

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California, )

Plaintiff, )

vs. )

No. 7373. )

Clarence Darrow, )

" )

Defendant. )

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REPORTERS' TRANSCRIPT.

VOL. 65

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
H. W. Pohlman,		5210		
F. R. Dyas,	5216	5218	5220	
Joseph, Lincoln Steffens,	5221			

**LOS ANGELES COUNTY.  
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B. N. Smith,  
Official Reporter

VOLUMES 65 to 67

WITNESSES:

H. W. Puhlman, Vol. 65

F. R. Dyas, Vol. 65

Joseph, Lincoln Steffens, Vol. 65

Joseph Lincoln Steffens, Vol. 66

Joseph Lincoln Steffens, Vol. 67

1s 1 AFTERNOON SESSION. July 18, 1912; 2 P.M.

2

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3

H. W. P O H L M A N,

4

on the stand for further cross-examination.

5

THE COURT. Now, gentlemen, you may proceed with the cross-examination.

6

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MR. FREDERICKS. Q Just before recess, Mr. Pohlman, I was

8

asking you whether your interest in that case, referring

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to the case of the People vs McNamara, in which Mr. Darrow

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was the attorney, was not a personal interest, and you

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replied that it was not. Isn't it a fact you were the

12

business agent of the Iron Workers Union of Seattle on the

13

31st of August, 1910, when the Lyon's Building, then in the

14

course of construction, was dynamitted and blown up in

15

your town?

16

MR. ROGERS. Objected to as incompetent, irrelevant and

17

immaterial and not cross-examination. Further, I take an

18

exception to the question being asked.

19

MR. FREDERICKS. I will add a little to the question, then,

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in order that it may be ruled on, if counsel will indulge

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me. And did you not know that all of the explosions which

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had occurred of that nature throughout the United States,

23

including that one in Seattle, were going to be brought

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into that trial?

25

MR. ROGERS- That is objected to on the same grounds

26

given in my last objection. I take the same exception.

1 One cannot cross-examine by detailing incidents of any  
2 nature whatsoever, which are not absolutely connected  
3 with the subject matter of the action on trial.

4 MR. FORD. The subject matter of the action on trial is  
5 the bribery of a juror committed in the McNamara trial, and  
6 certainly if the McNamara trial consisted in the murder  
7 brought about by the explosion, which was merely one of  
8 a series of incidents perpetrated by the defendant in a  
9 general conspiracy carried on by the International Asso-  
10 ciation of Bridge and Structural Iron Workers, and this  
11 witness was the local business agent for that association,  
12 and that association had caused an explosion to be made--  
13 to occur in the jurisdiction of this witness, why, cer-  
14 tainly, that is sufficient connection to show the witness's  
15 interest in the trial, that the establishment of the guilt  
16 of the defendant might incriminate other persons who would  
17 have an interest in preventing his conviction, and being  
18 interested in it would naturally be biased in favor of the  
19 parties who were endeavoring to prevent their conviction,  
20 either by lawful or unlawful means.

21 MR. ROGERS. Nevertheless, your Honor, it is elementary  
22 law--

23 THE COURT. I think the question goes too far.

24 MR. FREDERICKS. Will the court indicate in what particular  
25 the error lies in order that I may avoid--

26 THE COURT. In this, that to go to Seattle, and then I

1 judge from the statement of counsel we will be called  
2 upon here to investigate a large number of other explo-  
3 sions.

4 MR. FREDERICKS. Not investigate them, no.

5 THE COURT. The matter on trial when the McNamaras were  
6 before this court was the dynamiting of the Los Angeles  
7 Times Building, and no other, as I understand that situa-  
8 tion.

9 MR. FREDERICKS. No, that is not correct. It is correct  
10 up until the statement that the Court makes, "and no other"  
11 just as in this case there has been introduced evidence  
12 of other collateral acts alleged to have been com-  
13 mitted by this defendant, so in that--and we were inquiring  
14 if this witness was not interested in one of those col-  
15 lateral acts showing his interest in Clarence Darrow, the  
16 defendant in this case.

17 THE COURT. I don't believe on cross-examination for the  
18 purpose of showing interest those collateral matters can  
19 be taken up. The objection is sustained on that ground.

20 MR. FREDERICKS. Q Do you know E. A. Clancy? A yes, sir.

21 Q Did you see him up in Seattle at about the time I have  
22 referred to?

23 MR. ROGERS. I take the same objection I mentioned last,  
24 it is not cross-examination, incompetent, irrelevant and  
25 immaterial and no foundation laid.

26 THE COURT. It is preliminary and upon that ground I will

1 overrule the objection. I don't know what is coming.

2 A At what time?

3 MR. FREDERICKS. Q At the time the Lyons Building was  
4 blown up in Seattle or shortly before? A No, sir.

5 MR. ROGERS. The same objection.

6 THE COURT. Overruled.

7 MR. ROGERS. Exception.

8 MR. FREDERICKS. Q Didn't E-A. Clancy introduce J. B.  
9 McNamara to you at that time under the name of Brice?

10 MR. ROGERS. Objected to upon the ground it is incompetent,  
11 irrelevant and immaterial and not cross-examination and  
12 an invasion of the order of the court just made and I  
13 take an exception to the question being asked. If it comes  
14 to the matter of a trial of this witness for participation,  
15 acts or sympathetics in any of the dynamiting throughout  
16 this country, the hope that we have been hugging to our  
17 souls, that this case might finish sometime, will disappear  
18 and we will try all the dynamiting cases, undoubtedly,  
19 before we get through, because I shan't let this witness  
20 go off the stand, and if your Honor permits that kind of  
21 a cross-examination without going into his connection with  
22 any matter concerning it, what will we be doing then?  
23 We will be trying Pohlman.

24

25

26

1 THE COURT: The court has just sustained the general objec-  
2 tion. Counsel has a right to complete the record, counsel  
3 on either side, and the court is not going to interfere with  
4 it.

5 MR FORD: The objection was sustained, was it?

6 MR FREDERICKS: Let me hear the question just before that.

7 (Last question read.)

8 MR FREDERICKS: Was there an objection to that?

9 THE COURT: Yes sir.

10 MR FREDERICKS: What was the ruling?

11 THE REPORTER : No ruling.

12 THE COURT: I thought I ruled on it. I intended to say  
13 that the objection was sustained, and if I did not I say  
14 it now. The objection is sustained.

15 MR FREDERICKS: State whether or not you did have a per-  
16 sonal interest or an interest in the case against J. B.  
17 McNamara and J. J. McNamara, by reason of the fact that  
18 you were the business agent of your Iom Workers local  
19 union at the time of the explosion of the Lyons building  
20 in Seattle?

21 MR ROGERS: We object to that as incompetent, irrelevant  
22 and immaterial, and not cross-examination, and I make the  
23 same objection and state the same reasons, and take the  
24 same exception I have just taken to the last two ques-  
25 tions.

26 THE COURT: Objection sustained.

1 MR FREDERICKS: Isn't Mr Darrow counsel for you.

2 Haven't you been counselling with him in the present  
3 litigation in which you are interested in the United  
4 States Court? A I don't understand your question.

5 MR FREDERICKS: Read the question.

6 (Last question read.)

7 MR FREDERICKS: I think I will amend that; it seems dual --  
8 or, rather, I will withdraw it. Have you not been coun-  
9 selling with Mr Darrow in reference to the present litiga-  
10 tion in which you are interested in the United States  
11 Court? A No sir. Mr Harriman, Rickman and Tuttle are  
12 my counsel.

13 Q Who? A Mr Harriman, Rickman & Tuttle.

14 Q They are your attorneys? A Yes sir.

15 Q But, have you not also been advised with Mr Darrow  
16 in regard to the matter? A I might have discussed the  
17 case with him; I have not been advising with him.

18 Q By discussing the case, you were getting his views  
19 and advice, were you not? A N<sup>o</sup>t to determine my action.

20 Q Well, in regard to the case? A No sir.

21 Q Were you not discussing the case with him at all?

22 A Yes sir.

23 Q Were you not getting his advice in regard to the case?

24 A What do you understand by "advice"?

25 Q Well, <sup>views,</sup> opinions or advice, to hear what he had  
26 to say about it? A He probably expressed it, yes.



1 Q And you discussed it with him in order that you might  
2 get his expression, did you not? A No sir.

3 Q Why did you discuss it with him? A I had no parti-  
4 cular reason except as I would discuss the case with any-  
5 body asking me how I was coming out and what the standing  
6 of my case was.

7 Q Well, your feeling toward Mr Darrow is one of great  
8 friendship and sympathy, is it not? A I cannot say as to  
9 the friendship. I admire Mr Darrow's principles, and his  
10 character.

11 Q You admire him personally, do you not? A No sir.

12 MR ROGERS: He just said he admired his principles and his  
13 character, and I suggest the question is a repetition.

14 MR FREDERICKS: Possibly so.

15 MR FORD:" It is not a repetition; the witness said he did  
16 not admire him personally at all, the witness makes a dis-  
17 tinction.

18 MR FREDERICKS: That is all.

19 MR ROGERS: That is all.  
20

21 F. R. DYAS, a witness called on behalf  
22 of the defense, being first duly sworn, testified as fol-  
23 lows.

24 DIRECT EXAMINATION

25 MR ROGERS: Mr Dyas, please give your name? A F. R.  
26 Dyas.

1 Q Where do you live, Mr Dyas? A 401 West Fifty-seventh  
2 street, this city.

3 Q How long have you lived in Los Angeles? A Since the  
4 spring of 1910.

5 Q Your business or occupation? A Newspaperman.

6 Q How long have you been a newspaperman? A In one  
7 department or the other, practically the last 15 or 18  
8 years.

9 Q Do you know John R. Harrington? A I do.

10 Q How long have you known him, at least by sight, or  
11 to know his name? A I first became acquainted with him  
12 after the McNamara defense secured offices in the Higgins  
13 Building, and began their work. I don't remember the ex-  
14 act date, or how long ago it was, about the time of the  
15 beginning of the McNamara trial.

16 Q You know him from that time on from time to time?

17 A By sight, yes; I knew <sup>who</sup> he was and what his capacity  
18 was.

19 Q Do you remember an occasion of your having a talk with  
20 him while he was in attendance upon the county grand  
21 jury, sometime during the month of February of this year?

22 A I don't remember whether it was February or March,  
23 it was about that time; I remember it, yes sir.

24 Q Well, he was attending upon the county grand jury as  
25 a witness? A Yes sir.

26 Q At that time did you have a conversation with him

1 with respect to Mr Darrow? A I did.

2 Q I will ask you if Mr Harrington at that time and place,  
3 and under those circumstances did say to you something to  
4 this effect or in substance or purport: That Harrington  
5 knew nothing to testify to, that he had no knowledge of  
6 any bribery or corruption in the case, and no information  
7 of any kind against Mr Darrow which he could give, if  
8 he wanted to, or words to that effect? A Substantially,  
9 yes.

