
2 asking for it when you needed money to pay your men, is
3 that right? A I don't remember what I said to him; I got
4 the money.

5 Q You don't know what you said or what Mr Darrow said
6 about it? A No.

7 Q Therefore, there were no particular discussions as to
8 what it was for, that is all. I mean? A I ~~don't~~ don't
9 remember any particular discussions. I presumed it was
10 understood it was to be used in the case.

11 Q Now, used in the case. Now, used in what manner?
12 Now, come right out and tell us whether it was to be used for
13 illegal and improper purposes, or for the purposes of
14 legitimate expenses you made? A I don't think there was
15 any conversation in regard to it, I don't remember.

16 MR FREDERICKS: What is the use of wasting time on that,
17 your Honor? The witness has said he got it to pay his men.

18 MR APPEL: He has answered.

19 THE COURT: He has answered it; there is nothing before the
20 Court.

21 MR FREDERICKS: But we have been seven days at this and
22 there ought to be a limit to that.

23 MR ROGERS: I take an exception to that statement. About
24 three days have been taken up with puerile and obstructive
25 objections to our questions.

26

Burns

1 MR FREDERICKS: The dragging in of firms and the Marchants
2 & Manufacturers Association, and the trial of everybody else
3 excépt Mr Darrow.

4 THE COURT: I think you are both right. I think there has
5 been too much dragging in of outside matters.

6 MR ROGERS: May that be construed as an intimation as to
7 what counsel has said, dragging in Burns and outside matters?

8 THE COURT: I think you are both right in your statements;
9 there have been too many arguments and discussions to the
10 questions that have been presented to the Court, more than
11 the circumstances justified.

12 MR APPEL: I don't object, your Honor, to the District
13 A\torney's office here talking with Mr Burns; I think they
14 ought to talk with Mr Burns.

15 MR KEETCH: I submit, your Honor, that Mr Appel be admonished
16 by your Honor, it is absolutely uncalled for. These remarks
17 are made for a purpose, no question about it.

18 THE COURT: I see no harm in them.

19 MR APPEL: And you make your remarks for your own purposes.

20 THE COURT: Now, gentlemen, let us get on with the questions.
21 Let us devote more time to questions and answers, and less
22 to argument.

23 Q By Mr Appel: Now, that \$500 which you said you got from
24 Mr Darrow on October 28, is that the amount which appears in
25 your handwriting in pencil on the bank-book? A To the
26 best of my recollection, yes sir. I think you will find that

1 was on Saturday, and that is my best recollection. I am not
2 sure, but I think it was.

3 Q Was that given to you in cash?

4 MR FORD: We object to that as matter fully gone into.

5 MR APPEL: Yes, I think it has.

6 THE COURT: The question is withdrawn.

7 MR FORD: It is not recross-examination.

8 Q By Mr Appel: I think you said it was partly cash and
9 partly check? A I did not, Mr Appel.

10 MR APPEL: Now, he said that he didn't.

11 A I didn't say any such thing.

12 MR FORD: He said it was a check for \$500, and he has
13 said that three or four times.

14 MR APPEL: He said check.
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11p1 A I said, to the best of my recollection that was a check
2 I cashed it at the First National Bank and put the money
3 in my pocket to pay the men, that is what I testified to it.
4 MR. FORD. I think that is the sixth time the testimony
5 has been given on that point; I call your Honor's attention
6 to it.

7 BY MR. APPEL. Q Now, did you testify it was a check?

8 A I said, to the best of my recollection.

9 Q Now, is it to the best of your recollection? A yes,
10 and that is what I said all the time.

11 Q Now, you have a recollection now that was a check?

12 MR. FORD. What date was that?

13 Q Now, wait a moment now--I attract your attention--

14 MR. FORD. Counsel ought to have politeness to tell us
15 what page you are looking at, out of politeness, that is
16 all.

17 BY MR. APPEL. Q If you will listen you will hear and you
18 will learn. I attract your attention to page 635, Volume
19 8 of the transcript of your testimony given here on cross-
20 examination, part of it being on direct examination, com-
21 mencing with line 22: "Q--Now, in the book here appears a
22 pencil memorandum on the 28th under the heading 28\$500.

23 Who put that in there? A--I did. Q--Well, why didn't the
24 banker put it in, do you remember? Didn't you have your
25 book with you? A--I didn't deposit that amount, that
26 was cash and I made that at the time I received it. Q--

When did you make that entry? A--The date that I got it.

1 Q--Then it is not, it was not deposited in the bank, was it?

2 A--No, sir." Didn't you so testify on cross-examination?

3 A And I so testify now.

4 Q Don't you now say it was a check? A I said to the best
5 of my recollection it was a check and I cashed it and took
6 the cash.

7 Q The other day your recollection is it was cash?

8 MR. FORD. If your Honor please, I wish to make an objec-
9 tion.

10 THE COURT. Mr. Ford.

11 MR. FORD. My objection is it is not recross-examination,
12 that this is the very cross-examination they are reading
13 from at that time when they went into it fully and the
14 only object of this is to go over and over again to see if
15 they cannot do something that they have not been successful
16 in doing on cross-examination, to get some little thing on
17 which ^{which} they can hang a little variation ~~to~~ and argue the matter
18 to the jury.

19 MR. APPEL. We object to that--

20 MR. FORD. Something that the law does not permit to be
21 done, and there is no reason in the law in permitting recross-
22 examination on matters which have been gone fully into on
23 cross-examination, and I think this argument illustrates it.

24 THE COURT. I think the court fully agrees with you on that
25 point, but does not agree with you on new matters, matters
26 that have not been touched upon.

1 MR. FORD Then we add the further objection that it does
2 not serve to impeach his testimony in any way, shape or
3 form. Do I understand your Honor to rule that the matter of
4 the payments is new matter brought out on redirect examina-
5 tion?

6 THE COURT This is new matter on which counsel is interro-
7 gating the witness, it has relation to such new matter.

8 MR. FORD. If your Honor will designate the new matter it
9 will perhaps save me trouble and time in making further
10 objections and save the time of the court and the jury.

11 THE COURT. The court understand this is new matter and
12 does not regard it as proper to make a declaration of it to
13 counsel.

14 MR. FREDERICKS. Well, then, we will stipulate we will not
15 take up the time of the court in making objections and if the
16 court deems it has gone far enough we will leave it to the
17 court to stop it.

18 THE COURT. Do as you like, Mr. Fredericks.

19 MR. Appel. I will ask my questions and I will submit
20 always to the rulings of the court, necessarily so, but
21 that wont keep me from asking questions.

22 THE COURT Read the last question.

23 MR. APPEL. There was no question, I was going to put
24 another.

25 MR. Ford. We would like to stipulate that the objections
26 may stand to all these questions and whenever your Honor

1 feels like sustaining the objection your Honor may do so.
2 THE COURT Do you so stipulate, Mr. Appel?
3 MR. APPEL. yes, your Honor, and whenever I think I have
4 gone too far in asking questions that have been asked
5 already, I will sustain the objection also. I don,t intend
6 to do it, that is what I mean.

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12p 1 Q I will attract your attention to page 360 when you were
2 questioned by Mr. Ford. The other question propounded was
3 a question by Mr. Rogers, but, on your direct examination,
4 page 360, commencing with line 18, "Q--By whom were you
5 paid for this work, Mr. Franklin? A--Mr. Darrow. I received
6 one time, perhaps twice, a check from Harriman when Mr.
7 Darrow was not present. Q--And the balance of the times
8 you were paid by Mr. Darrow? A--Yes, sir. Q--In what manner
9 were you paid? A--By check. Q--Did you receive any money
10 from him other than by check? A--Yes, sir. Q--When and where
11 did you receive money from him other than by check? A--I
12 received \$500 in cash from Mr. Darrow but I couldn't tell
13 you the date? Q--What month? A--I think during the month
14 of October, about the middle of the month. Q--Had you ever
15 received any money in cash previous to that day? A--No, sir."
16 Did you or did you not so testify, in this court? A I think
17 I did, and I testified part of it was cash and part by
18 check.

19 Q Didn't you testify as I have read to you, it was cash,
20 "I received \$500 in cash from Mr. Darrow, I couldn't tell you
21 the date. Q--What month? A--I think during the month of
22 October, about the middle of the month."? A I testified
23 part was in cash and as I remember it, but I am not sure
24 it was in October, part cash and part check.

25 Q Didn't you testify it was in October--"In what manner were
26 you paid? A--By check. Q--Did you ever receive any money

1 from him other than by check? A--Yes, sir." Didn't you
2 so testify? A If you will read all of it you will under-
3 stand it.

4 THE COURT. Do you wish to examine the transcript? A I do
5 not. My eyes are hurting me and I do not care to read it.

6 BY MR. APPEL. Q Your eyes are bad? A My brain is all
7 right.

8 Q Now, was any of this money given to you for expenses and
9 so on, was any part of it banked by your wife in her own
10 name?

11 MR. KEETCH. We object to that on the ground it is incom-
12 ptent, irrelevant and immaterial, not proper recross-
13 examination.

14 THE COURT. Objection overruled.

15 A Indirectly it may have been.

16 Q Indirectly. Well, what do you mean by "indirectly"?

17 A Well, I may have given her some money and she may have
18 taken it and put it into her own account in the bank; yes,
19 sir; probably she did.

20 Q Do you know how much she put in the bank out of those
21 moneys? A Very little.

22 MR. KEETCH. We object to it on the same ground.

23 THE COURT. Objection overruled.

24 Q Do you know how much, I said? A I do not.

25 Q How often did you turn over the money to her to have her
26 pay the men? A I think I paid the men myself all the time,

1 except when she paid them by check. They were generally
2 paid by check, most always.

3 Q And were they paid by check as against your account or
4 checked against her account? A There might have been a
5 time when my account was a little low that she checked
6 on her own, but I don't think so.

7 Q Then, whatever moneys you gave to her, whatever moneys
8 you received from Mr. Darrow, your impression is they were
9 not used for the payment of these men, these moneys she
10 banked herself? A No, sir, it was taken for household
11 expenses or expenses of the household and it was coming to
12 me.

13 Q yes. What balance did you have, say on October 6th,
14 1912, if you remember? A \$109.10, ^{before} but I deposited the
15 check I got from Mr. Darrow to bribe Mr. Bain.

16 MR. APPEL. I ask that that last statement be stricken out.

17 A Your Honor I had to tell that.

18 MR. APPEL. I asked you what was the balance, you know.

19 MR. KEETCHE He gave it to you.

20 MR. APPEL. I didn't ask about the \$1,000 check. Of
21 course, this is only an exhibition of the great solicitude
22 this witness has for my client.

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

24 MR. KEETCH. As I understand it, it was only given for the
25 purpose of fixing the time.

26 MR. APPEL. No man can say that, that statement is not

1 correct, any man can see that question can be answered
2 by saying, I had such and such a balance at that date.

3 MR. KEETCH. At what time?

4 MR. APPEL. Go on and learn something.

5 MR. KEETCH. It wont be from you.

6 A On October 6th before I deposited the check for \$1,000
7 which appears in my bank book I had a balance of \$109.10
8 to my credit in the First National Bank.

- 13-P 1 Q Very well. That is the way to answer that question.
2 Now, how much did you owe your men on that day for work
3 that they had done? A I don't know.
4 Q How many men did you have at that time working for you?
5 A I don't know.
6 Q That was before or after the McNamara case had com-
7 menced, as near as you can remember, without being accurate
8 as to date? A Well, it was before, I think so, yes sir.
9 Q Sir? A I am quite sure of that. I think it commenced
10 on the 9th or the 11th.
11 Q Did you have at least ten or fifteen men working for
12 you at that time? A I don't remember.
13 Q May have had that many? A I don't remember.
14 MR KEETCH: I object to that upon the ground it has already
15 been asked and answered several times.
16 THE COURT: Objection sustained on that ground.
17 MR APPEL: I take an exception.
18 Q Do you know how much was the amount you owed those men
19 on that day? A I don't remember. Less than \$500.
20 Q Well, how do you know? A Well, because I never owed
21 them any more than that; I paid them every Saturday.
22 Q You paid them every Saturday? A Yes sir, and I have
23 receipts for it.
24 Q When you had ten men working for you, how much a day was
25 that? A I don't know.
26 Q Don't know? A No sir.

1 Q The expenses of these men, did you gave them cash
2 to pay their expenses as they went along? A When they
3 asked for it I advanced money to them for expenses, yes sir.