10 MR ROGERS: Cross-examine.

11

12 CROSS-EXAMINATION

13 MR FORD: What paper do you work on, Mr Dyas? A The  
14 Tribune.

15 Q Just state the words used by Mr Harrington? A I had  
16 published a story to the effect that Mr Harrington and  
17 Mr Cooney were to be witnesses for the prosecution --

18 MR FORD: Never mind that. Move to strike that out as not  
19 responsive. Just state the words used.

20 MR ROGERS: That is part of it.

21 MR FORD: I move to strike out the answer as not respon-  
22 sive. I asked him to state the words used by Mr Harring-  
23 ton.

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3p 1 THE COURT. Let us see. Can you state those words without  
2 explaining the circumstances under which they were said?

3 MR. FORD. If the court please, he has already explained  
4 the circumstances--

5 THE COURT. I am asking the witness a question.

6 THE WITNESS. Yes, in substance.

7 THE COURT. It is your duty to do so.

8 A In substance, he knew nothing about any bribery or  
9 corruption in the McNamara case to testify to or anything  
10 detrimental to Mr. Darrow.

11 MR. FORD. Q Those are the words he used? A Not the  
12 words, that is the substance. I would not undertake to  
13 repeat the exact words of the interview this far after  
14 the occurrence, as I interview numerous people daily and  
15 it is impossible to carry all that in my head, the exact  
16 words.

17 Q Didn't he tell you he didn't know anything about any  
18 jury bribing, isn't that the term, of his own knowledge?

19 A As I recall it, he used the words "bribery and corrup-  
20 tion," "Bribery or corruption."

21 Q you are not sure that he did say jury bribing? A I do  
22 not recall that he said jury bribing.

23 Q He may have said jury bribing? A It is possible.

24 Q That he had no personal knowledge of the jury bribing?

25 A That is not what he said, no, sir.

26 Q That he could testify to? A No, sir; that is not what

1 he said.

2 Q Didn't you just now state that Mr. Harrington had said  
3 he didn't have any knowledge of the bribing? A He didn't  
4 use the word personally, he said he knew nothing of any  
5 bribery or corruption concerning Mr. Darrow, to which he  
6 could testify.

7 MR. FORD. That is all.

8

9

REDIRECT EXAMINATION.

10 MR. ROGERS. Q He was then called in to testify before the  
11 grand jury? A He was on the seat outside waiting to be  
12 called.

13 MR. FREDERICKS. We object to that and move to strike it  
14 out--

15 THE COURT. Strike it out for the purpose of the objection.

16 MR. FREDERICKS. We object to the part of the question  
17 which is, "to testify". It might appear from that that  
18 he did actually appear to testify before the grand jury.  
19 The witness only knows he was to be called in.

20 THE COURT. Objection overruled. Restore the answer.

21 Have you finished your answer, Mr. Dyas? A I think I had  
22 finished.

23 MR. ROGERS. Q Mr. Dyas, isn't it a fact that you had  
24 published an article at about that time, probably that morn-  
25 ing, in which reference was made to some matters connected  
26 with the case and that he telephoned down to the office

1 and asked you to come up, or some circumstance of that  
2 sort, he wanted to talk over that article with you?

3 MR. FORD. We object to that as not redirect examination,  
4 as no foundation laid for the asking of the question by  
5 way of impeachment. The same question was not asked Mr Har-  
6 rington, , and certainly not redirect examination.

7 MR. ROGERS. The matter was brought out by their question,  
8 the circumstance brought up, and therefore I have a right to  
9 inquire.

10 THE COURT. Strike it out.

11 MR. FORD. I specify to strike out certain--

12 THE COURT. Yes, it went out. Objection sustained.

13 MR. ROGERS. Exception. That is all.

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15 J O S E P H L I N C O L N S T E F F E N S,  
16 called as a witness on behalf of the defense, having been  
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION.

19 MR. ROGERS. Q Your name, please? A Joseph Lincoln  
20 Steffens.

21 Q Where do you live? A Riverside, New York, Connecticut.

22 Q What is your business, occupation or profession?

23 A Reporter.

24 Q And with what publications are you now connected and  
25 what have you been connected in the past, in a general way?

26 A At present connected with none. Connected with the New

1 York evening Post; New York Commercial Advertiser;  
2 McClures Magazine; Everybodys Magazine; The American  
3 Magazine, and have written for syndicates of newspapers.

4 Q Are you the author of any books which have been pub-  
5 lished of late years? A Four.

6 Q What are they? A "The Shame of the Cities;" "Struggle  
7 for Self Government"; "Upbuilders," and a little book  
8 called "The Least of these."

9 Q You have been writing for magazines of late years upon  
10 any particular subject or making a specialty of writing  
11 upon any particular matter? A Yes, I have written for  
12 17 years about, on government, politics, and lately on  
13 labor; industrial problems.

14 Q For McClures and Everybody's and the American Magazine  
15 and other publications of that sort? A No, when I  
16 changed from politics to labor it was difficult to find a  
17 medium for publication, so I published where I could.

18 MR. FREDERICKS. I move to strike out that part of the  
19 answer where it says "It was difficult to find publica-  
20 tions," not being responsive.

21 THE COURT. Motion to strike out is denied.

22 MR. ROGERS. Q You say you lived in Connecticut and New  
23 York. Were you in California during the month of November,  
24 1911? A Yes.

25 Q About what time did you come to California? A I came  
26 about the 10th of November.

1 Q Did you see Mr. parrow after coming here? A Immediate-  
2 ly.

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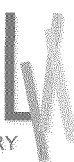
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1 Q Calling your attention to the particular meeting with  
2 him in the vicinity of San Diego, I will ask you if you  
3 recall that circumstance of meeting him at a house near San  
4 Diego? A Yes, it was at the house of Mr Scripps; Mr  
5 Darrow and I went together to San Diego and called on Mr  
6 Scripps, and the conference you speak of was the conver-  
7 sation on November 19th, a Sunday.

8 Q Mr Scripps, he is the E. W. Scripps of the Scripps  
9 papers, the man who controls the various papers through-  
10 out the country, known as the Scripps papers? A Yes.

11 Q You went there with Mr Darrow on the 19th of November?

12 A We went Saturday and came back Sunday night. The  
13 day you refer to was Sunday.

14 MR FORD: The 19th was Sunday? A The 19th was Sunday,  
15 unless I am mistaken on that.

16 MR ROGERS: State whether or not at that time, on the 19th  
17 of September, the matter was taken up between you and Dar-  
18 row and Mr Scripps, with reference to having the McNamaras,  
19 so known, plead guilty to the charge upon which they  
20 were incarcerated here, namely a charge connected with  
21 the dynamiting of the Los Angeles Times, and what was  
22 by said, you and Mr Darrow at that time on that subject.

23 MR FREDERICKS: Now, may it please the court, taking up  
24 this matter, we don't wish to interrupt, but we wish it  
25 understood that the McNamaras, in our notion, there is an  
26 entire difference between the case of the two McNamaras,

1 in the handling of this matter by Mr Steffens and Mr Dar-  
2 row, and when the witness answers the McNamaras, he may be  
3 answering in regard to what was talked of in regard to  
4 one of them and feel that he has answered the question,  
5 whereas, it would be an answer in the record as to both  
6 of them. Now, we wish that that will be kept perfectly  
7 clear. A I think I can do that.

8 MR FREDERICKS: As long as the witness understands.

9 MR ROGERS: I understand counsel's statement, of course,  
10 is not an objection, --

11 MR FREDERICKS: No.

12 MR ROGERS: -- it is not placed for argument, it is prac-  
13 tically an instruction to the jury, and ought not to be  
14 recorded. I think the witness will bear in mind what was  
15 said and the circumstances, and we intend to show the mat-  
16 ter concerning both McNamaras ran side by side all the  
17 time.

18 THE COURT: I took the Captain's suggestion merely as a  
19 suggestion that we might save time, and I think we are  
20 all anxious to do that.

21 MR FORD: And to be fair to the witness also, so we don't  
22 misunderstand him.

23 THE COURT: All right; let's have the answer to the ques-  
24 tion. Would you like to have it read? A No, I remember  
25 it. The conversation was upon the general labor sit-  
26 uation in the United States and the McNamara case came up,  
27 as an element in what we talked of, as a struggle between

1 capital and labor, as a part of the fight, and Darrow in  
2 speaking of it uttered one ejaculation --

3 MR FREDERICKS: Spoke of it a--

4 A About these two cases, his cases. He said he wished  
5 they could be settled. We were both surprised at that.  
6 We drew him out a little bit about it, and he described  
7 somewhat vaguely, but gave us an impression of the hopeless-  
8 ness of the case, as he had to try them. The conversation  
9 drifted,-went on from that -- after Darrow had said all  
10 he wished to say, we asked no more questions. Nothing was  
11 said that afternoon. In the evening, Darrow and I went  
12 to the theatre together, and we took the midnight train  
13 back to Los Angeles. What he said made an impression upon  
14 me, because it fitted in with the purpose I had in mind.  
15 I don't think it is pertinent here --

16 MR FREDERICKS: I don't think it is proper for the wit-  
17 ness to give his purpose. He should only give the facts.

18 THE COURT: yes, that is correct. Confine it to what was  
19 said, and as direct answers as you can. A We break-  
20 fasted -- Darrow and I went from the train to breakfast  
21 together, and at Breakfast, I turned to him and I asked  
22 him if he really meant what he said the day before, how he  
23 would like to have those cases settled, and he said he cer-  
24 tainly would. I said, "Why not try it?" "Oh," he said,  
25 "it is impossible." I said, "Why is it impossible?"  
26 Why, he said, "It is a part of this great big fight we

1 were talking about yesterday. The businessmen in the  
 2 United States are pent upon getting revenge on the working-  
 3 men -- on organized labor, and the business men of Los  
 4 Angeles have their feelings all aroused about it. They  
 5 would not consent for a moment. " We went on to talking  
 6 about the hate getting into the conflict between capital  
 7 and labor, and I answered, "Out of my experience and all  
 8 these political men, these corrupt men, so-called, and bad  
 9 men, I believed there was enough good to work upon to  
 10 get a result," and I told him that I would like to have the  
 11 chance to try to get typical leading businessmen of Los  
 12 Angeles

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1 to see that they would get no result by simply sending  
2 individuals to prison, but might get results by sitting  
3 down with intelligent labor leaders and finding out just  
4 what labor wanted and what was the matter. Well, he  
5 said, "Go ahead," He didn't take much stock in it;  
6 didn't believe it could be done, but he said, "Go ahead."  
7 Went on with our breakfast, talked a little more about it.  
8 Then he cautioned me that, of course, that in any negotia-  
9 tions I conducted I must not speak for him, because any  
10 intimation that came through me as from him That he  
11 wanted to settle those cases, would be an intimation or  
12 practically a confession of guilt, that there were no  
13 cases. I promised him to do the best I could on that and  
14 I went over after breakfast directly to the office of Mr.  
15 Myer Lissner.