4 Q On an average, how much^a"day would you spend?

5 A I don't know.

6 Q You have your receipts, haven't you? A I have, yes sir.

7 Q And you have your checks that you gave them? A I think
8 so, yes sir.

9 Q Well you know you have them? A I think so, I am not
10 sure about the checks; I have my receipts.

11 Q Well didn't you say yesterday you had them? A I said
12 I thought I had them.

13 Q Did you say you thought you had them? A Yes sir.
14 Not yesterday, I didn't.

15 Q Did you use the word "thought"? A I did, yes sir.

16 Q You said "I think I have them", did you? A Yes sir,
17 that is just what I said.

18 Q Now you remember that? A I do, yes sir.

19 Q Well now, have you any objection to producing all of
20 the receipts of these men? A Not a bit in the world. I
21 had them in court in my pocket, I expected to be called for
22 them.

23 Q You had them? A I did, yes sir.

24 Q When? A The second or third day I was on the stand,
25 I expected to be asked for them.

26 Q Now you tell the jury you "think" you have.

1 A I am talking about receipts.

2 Q Well I am talking about the receipts. A Yes sir, I had
3 them. I know I have got my receipts.

4 Q Oh yes, you know. A I never said anything else, and
5 I object to the counsel putting words in my mouth and insult-
6 ing me. If the Court won't protect me I will protect myself.

7 MR APPEL: I will tell you one thing, -- A Now, never mind --

8 THE COURT: Just a moment, Mr Appel. I think Mr Franklin
9 that you are a little unnecessarily touchy about this
10 matter. The Court will protect you if there is any occa-
11 sion for protection, but these questions, the Court is
12 paying very close attention to this, and will immediately
13 stop any improper question and will be just as quick ^{to resent} /any
14 improper conduct towards you, or any other witness on the
15 stand, as you would yourself; but I do not regard the matter
16 as being so improper as to call for any action. Gentlemen
17 of the jury, bearing in mind your former admonition, we
18 will take a recess at this time for five minutes.

(After recess)

19 THE COURT : Proceed with the recross-examination.

20 MR APPEL: Now, Mr Franklin, in order to clear a date and
21 the time as nearly as we can under the circumstances, can
22 you tell me whether or not the conversation you had with
23 Tom Johnson -- Colonel Tom Johnson, or the conversation that
24 he had with you, was or was not before January 14th, 1912?

25 A I think it must have of necessity been before that
26 date, Mr Appel.

1 Q Then it was ^{before} ~~that~~ you had that conversation with Mr
2 Davis and Mr Darrow? A Yes sir, to the best of my
3 recollection it must have been.

4 Q Now, that conversation with Mr Johnson, as I understand,
5 I may be mistaken, you told Mr Johnson that he should go to
6 Mr Ford and tell him that if you could get your case con-
7 tinued for about thirty days that you could find the man
8 who had given you the money and clear up the whole trans-
9 action, or words to that effect? A I didn't say anything
10 about a month, in my recollection. I told him that, though.
11 I didn't tell him to go to Mr Ford.

12 Q Anyhow, he came back to you prior to the 14th day of
13 January, and said to you Mr Ford didn't want any such story
14 as that, that the man they wanted was Darrow, or words to
15 that effect? A I didn't so testify, no sir.

16 Q Did he, or did he not state that to you? A I don't
17 think so, no sir.

18 Q Will you swear he didn't?
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14s 1 MR. FORD. Just a moment--that is an improper question.
2 Every bit of testimony the witness gives is under oath.
3 THE COURT- Yes.
4 MR. APPEL. Q Will you say that you did? A I will say
5 to you that I don't remember any such conversation, and
6 I don't think it took place.
7 Q Isn't it a fact you do remember and you don't want to
8 admit it here before the jury? A No, sir; that is not a
9 fact. If I remembered I would be glad to tell you.
10 MR. FORD. Is that a proper question?
11 THE COURT. No, I don't think so.
12 MR. APPEL. Q Who was the person that said to you,
13 "We want the higher up," or, "We want Darrow"? Was it Mr.
14 Ford? A I didn't testify anybody ever told me that.
15 Q You didn't say that anybody said that to you? A I don't
16 remember of it at this time.
17 Q Well, in fact, you have never testified to that effect?
18 A I don't remember.
19 MR. FORD. That calls for a conclusion.
20 MR. FREDERICKS. Whether he testified to that effect, that
21 is another thing.
22 THE COURT. Objection sustained.
23 MR. FORD. He didn't say anything like that.
24 THE COURT. The record will state whatever he said.
25 MR. APPEL. It shows exactly that, nothing else.
26 MR. FORD. We object to that comment of the counsel; what he

1 stated what he said I said to him is something entirely
2 different. You look at the record, you will find what
3 he said. He said Mr. Ford said "We don't want you, we
4 want those behind you," he did not testify he said,
5 "We want Darrow" or anything else.

6 MR. APPEL. I will adopt the amendment and incorporate it
7 in my question.

8 MR. FORD. I like an opportunity to object to the question
9 before it is answered.

10 MR. APPEL. Q. Was that statement made to you by Mr. Ford
11 on the 14th day of January over at your home?

12 MR. FORD. Just a moment--object to the question as indefinite
13 and uncertain. It doesn't designate what statement counsel
14 is now referring to, and our reason in wanting to be exact
15 is the same reason which has prompted this witness to be
16 technical. It is not merely our desire to be technical but
17 to be right.

18 THE COURT. Objection sustained.

19 MR. APPEL. Q. Was the statement just now made by Mr. Ford of
20 what he told you, to wit, "Bert, we don't want you, we want
21 those behind you;" was that statement made on the 14th day
22 of January over at your home and if not where was it made
23 to you?

24 MR. FORD. I object to the form of the question on the
25 ground that it is not a correct statement of what occurred.
26 I have not just now told the witness anything. I have told

1 your Honor what the record shows the witness^{said} I said to him.

2 THE COURT. Objection sustained.

3 MR. APPEL. Exception.

4 Q What was the statement that Mr. Ford made to you? A When?

5 Q In reference to "We want those behind you"? A I don't
6 remember any such statement.

7 Q Well, he didn't make any such statement to you whatever?

8 A I don't say that, either.

9 MR. FORD. If the court please, we object to any examination
10 along this line on the ground it has been gone into fully
11 on cross-examination, and on direct examination was not
12 touched on redirect at all.

13 THE COURT. No unanswered question before the court at this
14 time.

15 MR. APPEL. Q Now, Mr. Franklin, after the conversation you
16 had on the 3rd day of February, 1912, at the Hoffman House,
17 that is, Mide Polaski's place of business on Spring street,
18 with Dominguez, Wheaton and Spring, they being present,
19 to which you have already referred this morning, did you there
20 after about the corner of Spring and Second street in this
21 city, within a few days after meeting Mr. Drain again, and
22 did you or did you not then, you and he being present, no
23 others being present, so as to enable them to have heard
24 the conversation between you two, state to him, "Drain, you
25 were present when I talked with Dominguez and he says that
26 I told him that Mr. Parrow had nothing to do with this bribery

1 question, that I was not going to drag an innocent man in."
2 Now, isn't it a fact that I didn't make that statement to
3 him," and didn't then he say to you, "Franklin, you did
4 make that statement to him?" A No, sir.