16 MR. FREDERICKS. May we interrupt so as to get this chrono-  
17 logically in order to get that date?

18 A This is Monday the 20th. I said to Mr. Lissner, "Why  
19 don't you business men in Los Angeles get rid of this labor  
20 fight here in Los Angeles?" Of course, he was astonished,  
21 said it was impossible and undesirable, and I went on to  
22 show what had happened in San Francisco as a result of a  
23 class fight there. I referred to what I had just seen  
24 last summer in England, and before I got through, in  
25 15 or 20 minutes or half an hour, Lissner was for it.

26 MR. FREDERICKS. Was for it?

A He was for the attempt to settle those cases and get

1 them out of the system of Los Angeles. "Now," I said,  
2 "that can be done only with the understanding--with the  
3 knowledge and understanding of your principal business  
4 men" and I described them as men who would be least  
5 likely to consider such a proposition, that is, men who  
6 were in the fight and who had the feelings of fighters,  
7 those were the men I wanted to get. We drew a list  
8 there of--I don't remember--17 or 20 men--I have the list  
9 somewhere. Then we thought, where would the chief opposi-  
10 tion come from? They thought it would come from the Los  
11 Angeles Times. Well, I said, "We got to get the Times."  
12 He said, "The man on the Times to get, then, is Chandler."  
13 Now, I was a stranger in town and we looked around--we  
14 thought who would be the best local man to conduct these  
15 negotiations. I had explained, you understand, to him,  
16 that I was not speaking for anybody, that he would have to  
17 take my word for it, that I was not talking through my  
18 hat, as I might put it, that I believed a settlement could  
19 be made, and I had some grounds for thinking so. He  
20 accepted that and selected Mr. Thomas E. Gibbon to go and  
21 see Mr. Chandler, and to see other business men. Gibbon  
22 came into the office, I think that same day about noon, and  
23 he was opposed at first, the same as everybody else, in  
24 attempting to settle these cases, but we made the same  
25 arguments with him and he joined us and he went over to  
26 see Mr. Chandler and came back and reported Mr. Chandler took

1 exactly the same view he had, and Mr. Chandler had said  
2 it was both impossible and undesirable, but it didn't take  
3 him over 15 minutes to get Mr. Chandler so enthusiastic he  
4 would give all his time to do this thing. Then I  
5 reported this back to Darrow.

6 MR. FREDERICKS. We move to strike out that statement that  
7 it didn't take any length of time to get Mr. Chandler enth-  
8 usiastic, as being a conclusion.

9 MR. ROGERS. That is what Mr. Gibbon said to him.

10 A This is all stuff that I reported to Mr. parrow.

11 THE COURT. And was reported to you by Mr. Gibbon?

12 A Reported by Mr. Gibbon.

13 THE COURT. Motion to strike denied.

14 A When Mr. Gibbon came back from his talk with Mr. Chandler  
15 then I felt pretty sure, as it affected these men, so it  
16 would affect others. They were perfectly typical men. So

17 I went to Darrow and I told him in great detail--

18 MR. FORD. The same day--pardon me for interrupting.

19 THE COURT. The same day? A the same day, yes.

20 MR. ROGERS. That is the 20th. A And then Darrow thought  
21 himself something might come of it, and I remember he said  
22 then he would speak to his colleagues, he must speak to the  
23 McNamara boys, as we always called the McNamara prisoners,  
24 and he must report to organized labor. Then he decided not  
25 to do that because after all it was only the first flush  
26 and it might all go to pieces the next day, so we put in  
another day on it. Now, that day was Tuesday, the 21st

1  
2 MR FORD: The day of the report to Darrow, or the next day?

3 A No, the day of the report to Darrow was on Monday, the  
4 19th -- the 20th -- the 22nd was spent, as far as I can  
5 remember, in my waiting for further reports from Mr  
6 Chandler, who, I understood, was communicating with the  
7 District Attorney, Captain Fredericks, through a Mr Brand.

8 MR FREDERICKS: I think the witness has inadvertently given  
9 a date which he might not mean. Was this the 21st or  
10 22nd? A I think I am on the 22nd.

11 Q That is Wednesday? A That is Tuesday.

12 MR DARROW: Tuesday is the 21st.

13 MR FREDERICKS: It is Tuesday. Sunday was the 19th,  
14 Monday the 20th, and Tuesday, the 21st. A It was Tues-  
15 day, whatever the date was.

16 THE COURT: Tuesday, whatever the date was? A Yes, it  
17 was Tuesday, whatever the date was.

18 MR FORD: Pardon me. We may have got it a little mixed.  
19 He said on November 20th, he reported to Darrow, and Dar-  
20 row said, he was speaking to the office of Darrow and  
21 organized labor, and Tuesday he waited another day which  
22 he said was the 21st, and then he started on another day,  
23 which was Wednesday. A Yes, that is right. I reported  
24 back to him and when I reported back to him, he wanted  
25 to report to his client, or to the others associated with  
26 him. That was on the 20th, but the same time, at that



1 same conversation, we decided to wait until we knew more.

2 MR FORD: And you waited all day Tuesday? A Yes.

3 MR ROGERS: Suppose we do not cross-examine him.

4 MR FORD: To be fair with him. A Perhaps it will help  
5 me to keep it clear.

6 MR ROGERS: All right. A No, on that Monday, going  
7 back to Monday, in that first conversation, we had to  
8 have a proposition to begin with for our settlement.

9 MR FREDERICKS: That is the conversation with Lissner?

10 A That is the conversation with Bissner.

11 MR FREDERICKS: Whenever counsel objects to our interpo-  
12 lating these questions, we will stop.

13 MR ROGERS: I do not object to the interpolation to keep  
14 the matter straight, but I do object to a series of  
15 questions for the purpose of cross-examination.

16 MR FREDERICKS: That is not the purpose.

17 MR FORD: I think the witness admitted himself that we  
18 helped him straighten them out. A Yes, I would like  
19 to have it clear. Coming back to this first conversation  
20 with Lissner, in order to have something to go on, they  
21 asked on what terms the settlement might be reached.

22 MR FORD: "They"? A They, being Mr Gibbon and Mr Liss-  
23 ner, and this was drawn (producing document) "The party  
24 on trial to plead guilty" --

25 MR ROGERS: Pardon me, Mr Steffens -- just a moment.

26 MR FREDERICKS: We do not care.

1 MR ROGERS: You say "this was drawn", and you hand me a  
2 document. Permit me to interrupt you a moment. Who was  
3 it drew this document? A Myer Lissner dictated it to  
4 his stenographer who went out and typewrote it, and  
5 brought it back in triplicate.

6 Q And gave you this copy? A Yes, and I put it in my  
7 pocket.

8 MR ROGERS: I offer in evidence, for the purpose of the  
9 testimony of the witness --

10 THE COURT: Show it to counsel. A May I read it.

11 MR ROGERS: Pardon me; we have to go through a certain per-  
12 formance here. A Yes.

13 (Document handed to counsel.)

14 MR ROGERS: Now, you may read it, sir; it has been offered  
15 in evidence.

16 A (Reading:) "Party on trial --" That was J. B. Mc-  
17 Namara -- "to plead guilty and receive such sentence as  
18 the court might administer, except capital punishment,  
19 all other prosecutions in connection with the affair to  
20 be dropped." Now, this was drawn on the basis of the  
21 conversation in the morning with Darrow.

22 THE COURT: Do you want this marked as an exhibit?

23 MR ROGERS: Yes sir.

24 THE CLERK: Defendant's exhibit M.

25 (Document marked.)

26 THE COURT: Do you want the jurors to see it?

1 MR ROGERS: Yes.

2 THE COURT: Mark it and hand it up to the jurors.

3 MR FREDERICKS: We understand that was Monday? A That  
4 was Monday.

5 MR FORD:Q Before the visit of Chandler? A Before the  
6 visit of Chandler. I skipped something there. When I  
7 asked Darrow at breakfast on what terms he would settle, he  
8 said in his emotional way, what he wanted was a settlement  
9 and what he was intent upon was that nobody should be  
10 killed, he thought that J.B. McNamara might be convicted  
11 and hanged, so that there was nobody to be hanged. That  
12 was one of the terms the defense would insist upon, the  
13 rest was partly my own -- I hoped that if the state had  
14 to have one victim it would be satisfied and would not  
15 have to have two, would not have to punish two men, so he  
16 started out on that, and the rest was all the other cases  
17 were to be dropped; that was the -- from the side of these  
18 businessmen who saw the point of getting all the labor  
19 cases out of the system of Los Angeles, all these labor  
20 cases out of the system of Los Angeles.  
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1 MR. FREDERICKS. This was prepared on Monday?

2 A Yes. One copy of this was taken to Mr. Chandler by  
3 Mr. Gibbons, I believe, and I think Mr. Lissner kept the  
4 other.

5 THE COURT. And this is the third one?

6 A And this is the third. We considered at that time  
7 calling in the men who were on our list, the business men--

8 MR. FREDERICKS. We have no time--

9 A This was Monday, this conversation with Mr. Lissner.  
10 Now, on Wednesday we were waiting to hear indirectly  
11 from the District Attorney through Mr. Chandler and Mr.  
12 Gibbons, and I am a little cloudy about what the first  
13 form of those answers were, But I think they were just a  
14 demand for both men to plead guilty, I think there was a  
15 demand for a confession from both of them.

16 MR. FREDERICKS. I think the witness ought to say where  
17 he got this conversation.

18 A From Mr. Chandler, Mr. Chandler purporting to report  
19 from Mr. Brand, whom, as I understood it, had seen you.

20 MR. FREDERICKS. Is the witness reporting what Mr. Chandler  
21 said to him or what Mr. Chandler said to Gibbon?

22 A Chandler said to Gibbon to say to me.

23 MR. ROGERS. Cut that out.

24 MR. FREDERICKS. We are just as much interested in getting  
25 this right as the defense is.

26 MR. ROGERS. But, you cannot, you are not justified to

1 keep things in good order to make the kind of interruptions  
2 that my distinguished friend Joseph Ford indulges in, I  
3 have seen it for two months, and it cannot be done.

4 MR. FREDERICKS. We are trying to get this straight.

5 MR. ROGERS. Yes, I think it would be a very good idea, but  
6 let the witness go on.

7 THE COURT. I think Mr Rogers is right to that extent, he  
8 has granted a reasonable amount of privilege of interrup-  
9 tion--

10 MR. FORD. If the court will pardon me, I was addressing  
11 my remarks to Mr. Fredericks and said, "Brand told Chandler  
12 and Chandler told Gibbon and Gibbon told the witness." I  
13 don't know that it is in the record. I don't know as the  
14 reporter heard it.

15 THE COURT. The right of interruption is granted you, but--

16 MR. FREDERICKS. If it will help any to put in an interpola-  
17 tion once in a while--

18 THE COURT. I understand the witness has not objected and  
19 Mr. Rogers has not objected to one counsel interrupting,  
20 but two counsel--now, go on.

21 A That was complicated and a difficult way to do. So Mr.  
22 Gibbon took me over and introduced me to Chandler, so we  
23 broke off one more link and therefore I could talk to Mr.  
24 Chandler directly. Mr. Chandler reported as from Mr. Brand  
25 as coming from the District Attorney.

26 MR. ROGERS. Q That is, talked with Mr. Harry Changler of

1 The Times, the General Manager as I understand it, in  
2 some respects, about the matter? A Yes.

3 Q And do you remember what day that commenced, Mr. Steffens?

4 A Yes, it began on that Wednesday.

5 Q Now, go ahead and in your own way relate the circumstan-  
6 ces and happenings chronologically, if possible, and as  
7 fully as your memory serves you, in your own way, without  
8 interruption, if you may.

9 MR. FORD. We are entitled to the time and place and the  
10 persons present.

11 MR. ROGERS. You are going to get them as fast as you can,  
12 and that is all.

13 A This was on Wednesday and there were a great many inter-  
14 views. I was going from Chandler to Lissner and from  
15 Lissner to Chandler until he heard from Brand, who  
16 was hearing from somebody else, and it was everyone wait-  
17 ing and out of the day's reporting backward and forward it  
18 was clear, it seemed to be clear to Mr. parrow--that is,  
19 he accepted my impression of that, that a settlement could  
20 be arrived at.

21 MR. FREDRICKS. I think we should object to that. He  
22 should say what was said to Mr. parrow and what Mr. Darrow  
23 said to him rather than giving Mr. Darrow's impression.

24 THE COURT. I think so.

25 MR. ROGERS. Q Can you say what Mr. Darrow said, the sub-  
26 stance and purport of it? A Yes, I went to Darrow and I

1 reported to him in great detail everything I had heard  
2 during the day, late Wednesday afternoon at the Alexan-  
3 dria Hotel, told him what Mr. Chandler said, that he had  
4 heard, and Mr. Darrowsaid, "Well, then, it looks as if a  
5 settlement could be reached." I said, "It looks that  
6 way to me. " "It looks to me that they would not demand  
7 that J. B. should hang." "That is what I understand."  
8 Then he said, "It is time to report." He sat down there  
9 and wrote a telegram, we wrote a telegram together to  
10 Gompers, I don't remember the language of the telegram, but  
11 in effect it was asking Gompers to send here immediately  
12 from Atlanta, Georgia, where the American Federation of  
13 Labor was in session, one or two or three men whom he  
14 named, something very important was coming up that he  
15 wished to consult with organized labor about it.

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1 I think that night, or, perhaps, it was early the next  
2 day, he spoke with some of his colleagues or attorneys for  
3 the defense on Thursday --

4 MR FREDERICKS: Were you present when he did that?

5 A No.

6 MR FREDERICKS: Then you should not state that. A All  
7 right.

8 THE COURT: Strike it out. *Nov. 22*

9 MR ROGERS: On Wednesday night, as I understood you, in  
10 your presence, he wired Mr Gompers, president of the  
11 American Federation of Labor, asking him to send on one or  
12 two or three men. Can you give us your best recollection  
13 of the names of the men mentioned? A Johannsen, I think,  
14 or Fveitmoe or Nöckels or, I think, Gunnery, I think they  
15 were the four.

16 Q Now, during that time, you were talking with Mr Chandler  
17 from day to day, making this arrangement for this plea of  
18 guilty - continue the course of your narrative as best  
19 you can, commencing with the Wednesday night when the tele-  
20 gram was sent. To call your attention back to the mat-  
21 ter a little bit, do you remember whether or not previous  
22 to sending that telegram to Gompers, whether or not a tele-  
23 gram was sent to another person requesting him to come and  
24 give his advice in the premises? A Yes, one other,  
25 Older.

26 THE COURT: I presume you mean Fremont Older, of San



1 Francisco? A Fremont Older of San Francisco, but that  
2 was the previous day.

3 Q I show you what purports to be a telegram, it is de-  
4 fendant's exhibit L, and ask you if your recollection will  
5 serve you as to whether this is or is not the telegram  
6 which yourself and Mr Darrow sent to Older of the 22nd,  
7 that will be Tuesday, as I understand it? A Yes, I sent  
8 that telegram.

9 MR FORD: I do not want to interrupt counsel, but that is  
10 Wednesday. A That is Wednesday; you are right, Mr Ford.

11 MR ROGERS: Wednesday morning, 10:22 A.M. is the date on  
12 the telegram. Now, did Mr Older come down after that tele-  
13 gram was sent? A Mr Older responded at once, yes.

14 Q Was there a conversation between Mr Older, <sup>and</sup> yourself  
15 with reference to this situation, and the settlement that  
16 was to be arranged? A Yes, we went over with Mr Older  
17 the whole situation up to that time, up to that moment.

18 Q Took his advice and counsel in the premises? A Yes.

19 Q Now, proceed in your own way, Mr Steffens, I don't  
20 want to interrupt you, and I don't want to suggest to you,  
21 but in your own way, tell us as best your recollection  
22 serves you, the incidents running along about that time.

23 MR FREDERICKS: Is that the end of the question?

24 MR ROGERS: yes.

25 MR FREDERICKS: We wish to object to the question because  
26 it is indefinite, and as I stated before, we are just as

1 anxious to get these statements chronologically as the  
2 witness is, and we do not believe we will get them by  
3 permitting the witness to run along in that way, the wit-  
4 ness is a newspaperman and accustomed to making things run  
5 along, but we think he should narrate the conversations,  
6 if permissible at all, he should narrate conversations and  
7 as near as possible give the date on which those conversa-  
8 tions occurred and state with whom they were, because if he  
9 goes on and states in a general way what ran along from day  
10 to day, it is not competent. Unless the witness is ask-  
11 ed definite questions, he will fall into that error, un-  
12 doubtedly, of making a statement, and we will find our-  
13 selves talking about Friday, for instance, when we think  
14 he is talking about Wednesday, and our point in the matter,  
15 of course, is, that time, that what occurred today, would  
16 have an entirely different aspect, for instance, if it oc-  
17 curred tomorrow, and if it occurred before a certain date  
18 it would have an entirely different aspect than if it  
19 occurred after a certain date, and those dates are very  
20 close in time, and we want to get the memory of this wit-  
21 ness, and we want to get it, if possible, just exactly as  
22 it occurred, and we do not think it can be done unless  
23 counsel will ask particular questions and we object to it  
24 on the ground it is too general.

25 MR ROGERS: I will endeavor as best I can, if your Honor  
26 pleases, to give Mr Steffens what aid I can by specific

1 questions, but I think it is your Honor's experience, I  
2 think it is the experience of every lawyer, there are wit-  
3 nesses, such as Mr Steffens, who are better able, if  
4 allowed to go along without interruption, to keep chronolo-  
5 gically and events in succession in their minds than by  
6 questions as to what happened next, and whom did you see,  
7 and so forth, that has a tendency to confuse. All we want  
8 are the facts and truth of the matter, and I think the wit-  
9 ness will find himself more at ease and able to more easi-  
10 ly relate the matter, if he is permitted to take his  
11 own method of refreshing his recollection, and we can make  
12 it more definite if indefiniteness does arise.

13 THE COURT: I think, as long as counsel and the witness  
14 are willing to extend the courtesy to Captain Fredericks  
15 that has been extended, that he interrupt from time to  
16 time, if he is really in doubt about a matter, perhaps we  
17 can get along.

1 MR. FREDERICKS. I do not think so, because it is going  
2 to be a continual interruption and I do not want to be put  
3 in that attitude, and the law requires that conversations  
4 if they are admissible at all, must be admitted with the  
5 surrounding accompaniment of time, place and persons pre-  
6 sent, and we think it should be followed, and this witness  
7 can do it. I have not the slightest doubt he can do it  
8 as well as I can the other way, and it should be followed  
9 so that we know where we are from time to time and so the  
10 jury knows. We object to that question as being too  
11 general.

12 MR. ROGERS. Q Well, now, after the conversation with Mr.  
13 Older and after the sending of the telegram to Mr. Gompers  
14 requesting the presence of some person for consultation,  
15 state what next occurred, according to your best recollec-  
16 tion in the premises, what was done, who did it and the  
17 circumstances and conditions under which it was done, as  
18 best your memory serves you, what was said and who said it.

19 A There was a great deal said in those two or three weeks.  
20 I cannot remember all those conversations in detail, but  
21 I can give you the purport of them.

22 Q That is what I want, the substance and purport.

23 MR. FREDERICKS. And the time and with whom they were.

24 A Well, upon the arrival of Older I saw him first, but  
25 I did not say anything to him in that early conversation  
26 that was not repeated later in the conversation with Darrow,

1 and there we were able to show to Older that the settlement  
2 was in view, that it was possible.

3 Q Well, did that conversation with Mr. Older during that  
4 time-- A On and off during that day, yes, sir--

5 Q You say there was a great deal said from time to time.  
6 You were talking with Mr. Chandler during these days and  
7 seeing him from to time and was any person present with  
8 him when you saw him? A Mr. Chandler?

9 MR. FREDERICKS. We object to that question as misleading.  
10 The witness is now narrating a conversation on Wednesday  
11 and he has said he met Chandler for the first time on  
12 Wednesday, and this makes it indefinite--

13 THE COURT. I understood you, from a certain <sup>time</sup> on met Mr.  
14 Chandler directly?

15 MR. FREDERICKS. Yes.

16 A From that Wednesday when I saw Mr. Chandler I saw him  
17 two or three times a day until the following Thanksgiving  
18 day.

19 MR. ROGERS. Saw him two or three times a day until the  
20 following Thanksgiving Day? A Yes.

21 Q Did you have any other business with him than the ar-  
22 rangement of this settlement connected with the McNamara  
23 matter? A None.

24 Q Was any person present with you and Mr. Chandler while  
25 you were making this arrangement and settlement with him?

26 A Sometime Mr. Gibbon but usually not.

1 Q Can you remember the conversation occurring between  
2 yourself, Mr. Older and Mr. Darrow with respect to Mr. Darrow  
3 saying he would assume the responsibility, etc?

4 MR. FREDERICKS. It is leading.

5 MR. ROGERS. Merely offer that as a suggestion, those few  
6 words, so that you can see what I am directing your mind  
7 to, and I would like to have you remember as much of the  
8 conversation as your memory serves you, between Mr. Older,  
9 Mr. Darrow and yourself. A Yes. After we reported to  
10 Older everything that had been done we asked Older to help  
11 us decide how it would be received and understood, and  
12 Older thought it could not be understood, that we could not  
13 make it understood. He suggested that Darrow would suffer,  
14 that he would be punished in some way by organized labor;  
15 he suggested I would be hurt professionally, in fact, we  
16 raised the question in a humorous way about who would be  
17 the goat, feeling certain that there would be some vengeance  
18 upon some of us for bringing about this settlement. But.  
19 Darrow said that he didn't care, he could not help that,  
20 that his duty was to his clients and that he was going  
21 to save J.B.'s life, that is the substance of it.

22 Q Do you recall being present at the conversation between  
23 Mr. Darrow and other members of the law staff of the defense  
24 wherein this matter was presented to them? A yes.