5 Q Or words to that effect?

6 MR. FORD I ask that the answer be stricken out and I be
7 given an opportunity to strike it out--or to make my objec-
8 tion.

9 THE COURT. Strike out the answer.

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1 MR FORD: We object to the question as calling for hearsay
2 on the part of what John Drain said. No way to impeach
3 or tend to impeach this witness. If they want to put Mr
4 Drain on the stand, put him on the stand, and don't try
5 to drag his testimony in through hearsay with this witness,
6 and it is an attempt to impeach him on an absolutely im-
7 relevant matter. The question is not a question of dis-
8 pute between this witness and some other witness as to
9 their recollection of a former conversation, but the
10 question is what the form of the question was, and they
11 cannot prove it by such hearsay testimony as that.
12 Let them bring Mr Drain, or Mr Nichols and Mr Dominguez
13 and put them on the stand where we can cross-examine as
14 to whether it occurred at the conversation between those
15 three. We object upon the ground that it calls for hearsay,
16 incompetent, irrelevant and immaterial, and not recross-
17 examination.

18 THE COURT: Objection overruled.

19 MR APPEL: The answer will stand, then?

20 THE COURT: The answer will stand.

21 MR APPEL: Now, isn't it a fact that the reason why you
22 went to Drain -- A Pardon me, your Honor; I would
23 to tell what that conversation was.

24 THE COURT: You want to explain your answer; you may.

25 A In the first place, the conversation didn't take place
26 at Second and Spring; it took place on Broadway in front
of the City Hall. I met Mr Drain subsequent to the time

1 that I had met Mr Dominguez in the Hoffman House, which I
2 remember now, I think I remember, February 3rd, and I said
3 that I had met Mr Dominguez -- Mr Dominguez had approached
4 me in the bar and had stated to me emphatically, or attempt-
5 ed to get me to admit that I had made a statement that Mr
6 Darrow had nothing to do with the bribing of jurors. I
7 said "Mr Drain, what is the substance of your recollection
8 of that conversation?" Well, he said "Bert, I don't remem-
9 ber of you making any such statement as that, but the fact
10 that you spoke in the highest terms of Mr Darrow left me
11 with that impression"; that was the conversation.

12 Q That is what Drain said? A That is what Drain said,
13 yes sir.

14 Q But you approached Mr Drain, too? A I didn't approach
15 him. I met him and asked him the question.

16 Q You tried to persuade him that you had not said any-
17 thing about Darrow being innocent? A I did not, ~~xxxxxxx~~
18 I want Mr Drain to come on the stand and tell the truth as
19 he remembers it -- now, wait until I get through -- and he
20 will tell the truth as he remembers it; he is that kind of
21 a man.

22 Q Yes, of course. A Yes sir.

23 Q But you -- this was after February 3rd and what were
24 you asking Drain for those questions, the fact that you
25 were trying to protect Darrow at that time?

26 MR FORD: Just a moment. I was going to make a motion to

1 strike it all out, on the ground that it is apparent that
2 all of it is there merely for the purpose of showing what
3 Mr Drain had said and is absolutely hearsay. Let them
4 put Mr Drain on the stand. That is the proper way to get
5 what Drain said in the record., if Drain's statements will
6 in any wise impeach this witness. What Drain has said
7 has no value whatever unless it is for the purpose of im-
8 peaching this witness, and if it is for the purpose of im-
9 peaching this witness, they cannot prove it here by hearsay,
10 but produce Mr Drain and let him testify on the stand.

11 Now, as to the last -- the Court will pardon me just a moment --
12 I am not addressing myself as objecting on this last
13 question. I want that question read and have an objection
14 to make to it. I am moving the Court to strike out ~~all~~ that
15 occurred between Drain and Mr Franklin as now testified to
16 by Franklin on a day subsequent to the meeting with Domin-
17 guez at the Hoffman Cafe, on the ground it is hearsay, pure
18 and simple.

19 THE COURT: Motion to strike out is denied.

20 MR FORD: May I have the question read? I think this
21 question is objectionable.

22 (Last question read by the reporter)

23 MR FORD: I certainly don't understand that question. May
24 I have it read again?

25 (Last question read by the reporter again)

26 MR APPEL: We will put it in ^{an} un_{an}mixed way. If you were trying--

1 if you really were trying to protect Mr Darrow after the
2 3rd day of February, you were trying to protect his name,
3 why was it you went to Drain and asked him what his recol-
4 lection of what the conversation was in his presence with
5 Mr Dominguez for?

6 MR FORD: We object to that upon the ground the question is
7 argumentative; that it is assuming the witness was trying
8 to protect Mr Darrow after the 3rd day of February, and there
9 is no such testimony here. The only testimony here on that
10 point is that on the 3rd day of February he did not want to
11 discuss Mr Darrow publicly; that he was then hoping against
12 hope that Mr Darrow could get out of it some way. He was
13 still his friend, but there was no testimony as to what his
14 feelings were after the 3rd of February, and it is irre-
15 levant and immaterial what his purpose was

16s 1 in seeing Mr. Drain, and I think that the question--It is
2 apparent the time and place has not been fixed. The time
3 has not been fixed, except it was after the 3rd of February
4 but whether it was just a few days ago or a couple of
5 months ago or immediately after the 3rd day of February,
6 certainly no foundation for it, and as to the motives at
7 that time, I don,t believe it is the least bit relevant at
8 this time.

9 THE COURT' Objection overruled.

10 MR. FREDERICKS. Might we ask the time be set a little
11 closer?

12 THE COURT. As to the time, that part of the objection is
13 well taken.

14 MR. APPEL. He had fixed it. I always fix the time in my
15 questions.

16 THE COURT. Let's have the question.

17 MR. APPEL. I said a few days after the 3rd day of February.

18 THE COURT. That is the question, then?

19 MR. APPEL. Yes, sir. The only difference between the
20 witness and I is that I fixed it at the corner of Second and
21 Spring and he said the conversation occurred opposite the
22 City Hall on Broadway.

23 THE COURT. If the time is fixed as a few days after--

24 MR. FORD. I didn't recall that. I like to ask the witness
25 if that is the time he fixed?

26 A To the best of my recollection it was the first time I

1 met Mr. Drain after I seen Mr. Dominguez on February 3rd, when-
2 ever that was, and I think it was a short time afterwards,
3 to the best of my recollection.

4 MR. APPEL. Now, read the prior question to the witness.

5 (Last question read by the reporter.)

6 A because I realized in my own mind, that if you want my own
7 mind at the time--Mr. Dominguez is present--that Mr. Dominguez
8 being from the office of Mr. Rogers, who I understood was
9 going to defend Mr Darrow, was preparing, to the best of his
10 ability, which it seems to be the case, to impeach my
11 testimony by some of my statements I had made to some of
12 my friends and to put Mr. Drain upon his guard as to exactly
13 the conversation, and as quickly as possible, so that he
14 might remember it, I then spoke to him and told him just
15 what I have stated.

16 Q So you were preparing a defense? A For myself.

17 Q A defense against any attack upon your truth and
18 veracity at any time? A No, sir, I was preparing an
19 attack upon impeachment of my testimony.

20 Q I say, you didn't want to be impeached? A No, sir.

21 I didn't mean by that that any witness will swear to a lie,
22 they will swear to the best of their recollection and maybe
23 got that impression. I don,t doubt it at all. The men
24 mentioned here are of the highest integrity excppt one, if
25 you wish I will name him.

26 Q Will you name that one that is not of the highest-

1 MR. FREDERICKS. We object to that.

2 THE COURT. The opinion of the witness on the matter is not
3 competent.

4 MR. APPEL. The witness having volunteered--

5 MR. FREDERICKS. That is not the way to impeach the witness.

6 MR. APPEL. The witness having volunteered a statement we
7 are entitled to the opinion.

8 THE COURT: Strike out the volunteer statement.

9 MR. APPEL. We are entitled to the information now for our
10 benefit, of course.

11 MR. FORD. I think the witness will give it to them out of
12 court.

13 THE COURT. The opinion of the witness upon that question
14 is not proper subject of judicial inquiry, not proper to
15 be given from the witness stand and the witness is directed
16 not to answer the question.

17 MR. APPEL. Q Now, after I called your attention to the
18 payment of \$500 that you say was made to you on October 28th,
19 too late in the afternoon to deposit in the bank, is it not
20 true, Mr. Franklin-- A Now, Mr. Appel, you are stating
21 something that I didn't testify to, and your Honor please,
22 I object to having words put into my mouth that I have not
23 stated.

24 THE COURT. Counsel is preparing, I assume, to ask you a
25 question. I haven't got the question.

26 MR. APPEL. I will leave that statement out. Q Isn't it a

1 fact that the payment made to you of October 28th, which
2 you have marked in your book with a lead pencil, isn't it
3 a fact that that payment was made to you at the bank upon
4 a check given to you by Mr. parrow and cashed by you at
5 3 o'clock in the afternoon by the cashier of the bank, at
6 your request, in the presence of this gentleman, I don't
7 know his name.

8 MR. FREDERICKS' Let us have his name.

9 A I know him.

10 THE COURT. Find out what his name is.

11 MR. APPEL. Collier.

12 A Collier, a detective for the defense in the McNamara
13 case.

14 MR. FREDERICKS. I think the description is pretty good.

15 MR. APPEL. Wait a moment. Here we get all of this--

16 THE COURT. You move to strike out the volunteer statement?

17 MR. APPEL. I want to tell this witness he must not do that,
18 and just as we have been asking that this court should tell
19 this gentleman here not to do that. Of course, he can
20 see the liberality with which these statements are made, and
21 he takes advantage of that. We cannot say anything to
22 this witness here, your Honor, we must try, and as far as
23 possible, with due respect we want your Honor to admonish
24 the witness at this time--we will single him out for admoni-
25 tion-- we ask him not to make those statements.

26 MR. FREDERICKS. Counsel maintain there is anything wrong

1 about it, the man is a detective for the defense, is he
2 ashamed of it?

3 MR. FORD. That is no insult.

4 THE COURT. The witness did make a volunteer statement and
5 the witness should, as far as possible, avoid that.

6 MR. APPEL. We take an exception. Now, you swear
7 that this man was a detective in the McNamara case?

8 A I will swear that he was supposed to be and told me
9 so himself.

10 THE COURT. Just a moment, Gentlemen, that answer was
11 stricken out on the motion of counsel. You want it in
12 now.

13 A I will state further, your Honor, that he worked under
14 my instructions part of the time.

15 MR. APPEL. Q As detective? A Yes, sir, supposed to me.

16 MR. FORD. The other question has not been answered about
17 whether this check was cashed in the bank. I think that
18 is what the witness testified, anyway.

19 THE COURT. There isn't an answer to the question there.
20 Read that question in regard to the check. (Question as
21 indicated read by the reporter.)

22 THE COURT. What is your answer?

23 A I don't remember of Mr. Collier ever being at the bank
24 when I cashed a check. He might have been possibly.

25 MR. APPEL. Q Well, I am talking only of one check.

26 A yes, sir; I don't remember.

1 Q I say October 28th, 1911. A To the best of my
2 recollection I cashed a check for \$500 which appears in
3 lead pencil in my hand writing in the bank book offered for
4 identification only.

5 Q Then it was not cash payment made by Mr. Darrow to you?

6 A I didn't so testify. I testified to the best of my
7 recollection Mr. Darrow gave me a check and that I got the
8 check cashed at the bank and put the money in my pocket
9 to pay the men in the afternoon so they would not have
10 trouble in getting their checks cashed. They complained
11 of it--to the best of my recollection, I may be mistaken.
12 If it was on Saturday October 28 I am quite certain that
13 is correct. I don't know whether October 28th is Saturday
14 or not, but I think probably it was. I know that happened
15 on one occasion.

16 Q Now, you and Mr. Davis had a conversation at the County
17 Jail sometime after your arrest? A I didn't so testify,
18 no, sir.

19 Q Did not have any conversation? A I never testified that
20 I had a conversation with Mr. Davis at the county jail.

21 Q Well, did you have? A I did not, to the best of my
22 recollection: I did not on this question.

23 Q The city jail? A Yes, sir.

24 Q Well, at a jail, anyhow. A At the city jail.

25 Q All right, we will call it the city jail, I didn't know
26 the distinction.

1 MR. FORD' I don't know whether that remark was facetious
2 or part of the record.

3 MR. APPEL. I said I didn't know the distinction between the
4 testimony here. I certainly haven't occupied either one,
5 probably you gentlemen know. Q Did Mr. Davis then tell
6 you that they would get you out on bail?