25 Q Can you give us the time, approximately, of that, what  
26 day it was? A No. I think it was about that time, though.

1 What happened on Thursday, Friday and Saturday, I cannot  
2 always fix the date of--the principal event was Mr. Chandler's  
3 report of the receipt in his office of telegrams from the  
4 Erectors' Association and business men in the east protest-  
5 ing against their understanding that negotiations consider-  
6 ing a plea of guilty only from J. B. McNamara, and they  
7 demanded by telegram to General Otis that no settlement  
8 should be made, but if the settlement were made that both  
9 men should be required to plead guilty.

10 MR. FREDERICKS. Now, when was that?

11 A This was in the end of the week, but I cannot remember  
12 the date, but when it came I went instantly and reported  
13 that to Darrow and Darrow's answer was that if it were  
14 absolutely necessary of course he would consent to that.

15 MR. ROGERS. Q To what? A To having two men plead guilty

16 Q The two McNamaras? A the two McNamaras instead of one.

17 MR. FREDERICKS. When was that?

18 A This was in the end of this week. I will fix the date  
19 before Sunday, because I remember what happened on Sunday.

20 Q That Mr. Darrow said that before Sunday? A Yes, if  
21 necessary--

22 Q That if necessary this was said before Sunday, if neces-  
23 sary he would have J J McNamara plead guilty to some  
24 offense? A yes.

1 Q Advised him to, I probably should say. A I had to  
2 know what the defense would do if the demand were really  
3 made for two men to plead guilty instead of one, and Dar-  
4 row told that to me, and he told no one else that, and of  
5 course, it was understood and he instructed me to go  
6 back and make as hard a fight as I could the rest of the  
7 week, the rest of the time, to have only one man go, as  
8 he kept putting it; "I only want one man punished."

9 Q That was all during the latter part of the week  
10 that Mr Darrow and you discussed back and forth the mat-  
11 ter, <sup>of</sup> you going to Mr Chandler and bringing back word from  
12 Mr Chandler to Mr Darrow? A That they were going to de-  
13 mand more. I said, "Darrow, they are going to ask more."  
14 "How much are you willing to give?"

15 Q Did he tell you just exactly what he was willing to  
16 give? A He was willing to give -- all that remained, he  
17 was putting it off as long as he could to see what the Mc-  
18 Namara boys would say to this. That happen<sup>ed</sup> on Sunday? We  
19 found that out on Sunday.

20 MR FREDERICKS: I don,t know -- what do you mean you found  
21 out on Sunday? A What the McNamaras said about it,  
22 their consent. The pleas of guilty were obtained on  
23 Sunday. I will explain that when I come to it.

24 MR ROGERS: Now, I understand you to say that during the  
25 latter part of the week Mr Darrow said to you to make as  
26 hard a fight as you could to save J. J. McNamara? A Yes.



1 Q Go on and illustrate it yourself, the way it came to  
2 you. A Oh, it was necessary that he would consent to have  
3 J. J. -- must go. We used a great deal of slang, you  
4 understand, but you understand what I mean.

5 Q Have to go? A Yes.

6 Q That is, go over the road? A Yes.

7 Q Was anything said at that time as to the extent to  
8 which J. J. McNamara would plead guilty, as to what he  
9 would plead guilty to, and as to the term of service that  
10 would be exacted from him? A No, as I remember that  
11 came up in a conversation with J. J. McNamara the next  
12 day, Sunday.

13 Q On Sunday, did you see the McNamara boys? A Yes,  
14 Judge McNutt and Darrow and I went over to see them.

15 Q Judge McNutt? A Judge McNutt.

16 Q And where did you see them? A In the jail.

17 Q That was on Sunday, now, the 28th? A Yes, Sunday,  
18 the end of that week.

19 Q And Judge McNutt and Mr Darrow visited the McNamaras  
20 in the jail. State whether or not a statement was made to  
21 them as to the circumstances and conditions of the nego-  
22 tiations whether they were put in possession of the infor-  
23 mation on the subject? A Well, J. J. McNamara had been  
24 put in touch with everything that had been going on before  
25 that by myself.

26 Q J. J. McNamara had been? A Yes.

1 Q You had personally seen J. J. McNamara before that  
2 day? A yes, I saw him nearly every day.

3 Q And kept him in touch with the whole situation?

4 A Yes.

5 Q Well, state whether or not on Sunday, or previous to  
6 that day, any agreement was reached with the McNamara Brothers  
7 that a plea be entered, as they were substantially entered?

8 A No, that was handled in this way.

9 Q Tell us how it was. A The two attorneys would see  
10 J. B., and I would remain with J. J., and they would talk  
11 with J. J., and I would see J. B., and sometimes we all  
12 talked to them altogether. I mean, it was a conversation,  
13 we went to and fro, and the understandings with the two  
14 prisoners was separate. I would like to explain that.

15 THE COURT: You may.

16 MR. FREDERICKS: This was Sunday? A This was on Sunday.

17 J. J. was willing to take a sentence for himself. J. B.  
18 was willing to take a sentence for himself, but J. B. didn't  
19 want his brother to take a sentence, so we had our und er-  
20 standing with J. J. separately that what he would do,  
21 and with J. B. what he would do, and J. J. and J. B. both  
22 consented to take a sentence. Now, you asked me a ques-  
23 tion a moment ago, I don't remember -- I didn't know what  
24 you were driving at, but I remember the conversation came  
25 up whether it was in my conversation with Chandler or  
26 there at the jail, the question came up somehow, about

1 how much J. J. was to take, and I don't know whether I sug-  
2 gested or whether I got it from Chandler -- that side --  
3 but say ten years, or something like that; but anyway,  
4 that J. J. was to have ten years came into these negotia-  
5 tions somewhere really at that time, but I don't know just  
6 where it came from.

7 MR ROGERS: Now, on Sunday, had both the McNamaras agreed  
8 to plead guilty and take such sentences as was covered  
9 by the agreement, namely, life-imprisonment for J. B.  
10 McNamara and a term of years for J. J. McNamara? A yes,  
11 something like ten years for J. J. That time we separated,  
12 you understand, because we knew how J. B. felt about  
13 having his brother go.

14 Q Each brother was trying to save the other. A Yes,  
15 they were trying to save each other and organized labor --  
16 the name of organized labor.  
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1 Q On that occasion, on that day? A I think I ought to  
2 explain that last remark.

3 Q Yes, go ahead. A J. B.'s interest was not only in  
4 his brother, but in this fact; his brother J.J. was an  
5 official in organized labor, and that if he were con-  
6 victed it would be tantamount to a conviction of organized  
7 labor, whereas he said he himself could hang and having  
8 no connection with organized labor he would not, tech-  
9 nically, connect organized labor. His two fads were  
10 organized labor and his brother, and that feeling of his  
11 made a great difference later in the week.

12 Q Now, did Mr. Darrow on that Sunday, you say both  
13 McNamaras agreed to enter their plea of guilty on that  
14 Sunday, and take such sentences as you have indicated;  
15 now, did Mr. Darrow at that time express to you the willing-  
16 ness that the agreement should be made, and his intention  
17 to carry it out? A Certainly.

18 Q You know what we are—what we want here is Mr. Darrow's  
19 state of mind. I have to bring that in. A I understand.

20 Q What about Judge McNutt? A When we left the jail we  
21 were comparing notes about what we had all said, and there  
22 was a feeling of elation that the thing had been consented  
23 to and agreed upon, dampened somewhat by the fear that we  
24 would have to let the two men go to jail instead of one, and  
25 on that Sunday also we led those two boys to hope that  
26 we still could save J.J.

1 Q But you had been told all through the latter part of  
2 that week-- A That there was some demand that both of  
3 these persons should plead.

4 Q And on that Sunday it was agreed that both should go?  
5 A If necessary.

6 Q What understanding did you have with Mr. Darrow after  
7 having reached this agreement that J. J. McNamara, should  
8 plead guilty if necessary on this Sunday, and should if  
9 necessary take a sentence and receive punishment, what did  
10 Mr. Darrow say to you with reference to your conduct with  
11 Mr. Chandler and the others in making the arrangements from  
12 that time on? A That it was all up to me to go back to  
13 see Mr. Chandler, Mr. Gibbon and Mr. Lissner and finally to  
14 call together these big business men here and make a plea  
15 with them to have them stand for the one man going to  
16 save the other and that was done.

17 Q That was done? A That appeal was made. ✓

18 Q When did you say--

19 MR. FORD Just pardon me a moment. I would like to hear  
20 the latter part of that answer.

21 (Last answer read by the reporter.)

22 A I think I saw Mr. Chandler Sunday night, I am not sure,  
23 I don't know certainly; on Monday and Tuesday I was work-  
24 ing on that matter.

25 MR. ROGERS. Q Now, that was previous to Tuesday the 28th  
26 Mr. Darrow had agreed that those men should plead guilty and

1 told you to go on and arrange it? A Oh, yes.

2 Q To give up the two, that is, to cause two pleas to be  
3 entered, if it should so be necessary? A yes, if neces-  
4 sary.

5 Q That is, if the other side demanded? A Yes, but we  
6 still hoped we could save J.J. ✓

7 Q But to save J. J. if you could. I want to bring your  
8 attention to Tuesday the 28th, unless there is something  
9 happened on Monday that occurs to you, to be related for an  
10 understanding of the matter. A No, I don't remember any-  
11 thing now that happened on Monday.

12 Q Do you recall Davis and -- A Except I asked Mr. Lissner  
13 to go ahead and get together his business men.

14 Q Do you remember Davis's reporting back on Monday follow-  
15 ing the Sunday after the conversation that he, Davis, had  
16 had with Mr. Fredericks?

17 MR. FORD. Just a moment.

18 MR. FREDERICKS. Let me get that question.

19 (Last question read by the reporter.)

20 MR. FREDERICKS. Reporting back on Monday?

21 A Yes.

22 MR. FORD. Just a moment, we want to make an objection.

23 MR. FREDERICKS. I think Davis ought to swear to that.

24 Hearsay purely. Seems Davis is here.

25 MR. ROGERS. That is part of the communication.

26 MR. APPEL. We want to show that Davis made that communica-

1 tion to Darrow and to the witness.

2 MR. FORD. If the Court please, there are two elements to  
3 this situation, assuming that it is put in for the pur-  
4 pose of showing the state of mind of the defendant, I  
5 really don't believe that that is the thing that will be  
6 argued to the jury later on--

7 MR. ROGERS. Let that alone then. I suggest it is mis-  
8 conduct to state what the weight of the testimony is or  
9 what we are going to do with it.

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1 MR FORD: The point before the court, there are two elements  
2 to the situation, one what Darrow thought and the other  
3 what the District Attorney demanded, but whether or not  
4 there was an agreement of minds between them. Now, you  
5 cannot show that agreement of minds by reporting what Mr  
6 Davis said he said. Let Mr Davis take the stand and testi-  
7 fy to what Captain Fredericks had said and what he report-  
8 ed to Mr Darrow, and what chances there were for bringing  
9 about of the plea at that time, the acceptance of a plea  
10 of guilty, even if the defendant did intend it, even if the  
11 defendant's state of mind was such that he was willing to  
12 let his clients plead guilty. There may not have been any  
13 hope on his part that the same could be accomplished, and  
14 the way to show that is to show what the District Attorney  
15 had in his mind at that time.