7 MR. FORD'. I think that matter has been fully gone into on
8 cross-examination.

9 MR. APPEL. Oh, no, your Honor.

10 MR. FORD' I am sure of it, your Honor, and I think counsel
11 has got it right before him on cross-examination.

12 THE COURT. Objection overruled.

13 MR. APPEL. I have it here on redirect, your Honor, and this
14 gentleman is making misstatements here. Now, I propose
15 to call the jury's attention to every statement he makes
16 here. I submit it to your Honor.

17 MR. FREDERICKS. Well, it is done, let's go on.

18 THE COURT. The court has overruled the objection some time
19 ago.

20 MR. APPEL_ He ought not to misstate.

21 MR. FORD. I think it is on cross-examination. I stand
22 by that statement.

23 A Read the question, please.

24 (Last question read by the reporter.)

25 A Who do you mean by "they"?

26 MR. APPEL. Q I am talking of the language used by Mr. Davis;

1 did he say to you, "How are you feeling--don,t worry--
2 that the complaint will be issued and that they would
3 get you out on bail?" A Oh, I am not certain whether he
4 s aid they or we, but anyway that is what he meant. He
5 meant that I would get out on bail in the afternoon.

6 MR. APPEL. I move to strike out that, that is what he meant.

7 MR. FREDERICKS. We submit that is synonymous with "That
8 is the substance of the conversation."

9 THE COURT. Motion to strike out denied.

10 MR. APPEL. Exception.

11 Q Did he say, "We will get you out on bail", or did he
12 say, "I will get you out on bail" or did he say, "I will
13 see that you get out on bail?" A I don,t remember his
14 exact language. The only thing I was interested in was
15 getting out of jail.

16 Q Now, at that meeting at the city jail with Mr. Davis and
17 after you got out on bail, you met Mr. Davis over at your
18 office? A Yes, sir. Now, you speaking about the same
19 day?

20 Q No, I mean any time. A Subsequent to the time I was
21 released on bail I met Mr. Davis, yes, sir.

22 Q And then the next conversation that you had with Mr. Davis
23 was over at Mr. Gage's office? A I don't remember.

24 Q Well, as nearly as you remember. A I don't remember.

25 Q Well, just in order to refresh your recollection--

26 A I understand, but I don't remember.

1 Q .I say, just to refresh your memory I am going, with
2 the permission of the court, to read this to you. I com-
3 mence at page 1210--on 1209 you spoke of the conversation at
4 the city jail, then following that, says 1210 at the top
5 of the page: "Q--And then a day or two following occurred
6 a conversation between you and Mr. Davis? A yes, sir.

7 Q --In which you discussed some arrangements to plead guilty
8 and the possibility of your being fined and sent a year
9 to the penitentiary. Just give us the whole of that conversa-
10 tion." Then follows on page 1211 by Mr. Ford: "Now, your
11 next conversation was at the office of Mr. Gage." Now, does
12 that accord with your present recollection? A I don't
13 have to give him the answer.

14 MR. FORD. We ask the witness be allowed to look at it.

15 THE COURT. Ye, he may if he wishes.

16 MR. FORD. The answer is, "To the best of my recollection."

17 MR. APPEL. Just keep your seat and let me examine this
18 witness. Your Honor, I insist on examining this witness.

19 THE COURT. The court has stated that the witness may see
20 the transcript.

21 MR. APPEL. I am going to show it to him.

22 MR. FORD. Counsel should read the answer.

23 MR. APPEL. You sit down.

24 THE COURT. Mr. Appel is going to show it to the witness.

25 MR. APPEL. Now, your Honor, he is going to do just the
26 very thing your Honor told him not to do.

1 MR. FREDERICKS That is just what the court told him to do.

2 MR. APPEL. The court didn't tell him anything of the kind.

3 THE COURT I will compromise this matter by showing the
4 witness the transcript.

5 MR. APPEL. I am going to do that now, your Honor.

6 THE COURT. The court compromises this very difficult
7 problem by showing the transcript to the witness.

8 MR. APPEL. Your Honor can see the manner in which this
9 man has an uncontrollable desire to interrupt the proceed-
10 ings.

11 THE COURT. Mr. Franklin, the court hands you the transcript
12 opened at page 1311 and you now have an opportunity to make
13 such an examination of it as you desire.

14 MR. FORD. I think the jury ought to have the record
15 read to them there on that page also, so they will understand
16 the significance of it.

17 MR. APPEL. I object to any such suggestion as this. The
18 court has the manner of the trial in charge, and whatever
19 the court orders we are very pleased to do. Certainly,
20 after he reads it I will put the question to him just
21 exactly as it is in the record.

22 MR. FORD. We object to the question itself--

23 MR. APPEL. I haven't asked him, your Honor, simply trying
24 to refresh his recollection. I will put the question.

25 THE COURT. Don't answer this question until Mr. Ford has
26 a chance to object.

1 MR. APPEL. Q Now, Mr. Franklin, the next conversation
2 that you had after your conversation with Mr. Davis at your
3 office, was it not at Mr. Gage's office to the best of your
4 recollection? A I don't remember.

5 Q Well, now, you read the transcript here? A Yes, sir,
6 that coincides with the transcript.

7 Q Did you read there the following, 1211, commencing with
8 line 4, "Mr. Ford; Now, your next conversation was at the
9 office of Mr. Gage? A--To the best of my recollection.
10 I don't testify on that for sure, but I think it was the
11 office of Mr. Gage." Now, was that statement in accordance
12 with your recollection then? A-- Yes, sir, that is in
13 accordance with my statement now.

14 Q Was Mr. Gage present at that conversation? A I don't
15 know; I don't remember.

16 Q Well, now, didn't you testify on redirect examination,
17 reading from page 1214, commencing with line 21, didn't you
18 testify here: "I did have a conversation with Mr. Davis, but
19 I am not sure but what Governor Gage was there, I think
20 he was." Didn't you so testify? A I possibly did. I
21 don't know, I say now I don't know.

22 Q After having read that what is your recollection whether
23 or not at that conversation that you had with Mr. Davis,
24 referred to by you, and by me in reading these parts of
25 this transcript, whether or not Mr. Gage was present? A I
26 don't remember.

1 Q Don't remember? A No, sir; that is what I stated at
2 that time.

3 Q Well, was Mr. Darrow there present at that time?

4 A No, sir; I don't think so.

5 Q Now, you remember Mr. Darrow was not there? A Yes.

6 Q Now, do you remember what persons were present at that
7 conversation? A I think Mr. Davis and myself in Mr. Gage's
8 office, to the best of my recollection. I don't know
9 whether Mr. Gage was there or not.

10 Q Well, now, you said the other time, "I am not sure but
11 what Governor Gage was there, I think he was." Now, don't
12 you think he was present now? A I don't remember.

13 Q But the other day you thought he was? A I don't remember
14 MR. FORD. Now, if the court please, we object to any further
15 cross-examination on that point. Counsel on cross-examina-
16 tion went to a number of different visits, and the only
17 question that was reviewed by the prosecution on redirect,
18 reviewed the various conversations leading up to a certain
19 conversation, that is, the times of them, without at any
20 time going into what occurred.

21 MR. APPEL. I have asked a question and the witness has
22 answered and I am not going to ask him any more on that.

23 THE COURT. Then there is no difference of opinion. Counsel
24 avows his intention of not pursuing that subject any fur-
25 ther. Counsel has sustained your objection.

26 MR. FORD. I withdraw the objection.

MR. APPEL. I sustain the objection.

Alp 1 MR. APPEL. Just a moment--let me see if there is anything
2 more I want to ask. I don't want to ask him generally,
3 you know.

4 Q You have indicated to the jury here the room in which
5 you met Mr. Darrow on the morning of November 28, 1911, and
6 is the room in which you saw Mr. Harriman. Who else did you
7 see? Did you look into the room adjoining that room in
8 which you say Mr. Harriman and Mr. Darrow were in?

9 MR. FREDERICKS. That is objected to upon the ground it was
10 gone into on direct examination, gone into again on cross-
11 examination, and one or two new points brought out, and then
12 gone into again on redirect examination and it has been
13 thoroughly covered and there has been nothing new brought
14 out on redirect that was not covered on cross-examination by
15 the defense.

16 MR. FORD. We asked him about a matter on redirect examina-
17 tion that was brought out on cross-examination.

18 THE COURT. I can see no new matter to which this question
19 can be directed, Mr. Appel, and unless you call my atten-
20 tion to it, the objection is sustained.

21 MR. APPEL. I take an exception.

22 Q Was there or was there not anybody in the room in which
23 you say Mr. Harriman and Mr. Darrow went in, as you say, on
24 the morning of the 28th day of November, 1911?

25 MR. FREDERICKS. That is objected to, the same question,
26 the same objection.

1 THE COURT. Objection sustained.

2 MR. APPEL. We except.

3 Q Before Mr. Harriman came there to the room you have indi-
4 cated, on the morning of November 28th, 1911, had any other
5 person been in the same room where you and Mr. Darrow were
6 before Mr. Harriman arrived, that you know of?

7 MR. FREDERICKS. The same objection, the same question.

8 THE COURT. Objection sustained.

9 MR. APPEL. We except.

10 Q Were you accompanied to that building by any one that
11 you know of? A No, sir.

12 Q Did you see any one there at the door in the hallway or
13 at the door of any of the offices that you have mentioned
14 here connected with Mr. Darrow's office on the outside, when
15 you went in and when you went out?

16 MR. FREDERICKS. We object to that on the ground it has been
17 already gone into, the same objection as the other one.

18 THE COURT. Objection sustained.

19 MR. APPEL. We take an exception. The witness was asked,
20 your Honor, whether he saw any one there, they themselves
21 asked that, we did not.

22 THE COURT. If you can call my attention to that.

23 MR. APPEL. I am asking for nothing else except what is on
24 redirect.

25 THE COURT. Objection sustained.

26 MR. APPEL. We except.

1 Q Were you over to Mr. Darrow's office or in that building
2 or Mr. Harriman's office or Mr. Darrow's office more than once
3 on the morning of the 28th day of November, 1911?

4 MR. FREDERICKS. We object to that for the same reason, that
5 the matter has been gone into fully on direct examination
6 and on cross-examination.

7 THE COURT. Objection sustained.

8 MR. APPEL. I take an exception.

9 Q Did you see the janitor or the watchman of the building
10 there on the morning of the 28th day of November, 1911?

11 MR. FREDERICKS. The same objection.

12 THE COURT. Objection sustained.

13 MR. APPEL. We except.

14 Q Who else did you see in the Higgins Building in and about
15 the office of Mr. Darrow and Mr. Harriman, besides Mr. Darrow
16 and Mr. Harriman, on the morning of the 28th day of November,
17 1911?

18 MR. FREDERICKS. We object to that on the ground it was gone
19 into on direct examination and covered fully on cross-
20 examination, and it is not recross-examination.

21 MR. FORD. This witness has already testified, your Honor,
22 he was not acting in concert with any witnesses and if there
23 were any detectives around there he did not see them.

24 MR. APPEL. My questions do not call for any remarks by
25 counsel.

26 THE COURT. No. Let me examine the transcript a moment.

1 MR. FREDERICKS. We are making the objection for the pur-
2 pose of making expedition and if it is going to take any
3 time we would rather the witness would answer the question.

4 THE COURT. It wont take but a moment. Objection sustained.

5 MR. APPEL. We take an exception.

6 Q When you went over there to Mr. Underwood's place of
7 business did the size of the building he occupied in a
8 business way, or what you saw in the building there, indicate
9 to you in any way, shape or manner, whether or not he was
10 interested or disinterested in the result of the McNamara
11 trial? A No. I went there for the purpose of getting
12 him to be interested.

13 MR. APPEL. Now, your Honor, we move that that last statement
14 be stricken out, I am asking him--

15 THE COURT. Strike out all of the answer except "No."

16 BY MR. APPEL. Q Did the size of the building, the factory
17 there indicate to your mind in any way, shape or manner,
18 whether or not Mr. Underwood was or was not a member of the
19 M & M Association? A No, it did not indicate anything
20 of that kind to my mind.

A&P 1 Q To be fair, Mr Franklin, not to ask you many questions,
2 the business he was in --

3 MR FREDERICKS: He has answered.

4 THE COURT: He is asking another one.

5 Q By Mr Appel: I understand, and I want to get one
6 question without asking so many of them -- the appearance
7 of his business; the business in which he was interested,
8 didn't indicate to you in any way, shape or manner, whether
9 Mr Underwood would be likely to accept a proposition that
10 you made to him or not, isn't that a fact?