16 MR APPEL: No, your Honor --

17 MR FORD: Just let me finish. To show what the District  
18 Attorney had in his mind, and let the parties who knew  
19 that and who made the report, take the stand and testify to  
20 it, otherwise, this jury will be drawing the conclusion  
21 that the District Attorney had agreed to do this, and doing  
22 that when, as a matter of fact, he may never have made any  
23 such agreement on that date.

24 THE COURT: Objection overruled. Answer the question.

25 MR FREDERICKS: We simply think, with your Honor's per-  
26 mission -- will your Honor permit us to go into our end of



1 it as fully?

2 MR APPEL: We will take that up when it comes.

3 MR FREDERICKS: I know. There is just the trouble with  
4 this whole situation.

5 THE COURT: Mr Fredericks; the court will explain the rul-  
6 ing, if you so desire. This witness has stated there were  
7 certain things and certain statements upon which he was  
8 acting, and authorized to act by the defendant in this  
9 case. The court is admitting the testimony upon that  
10 theory.

11 MR FREDERICKS: I know; I just ask the court to indulge  
12 me a moment, to see where we are drifting to. When the  
13 defense gets through with this, there is one side of it  
14 here. Now, suppose we try to show the other side that  
15 they went up against a stone wall, and that their propo-  
16 sitions absolutely were turned down, were not accepted or  
17 acceded to? Suppose we try to show that; in order to show  
18 that I have got to put on a lot of hearsay testimony  
19 which may be error, but this thing is opened up now, and  
20 it has got to be done, what the whole situation was.  
21 Suppose it appears now that all these negotiations that  
22 were attempted, and that the defense had agreed on among  
23 themselves, when they tried to make a union of agreement  
24 with the District Attorney, they failed? How are we going  
25 to show that except by hearsay testimony; except by the same  
26 character of testimony as this, but unless we can show it,

1 certainly we have been left a lot here that the facts  
2 will not warrant, and I doubt very much -- I doubt very  
3 much when the time comes, the court is going to allow us  
4 to show just exactly what the situation was. We want to  
5 go into it, now that it is open. But I want to call the  
6 court's attention to where we are going to. When this  
7 thing -- when this witness is through, and their other  
8 witnesses are through, we propose to call Harry Chandler,  
9 Tom Gibbon and Mr Brant, and all those people, who he assum-  
10 ed were dealing with me, and show what the real facts  
11 were, and where are we going to be.

12 THE COURT: Well, we will cross that bridge when we come  
13 to it.

14 MR FREDERICKS: But we are crossing it right now by this  
15 material going in here, makes a reply absolutely necessary,  
16 if there is any way to save it --

17 THE COURT: Maybe I don't get the full force of that  
18 question. Let's have it. (Last question read by the  
19 reporter.)

20 MR APPEL: We propose to show what Mr Davis said, what he  
21 came back and said to Mr Darrow that Mr Fred ericks  
22 would do; what sort of a plea he would accept. We want to  
23 show that, your Honor, for two reasons: we want to show that  
24 not only Mr Steffens and Mr Darrow and the McNamaras had  
25 from one side, from another line, from Gibbon and Chand-  
26 ler and Lissner, facts upon which they had agreed to plead

1 guilty, one to take ten years, and the other one life, but  
2 that there was another source --

3 THE COURT: I don't think we need spend any more time on  
4 the proposition, MR Appel. I have the idea, and I think  
5 counsel exaggerates the danger of hearsay testimony here.  
6 There is lots of hearsay testimony that is good evidence.

7 MR FREDERICKS: Oh, yes.

8 THE COURT: And I think the answer to this question is  
9 the proper, under circumstances. We will cross the other  
10 bridge when we get to it.

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1 MR ROGERS: Might I suggest just one thing? Mr Freder-  
2 icks has had the floor. There is one thing absolutely  
3 sure in evidence in this case already has been put in,  
4 that no matter what was said, no matter whether <sup>the</sup> negotia-  
5 tions were failures or not, the thing was done in the end  
6 just as Mr Steffens and Mr Chandler agreed. Now, it might  
7 be, of course, that the whole thing was a failure, and  
8 the District Attorney arose in his wrath and kicked it  
9 all out of the window, but it was all done.

10 MR FREDERICKS: We might as well take this thing and come  
11 down to an issue. There is no controversy over the fact  
12 that the defense were willing to let J. B. McNamara plead  
13 guilty, but there is a controversy over the fact that they  
14 were ever willing to let J. J. McNamara plead guilty  
15 until after Franklin was detected in this bribery, that  
16 is the point, and we wish, if the doors are going to be  
17 opened on this, we want them opened wide enough so we can  
18 put in Gibbon and Chandler and Brand, and all those people  
19 and show that they had come to an absolute dead-lock;  
20 that the defense would not give up J. J., and the prosecu-  
21 tion would not take anything else, and that the negotia-  
22 tions were off, and we went on to get the jury. A That  
23 was my bluff.

24 MR APPEL: No, no. We propose to show --

25 THE COURT: There is no question before the court at  
26 this time.

1 MR APPEL: But we would like to answer that. We propose  
2 to show by this witness that Davis came back, and he  
3 brought the report on Monday from the very lips of the  
4 District Attorney, "I will let J. J. Plead guilty and take  
5 a term of years," and that Mr Davis said to him, "Well,  
6 what term of years?", and he said to him, he says, "Ten  
7 years", and that he brought that back and reported to this  
8 witness and to Mr Darrow, and that then it was absolutely  
9 and finally understood on Monday that such a plea would be  
10 entered. Now, we propose -- and there, your Honor, that  
11 fact, whether it was true that Mr Fredericks had himself said  
12 ten years for J. J., and which fact had been communicated  
13 to J. J. on Sunday, as coming from another source, whether  
14 that is a fact or not, will depend entirely upon the tes-  
15 timony of Mr Davis when he comes upon the stand, and upon  
16 the testimony of the District Attorney or anyone that was  
17 present there, and that will be an issue for the jury to  
18 determine.

19 MR FREDERICKS: Let us have Davis here so I can to say to  
20 Davis, "Isn't it a fact, Mr Davis --"

21 MR APPEL: We will put him on the stand.

22 MR FREDERICKS: -- "We discussed that situation and you  
23 said you would never let J. J. plead guilty, and I said I  
24 would never take anything else", and the whole business  
25 broke up and ended there, and then the jury matter went  
26 on.

1 THE COURT: Gentlemen, we are getting away out of this  
2 case. The question before the court has been decided.  
3 The court has been requested to rule upon evidence that  
4 may come in here at a later time. The court will rule  
5 on that when it comes, not now. The ruling is now upon  
6 the question before the court, and that alone. The wit-  
7 ness may answer the question. A Can you repeat it.  
8 (Question read by the reporter.) Yes sir, I remember  
9 it very distinctly. It was the first direct confirmation  
10 we had from the District Attorney of what I had been hear-  
11 ing, so indirectly through Mr Gibbon and Mr Chandler.

12 MR FORD: That is a conclusion of the witness.

13 MR FREDERICKS: That is hearsay. That doesn't show Mr  
14 Darrow's state of mind; what he told Mr Darrow .

15 MR DARROW: What Mr Davis told me?

16 MR FREDERICKS: No, what this witness told Mr Darrow.

17 MR FORD: here is the witness' conclusion that it is an  
18 absolute confirmation, and is introduced for no other pur-  
19 pose than to show what the District Attorney said, was  
20 hearsay. A I can't remember the exact conversation.

21 MR FORD: We are addressing the court, Mr Steffens. I move  
22 to strike out the answer as not responsive to the question.  
23 The question was what did Mr Davis report to this witness,  
24 and this witness has stated his conclusion, and it is not  
25 responsive to the question.

26 THE COURT: It is not responsive to the question. The

1 matter may be stricken out for that reason. Now, read  
2 the question.

3 (Last question read by the reporter.)

4 MR ROGERS: State the substance of that conversation to  
5 which I referred in the last question.

6 MR FREDERICKS: If the witness understands. A This was  
7 the conversation, I think, Monday morning, or Monday some-  
8 time. Mr Davis came back and reported that he had seen  
9 Captain Fredericks, and that Captain Fredericks was ask-  
10 ing in addition to J. B. taking life, J. J. should take a  
11 sentence. I don't remember just what it was. I have an  
12 impression that it was ten years. I remember Darrow and I,  
13 separately from Mr Davis, who didn't know all the plans,  
14 you know at this moment -- Mr Davis didn't know that Dar-  
15 row was willing to consent yet, to have J. J. go too. Mr  
16 Darrow and I talked this over, and felt that what Davis  
17 reported confirmed what I had been reporting out of the  
18 dark, so to speak.

19 MR ROGERS: What did Mr Darrow say when Mr Davis reported  
20 what the District Attorney had said to him on that Monday?

21 A As I remember it, he told Davis that he would not let  
22 J. J. go, and he told me to go out and make a fight and  
23 say to everybody that J. J. could not go. At any rate, the  
24 rest of the week I was telling everybody it would be im-  
25 possible to settle if J. J. was asked for, too. ✓

26 THE COURT: We will take a recess at this time.

1 MR ROGERS: Just one question, if I may be permitted.  
2 You spoke a moment ago when the District Attorney was  
3 talking, turned around to the court and said, "That  
4 was my bluff--" I don't know that it went into the re-  
5 cord. Be kind enough to state what you meant by that  
6 statement, "That was my bluff"? A I just explained the  
7 impression that got around among these businessmen, there  
8 couldn't be a settlement if J. J. was asked for. I was  
9 doing my best to give everybody, intentionally, the im-  
10 pression, that there could be no settlement unless J. J.  
11 were allowed to go.

12 Q But that, as a matter of fact, was Mr Darrow's under-  
13 standing with you? A That J. J. should go, if necessary,  
14 but that was the agreement between Darrow and myself, and  
15 absolutely necessary for me to have in order to work at all  
16 THE COURT: Gentlemen of the jury, bearing in mind your  
17 former admonition, we will take a recess for ten minutes.

18 (After recess.)

19 MR ROGERS: Mr Steffens, in response to a question you  
20 said you were making a bluff in order to get the best  
21 terms that you could. State whether or not if that bluff,  
22 as you call it, was meant for the lawyers; that is to say,  
23 it was intended for their benefit as well as for the bene-  
24 fit of those whom we were told? A No, for the businessmen,  
25 only.

26 Q Now, did you have a conference on Monday, yourself,



1 Mr Darrow and Mr Davis and Judge McNutt with reference  
2 to this entering of these pleas on this Monday that you  
3 have spoken about. A Yes.

4 Q State whether or not there was an agreement there, be-  
5 tween these various men that the pleas should be entered  
6 under the terms indicated, but nevertheless there should  
7 be a continued effort to relieve J. J. if possible.

8 MR FREDERICKS: That is objected to as calling for a  
9 conclusion of the witness. I think he should state what  
10 was said by the parties.

11 MR ROGERS: That is calling for the substance and pur-  
12 port of the conversation, of course.

13 THE COURT: With that explanation, the objection is over-  
14 ruled.

15 A At this conference we spoke of before the intermission,  
16 it was decided, the news was so bad that Judge McNutt  
17 should also be sent for, and all the attorneys together  
18 there agreed to what Darrow and I had agreed upon.

19 MR ROGERS: And what was that? A That if necessary, J. J.  
20 should go also -- should plead guilty, also.

21 Q Now, what was agreed on at that time with reference  
22 to the continuation of the efforts, if possible, to get bet-  
23 ter terms for J. J. at that conference between the law-  
24 yers that I have mentioned on that Monday. A They were  
25 to carry on their negotiations more directly, as I understood  
26 it, Mr Davis with the District Attorney, and I was to go

1 at it the other way through these businessmen.)

2 Q Do what, Mr Steffens? A To save J. J., to have only  
3 one man plead guilty and go to prison.

4 Q But if you failed, neither you and Davis could not  
5 bring it about, what was the agreement? A Why, that they  
6 both should plead guilty. ✓

7 Q And get the sentence indicated in your previous answer?

8 A Yes.

9 Q Do you remember whether Mr Davis was present at any  
10 part of the time when you and Mr Older and Mr Darrow were  
11 conversing about this on this Wednesday? A On Wednes-  
12 day when Older was there?

13 Q Yes. A Yes, he was there part of the time, I am  
14 quite sure.

15 Q State whether or not it was spoken of there by Mr Dar-  
16 row or in his presence, by Mr Davis, that the District  
17 Attorney was going to demand that J. J. should receive some  
18 sentence and that he should plead guilty, as well as his  
19 brother, J. B.; that is, in Mr Older's presence on Wednes-  
20 day? A Yes, that fear was with us all the time.

21 Q Do you remember whether or not Mr Darrow then instruct-  
22 ed, on that Wednesday, Mr Davis to return to the Dis-  
23 trict Attorney's office, or to go to the District Attor-  
24 ney's office in that behalf.

25 MR FORD: Now, if the court please, that is certainly  
26 leading and suggestive. I think that the witness ought to

1 be allowed, especially an intelligent witness; at this time,  
2 in whose mind all these things are vivid, ought to be  
3 allowed to answer the question without being led and sug-  
4 gested to, and he is skipping from one conversation to  
5 another. Of course, I presume, this refers to Wednesday,  
6 the 23rd.

7 MR ROGERS: It is in the presence of Mr Older.

8 THE COURT: The question is leading, but I think in this  
9 instance, harmless. The objection is overruled.

10 A Will you r ead it again. (Last question read by the  
11 reporter.)

12 MR FORD: It is ambiguous <sup>about</sup> in returning and going. The  
13 first note we have Davis going to the District Attorney's  
14 office was later, Monday.

15 MR DARROW: We will have that supplemented later.

16 MR FORD: That is just the viciousness of suggesting.

17 A That was the conclusion of our conversation. I was  
18 sent back to my side and Davis was sent back to his side.  
19 I don't remember distinctly now, what you refer to.

20 MR ROGERS: Now, will you say whether or not you were  
21 in the city when the news was sent forth upon the street  
22 and elsewhere as to the arrest of Franklin? A Yes.

23 Q State what you did upon hearing of the arrest of Franklin  
24 or learned of it in anyway? A Well, I heard it first in  
25 the lobby of the Alexandria; then I read it in a newspaper,  
26 and I went over to Lissner's office, and I think Mr Gib-

1 I remember. And I found that they remembered their as-  
2 tonishment of that news at that time.

3 MR FORD: What the witness found that they remembered is  
4 third or fourth degree hearsay, and what was said about  
5 Franklin's arrest, was certainly the worst kind of hearsay.

6 THE COURT: There is no objection?

7 MR FORD: We object upon the ground that it is hearsay,  
8 and move to strike it out upon that ground.

9 THE COURT: That portion of the answer, "I found that they  
10 remembered", should be stricken out.

11 MR FORD: And what conversation they had about Franklin's  
12 arrest, that has got nothing to do with Mr Darrow's state  
13 of mind.

14 MR ROGERS: It has this to do with -

15 THE COURT: I think it has something to do with it. Ob-  
16 jection overruled. Motion to strike as to that part is  
17 denied.

18 MR ROGERS: Well, you said they expressed astonishment.  
19 Do you remember what was said at that time?

20 MR FORD: Objected to as hearsay, what Lissner and Gibbon  
21 had to say about Franklin's arrest, would not illustrate  
22 this defendant's state of mind. It is hearsay, incompetent,  
23 irrelevant and immaterial.

24 THE COURT: That is going pretty far.

25 MR DARROW: It is not all my state of mind, together with  
26 that. We have a right to the facts, how far this matter

1 had gone.

2 MR FREDERICKS: What did Gibbon and Lissner know about  
3 it anymore than anybody else?

4 MR ROGERS: It is very apparent that Mr Gibbon and Mr  
5 Lissner were most active participants in this arrange-  
6 ment, and they have been announcing that they were going  
7 to call some people on this matter, and I think it is only  
8 within the rule, that we may show that they were, in good  
9 faith, and that they were, as a matter of fact, participat-  
10 ing in the arrangements, either that had been or was in  
11 process of accomplishment, and it shows their good faith  
12 in it when they expressed themselves that a thing of this  
13 kind could happen, if Mr Darrow had anything to do with it,  
14 or knew anything about it. We want to show the continuance  
15 further of the negotiations right along, without interrup-  
16 tion, with nothing to interfere or nothing to break it  
17 down in any effect.

18 MR FORD: If the court please, we haven't contended that  
19 Mr Gibbon or Mr Lissner, either one of them are accom-  
20 plices of the defendant in this case, and it is only in  
21 cases where the third persons are accomplices of the de-  
22 fendant that their acts and declarations may be admitted  
23 in evidence, and then only when it is in furtherance of  
24 the conspiracy. That is the only reason upon which they  
25 are admitted. The other theory which, with all due defer-  
26 ence to the court, I cannot give my adherence to that any

1 of this is admitted on the theory it explains the defend-  
2 ant's state of mind, certainly is not supported by the  
3 fact that Gibbon and Lissner expressed astonishment at  
4 Darrow, or at Franklin's arrest. That would be <sup>a</sup> natural  
5 thing for both of them to do, would be a natural thing for  
6 a great many people to do. I can't see what possible bear-  
7 ing it has upon this situation.

8 THE COURT: That properly might have been stricken out if  
9 it was demanded. The question is now, what was said.  
10 Coun sel says he seeks to prove the furtherence of this  
11 plan for a settlement of the McNamara cases, to show  
12 that it was pursued as one system to a conclusion.  
13 I think he has that right. Objection overruled.

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1 MR. ROGERS. Q You said they expressed astonishment and  
2 went on with the negotiations and I desired you to say what,  
3 if you can remember, Mr. Lissner and Mr. Gibbon said on that  
4 occasion, to the best of your recollection, respecting  
5 Franklin. A It was a rattling conversation, they wanted  
6 to know who Franklin was and I told them he was a detec-  
7 tive for the defense and they asked what it meant, they  
8 talked about what it might mean--

9 MR. FORD. Well, now--

10 THE COURT. It is necessary for you to give the conversa-  
11 tion or the substance of it. Of course, I assume you cannot  
12 remember the exact words, but the substance of the con-  
13 versation.

14 A The substance of the conversation was mainly an  
15 expression of astonishment that the defense or anybody con-  
16 nected with the defense at that time would do such a thing,  
17 and, secondly, the other conclusion was we were to go on  
18 with the negotiations, not believe it, and go on with the  
19 negotiations as if nothing had happened. I went to see  
20 what Darrow was going to do--

21 MR. FORD. The witness is testifying about something else.  
22 The question calls for what was the conversation between  
23 Lissner and Gibbon and he said, "We discussed what it might  
24 mean," and does not tell yet what they thought it might  
25 mean.

26 THE COURT. He has told what the substance of the conversa-

1 tion was, and that is all.

2 MR. ROGERS. Is the question answered?

3 THE COURT. I think so.

4 A I understood it from the court's ruling--

5 MR. ROGERS. Is the question answered?

6 THE COURT. Yes, would you like to have it read?

7 MR. ROGERS. Yes, I was talking to Mr. Appel.

8 (Last answer read.)

9 MR. ROGERS. Q And proceed from that point on when you  
10 went to Mr. Darrow's office, relate as fully as you can the  
11 conversation between yourself and Mr. Darrow immediately  
12 following your talk with Mr. Lissner and Mr. Gibbon about  
13 going on with those negotiations.

14 MR. FORD. The place and the persons present have not  
15 been laid and we object to that on that ground.

16 THE COURT. Objection sustained. The place and persons  
17 present were not mentioned.

18 MR. ROGERS. Q Did you meet Mr. Darrow after leaving there  
19 then? A I went to Mr. Darrow's office.

20 Q Did you see him there? A Yes.

21 Q Any one else present? A Not that I remember; he was  
22 alone.

23 Q How long was that after you had been down and talked to  
24 Mr. Lissner and Mr. Gibbon? A I went from there to Mr. Darrow's  
25 office.

26 Q About what time of the day was it? A In the forenoon.



1 Q Please relate the conversation with Mr. Darrow, as nearly  
2 as you can, as far as your recollection serves you.

3 A I went in and I asked Darrow, showed him this extra, and  
4 I asked him what effect that would have upon these nego-  
5 tiations that I was carrying on and he said "None what  
6 soever" and then he said, he walked off and returned around  
7 a moment and said, "Not as far as I am concerned. It  
8 may make a difference with your crowd." I told him I  
9 had seen my crowd and my crowd was going on.

10 Q After that did you still continue your negotiations with  
11 reference to the shortening of J. J. 's term or to get the  
12 best terms you could for him, after that morning when you  
13 talked with Mr. Darrow? A Yes.

14 MR. EARD. Of course--just a moment, now. We object to  
15 that as leading and suggestive, and I presume--

16 THE COURT. Objection sustained upon that ground.

17 MR. ROGERS. Q State what you did with reference to the  
18 matter after Mr. Darrow said to go right on with it it  
19 made no difference with him? A Well, I went and saw Mr.  
20 Chandler again and I went and saw Mr. Lissner again and the  
21 result of those two conferences was there was a meeting  
22 called in Mr. Lissner's office there on Tuesday night or  
23 Wednesday night of that week.

24 Q A meeting of whom? A Of some 17 or 20 of these lead-  
25 ing business men of Los Angeles.

26 Q Can you name who they were? A I cannot name them all.

1 Q Name those who are now in your memory. A Well, there  
2 was Ex-Senator Flint; there was--

3 Q Have you got a memorandum you can refer to? A I think  
4 I have a list of them somewhere. Lissner--no, I think I  
5 have not it here, I think I can get that for you.