11 A I don't quite understand that question. Read it.

12 (Question read)

13 A I don't think there was anything about that building
14 that brought to my mind an^y connection, he might or might
15 not have with this opposition, about what was it? The
16 McNamara case?

17 Q Yes. A No, I don't think so.

18 Q Well, those -- That is, his business?

19 A I will tell you my impression, if you want it, at the
20 time?

21 Q No, wait a minute. I want to ask you and get it all
22 in a nutshell. A Yes.

23 Q His business, what you knew of his connection in
24 business lines, his standing in the community, you were
25 personally acquainted with him, didn't induce you to go to
26 him to make a tentative offer, such as you have stated,
you just went there for the purpose of seeing if possible

1 it might be accepted or not, feeling if he didn't want to
2 accept it he would tell you so? A That is about the
3 best statement you have made of it so far.

4 Q In other words, you took a chance at it? A Yes sir,
5 that is it exactly.

6 Q It did not enter into your mind as to whether or not
7 a proposition of that kind to Mr Underwood might be the
8 means of his angering him against you for making a proposi-
9 tion of that kind, or anything of that kind; is that right?

10 A I don't think the question of whether Mr Underwood
11 would get angry with me, or not, entered my mind. I thought
12 Mr Underwood was a man I could go to in a friendly way and
13 talk, and I never had any reason up to this time to change
14 the opinion I had then of him.

15 Q And you had the highest opinion of him, as you had
16 said?

17 MR FREDERICKS: We object to that on the ground it has al-
18 ready been gone into.

19 MR APPEL: Redirect examination.

20 MR FREDERICKS: No, ~~that part~~ we brought the Underwood
21 matter out on direct examination and they cross-examined him
22 on it.

23 MR APPEL: We have not cross-examined him.

24 MR FREDERICKS: Withdraw the objection.

25 A What is the question, please?

26 Q By Mr Appel: You thought him to be an honorable man?

A Yes sir, and that makes the fact that I went there

1 more heinous, that I tried to debauch a friend.

2 Q Yes. But when you started to go there, the considera-
3 tion, your idea and your estimation you had of him, of his
4 character, that he was an honorable man, didn't make you
5 feel it was wrong for you to go there and try to corrupt
6 an honorable man? A I certainly knew I was doing wrong,
7 and I knew the chances I was taking.

8 Q And notwithstanding you knew it was wrong to try to
9 corrupt an honorable man, you still went there to do it?

10 A I still went there and attempted to do it, yes sir,
11 much to my sorrow.

12 Q And you were perfectly willing not only to commit
13 a felony yourself, but to -- A But to assist somebody
14 else to commit it.

15 Q And to induce ~~an~~ honorable friend^s of yours to commit
16 felonies for the purpose of obtaining the sum of \$1,000 for
17 each juror that you should be able to bribe, weren't you?

18 A That is it, exactly, yes sir.

19 MR APPEL: That is all.

A3P

20
21 REDIRECT EXAMINATION

22 BY MR FREDERICKS:

23 Q Now, Mr Franklin, you testified on recross-examination,
24 on page 1173, as follows: "Q By Mr Appel: Now, at some
25 period of time you had Mr Davis and Gage appearing for you
26 as attorneys, is that right, Mr Franklin? A I would

1 answer that question by saying on divers occasions Mr Gage
2 and Mr Davis did appear for me. Q Were they your at-
3 torneys? " That was objected to, etc., and finally,

4 "A That is a matter of record. Q Again, I insist upon
5 an answer, a man knows who his attorney is. The Court:

6 Yes. Answer the question, Mr Franklin. A Yes sir.

7 THE COURT: Yes, answer the question, Mr Franklin. A Yes sir.

8 Now, I ask you, Mr Franklin, who employed Henry T Gage to
9 defend you? A I don't know.

10 Q Who paid Henry T Gage for defending you? A I don't
11 know.

12 Q How much was he paid for defending you? A I don't
13 know; only hearsay.

14 Q How many times did he appear for you over in the
15 preliminary examination? A I think on three different
16 occasions.

17 Q You say you don't know how much he was paid for
18 defending you? A No sir.

19 MR ROGERS: That is what he has said, and I take an
20 exception.

21 MR FREDERICKS: Only by hearsay, he said.

22 Q How much were you overⁱⁿ the Justice Court the first
23 preliminary examination, with Henry T Gage defending you?

24 A I don't remember, I think the whole examination
25 covered a period of perhaps two hours, I don't remember.

26 Q Did you ever sit down with your attorney, Henry T Gage,

1 and relate to him any of the facts or evidence in your
2 case? A No sir.

3 Q Did you ever inform him of what the facts in your case
4 were? A No sir.

5 Q Did you ever talk to your attorney, Henry T Gage, about
6 what the facts in your case were he was defending you on
7 over in the Justice Court, the preliminary examination?

8 A I did not.

9 THE COURT: It is 12 o'clock. Gentlemen of the jury, bear
10 in mind the admonition heretofore given you, you should not
11 talk about this case, you should not permit anyone else to
12 talk to you about it; do not form or express any opinion
13 relative to the merits of this action until the whole matter
14 is submitted to you. When Court reconvenes next Monday
15 afternoon at 1:30 o'clock, it will be in the Court room
16 usually occupied by Judge Bordwell, being the court-room of
17 Department 9, in the Hall of Records.

18 MR FORD: Is it the north court-room or the south court-
19 room.

20 THE COURT: It is the north court-room -- it is marked
21 Department 9.

22 MR FORD: It is not the one formerly occupied during the
23 McNamara trial, but the one adjoins it?

24 THE COURT: No, it is not, it is the one that adjoins it,
25 the same floor of the building.

26 A Do I understand they are through, your Honor?

1 THE COURT: Do you want to ask Mr Franklin further questions
2 on Monday?

3 MR ROGERS: We can solve that situation by saying that we
4 desire to have him remain under order of the Court at all
5 times.

6 THE COURT: That may be true without his necessarily coming
7 back at 1:30 Monday.

8 MR FREDERICKS: We will determine that and notify him.

9 JUROR DUNBAR: I have a question I would like to ask.

10 THE COURT: You will have to ask it on Monday.

11 JUROR DUNBAR: Yes, that is all right.

12 THE COURT: It is my duty to adjourn.

13 JUROR DUNBAR: I only said so because I wanted to know if
14 he would return or not.

15 THE COURT: Mr Franklin will be back on Monday afternoon at
16 1:30.

17 (Here the Court took an adjournment until Monday,
18 June 10, 1912, 1:30 o'clock P.M.)

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