6 Q Well, at any rate, there was Senator Flint. Was Stoddard  
7 Jess there, do you remember? A yes.

8 Q Fred Baker? A Yes.

9 Q Reese Llewellyn? A yes.

10 Q Harry Chandler? A yes--Oh, no, I think Chandler was not  
11 there, I am not sure.

12 Q Mr. Gibbon? A yes.

13 Q Meyer Lissner? A yes.

14 Q Well, now, at that meeting which you say was held  
15 either Tuesday night or Wednesday night, was this matter  
16 of the necessity of the plea of guilty to the settlement of  
17 these cases discussed? A Yes.

18 MR. FORD. I would like to ask your Honor to instruct  
19 counsel to refrain from asking leading questions of this  
20 witness, they ask leading and suggestive questions and all  
21 he has to do is to ask what they discussed and the witness  
22 is intelligent--

23 MR. ROGERS. There is nothing harmful about that, I direct-  
24 ed his attention to the subject and proceed to ask him what  
25 happened.

26 THE COURT. The question is leading, but it is harmless.

1 Of course, leading questions should not be asked.

2 MR. ROGERS. I ask him only to conserve time, to bring his  
3 mind directly to it. What was the subject of that meeting?

4 A I can describe the meeting and tell you all about it.

5 Q What is that? A I can describe the meeting and tell you  
6 all about it.

7 MR. FREDERICKS. This was at Mr. Lissner's office?

8 A This was at Mr. Lissner's office. When these men got  
9 in Mr. Lissner's office, Mr. Lissner turned to them and  
10 said very simply, in one sentence, I had a proposition to  
11 make to them, and I said that I had to make a proposition  
12 that they use whatever influence they would have to have  
13 a settlement of the McNamara matter and of the whole labor  
14 situation, so far as it concerned Los Angeles. I recalled  
15 to their minds what had happened in San Francisco, as I  
16 had to Mr. Lissner before, where a class fight was fought  
17 out in courts under the guise of a legal battle, I pleaded  
18 with them that there was hate all through this country and  
19 that there had to be a beginning somewhere of another  
20 attitude and that it was particularly pertinent and right  
21 for Los Angeles to do it, because Los Angeles had labor  
22 down here, that it had licked labor over and over again,  
23 that the city of Los Angeles had a better chance than any  
24 city in the United States to turn around and be handsome  
25 and if they had to have a symbol of the guilt of organized  
26 labor that there was J.B. to take it, he was willing to

1 take a life sentence, and I pleaded with them not to ask  
2 for two victims. Well, I said a great deal more to them.  
3 When it was over, when I got through the room was silent  
4 a moment and then as I remember it, Mr. Baker spoke up and  
5 expressed very strongly the injustice that he felt he had  
6 suffered from labor, and I answered that by saying,  
7 "Of course, labor abused its power as capital did, there was  
8 no plea that one side was right and the other side was  
9 wrong, that they were both wrong, there was something the  
10 matter between capital and labor, and the only thing to do  
11 was for one side to take the step towards the other, that  
12 this was no place for labor to do it, it was a place for  
13 Los Angeles, for capital to do it." They got--<sup>I</sup> don't  
14 know, I think Mr. Earle spoke up and said Mr. Baker's  
15 statement showed the typical feeling that made it so diffi-  
16 cult for capital and labor to get together, that was that  
17 Mr. Baker the capitalist was intent upon his own troubles  
18 and what he suffered and what he was trying to do at that  
19 meeting was for capital not to consider, not its own  
20 troubles but labor's trouble, so <sup>if</sup> that/capital instead of  
21 understanding itself would understand labor and the con-  
22 clusion was, I believe, that Mr. Baker himself made the  
23 motion--they were very much afraid of interfer<sup>ing</sup> with the  
24 District Attorney, or seeming to interfere with anything  
25 he was doing, but he made the motion, put it in the form  
26 that they would back anything the District Attorney could

1 be brought to do towards letting up in this matter of  
2 labor. I think that was the substance of it.

3 Q Were any definite steps taken or any definite statements  
4 made at that meeting with reference to what they would  
5 recommend concerning J. J. McNamara? A No, I think not.  
6 They refused to take an active part in the details of any  
7 negotiations of any settlement, they felt they had to be  
8 back of the law and back of the District Attorney and they  
9 wanted to stand by him, but they did agree there in this  
10 resolution if he could be brought to see the idea of mercy  
11 at all that they would support him, support the law and do  
12 what they could with public opinion.

13 Q Do you remember whether or not that was the first time,  
14 so far as you were aware that that large committee had  
15 gotten together? A That committee was drawn along about  
16 early that first week but it was not called until the  
17 middle of the next week.

18 Q Early in what first week? A The last week--

19 Q The week of the 19th? A The week we began on the 19th,  
20 the list was drawn, the list was made.

21 Q Who made that list of that committee at that time?

22 A Mr. Lissner and Mr. Gibbon.

23 Q That committee was then constituted or arranged for  
24 during the week commencing on the 19th? A No--

25 MR. FREDERICKS. Just a moment. That is objected to unless  
26 it was explained what was constituted and arranged for.

1 If it means they were notified--

2 A They were not notified, it was in our knowledge, we had  
3 the list of men, we felt we could call upon to meet  
4 with us immediately, they didn't know anything about it.

5 MR. ROGERS. Q Who consulted with you in the making of that  
6 committee, the names? A Just Mr. Lissner and Mr. Gibbon, it  
7 was my suggestion that they pick out the ablest men in the  
8 town, the most influential men in the town, especially  
9 business men.

10 Q I call your attention now to Thanksgiving Day, that would  
11 be on the Thursday of that week. A Yes.

12 Q And I ask you to state whether or not you had a confer-  
13 ence with any person or persons on that day. A That is  
14 the day we spent in jail.

15 Q You say, "We spent in jail", whom do you mean?

16 A Mr. parrow, Mr. Tom Scott.

17 Q Joseph Scott? A Joseph Scott, I mean--Mr. Judge McNutt.

18 Q Was Davis there, do you remember? A Yes, Davis. The  
19 attorneys were there and I was there all the forenoon and I  
20 went away in the afternoon and came back about 5 o'clock.  
21 Mr. Davis was away part of the day and on and off we were  
22 talking with the boys all the day long.

23 Q And what was the topic of conversation? A About this  
24 settlement and that is when it came to J.B.'s knowledge  
25 that we were considering also letting J.J. go, take a  
26 sentence too.

1 THE COURT I didn't catch the day of that conversation.

2 A This was Thanksgiving Day, Thursday.

3 MR. FREDERICKS. The day before they plead guilty.

4 MR. ROGERS. Q What was the substance of it. I do not  
5 ask for it in detail, of course, it was an all day con-  
6 versation and we cannot go into it fully, but in a general  
7 way what was the substance of the conversation between  
8 you and these gentlemen and the McNamaras? A Well, it  
9 began early in the morning by going to see J.B. if he  
10 would stand by what he said and he said he would and then  
11 they saw J.J. to see if he would stand by what he had said  
12 he would do and he said he would, and then we brought the  
13 two boys into a cell together and then they discovered  
14 it was arranged, then J.B. discovered that the understand-  
15 ing<sup>was</sup> J.J. also was to plead guilty and then began the fight.  
16 J.B. did not want his brother to go, as I told you before,  
17 for two reasons, one was that it was his brother and the  
18 other was that J.J. represented organized labor and he did  
19 not.

20 MR. ROGERS. Q Do you remember whether or not at that  
21 conversation Mr. Davis said anything with reference to  
22 whether the district attorney would insist on both of  
23 them pleading together at the same time, pleading guilty  
24 together, and what arrangement was made about that, whether  
25 that made it necessary to bring them together at that time  
26 or not? A I don't remember that.

1 Q you don,t remember? A No.

2 Q But, at any rate, in some way they were brought to-  
3 gether into the same cell and discussed the matter?

4 A Yes, they were brought together.

5 Q What, as a matter of fact was, to use a slang phrase,  
6 was the hitch that brought about that discussion on that  
7 day? A Why, J.B.'s objection to having organized labor  
8 officially convicted of guilt, that and his feeling about  
9 his brother.

10 Q And was that, to your knowledge, the time when he  
11 learned that his brother J.J. also was to plead guilty?

12 A Yes, sir.

13 MR. FORD. The answer did not get into the record there.

14 A Yes.

15 MR. ROGERS. Q And it was finally agreed what should be  
16 done onthat occasion, Thursday? A No--that evening Mr.  
17 Davis went and saw Captain Fredericks, at any rate, came  
18 back to Mr. Darrow's house and said he had seen Captain  
19 Fredericks and he told the final terms of the agreement.

20 Q The final terms of the agreement, what were they, as  
21 nearly as you can remember? A That J.B. was to take  
22 life and J.J. was to take 10 years.

23 MR. FREDERICKS. Of course, this is all going in over  
24 our objection, I assume, your Honor.

25 THE COURT. Yes, sir, it is so understood.

26 MR. ROGERS. Q Those were the same terms that were agreed



1 to separately on the Sunday previous, the Sunday previous  
2 to the 28th? A Yes, and there was a hitch the next day,  
3 you know.

4 Q And as had been consented to by Mr. Darrow and the other  
5 attorneys? A There was a further hitch the next day.

6 Q Please answer this question. A Yes.

7 Q If you may. A Repeat it.

8 Q Those terms Davis brought out to Darrow's house were the  
9 same terms the McNamaras had agreed to on Sunday previous?

10 A Well, except it was supposedly ten years, and as I  
11 remember it, on the Sunday when we were talking about it  
12 we talked "about ten years or something like that."

13 Q "Ten years or something like that?" A Yes.

14 Q And do you remember on Friday morning of word coming  
15 from the District Attorney's office through any way that  
16 the District Attorney insisted, as a matter of fact, on  
17 15 years because that really meant, according to the law  
18 diminution of sentence, it meant only ten years, do you  
19 remember anything of that? A Mr. Davis reported that  
20 Captain Fredericks had had to make a change in the sen-  
21 tence, he was going to ask for J.J. McNamara, that he had  
22 to serve ten years instead of getting ten years, and that  
23 fifteen years would about cover it.

24 MR. ROGERS. I am not prepared quite to announce I have  
25 finished with Mr. Steffens and there may be one or two  
26 matters; that I have not had the opportunity to

1 speak to him for about ten days and there may be one or  
2 two things I may want to inquire of him about that I  
3 probably ought to bring out. I have a general idea or  
4 a general outline of the whole matter, but there may be  
5 some few particulars I want to consult about, and as I  
6 indicated to your Honor I do not think any time would be  
7 lost if your Honor would let me continue this matter until  
8 morning now, or I can put on a short witness.

9 MR. FREDERICKS. We do not want this interrupted, your  
10 Honor, it is a matter of cross-examination over a long  
11 field. We have our minds on it now, it has been a new  
12 subject we didn't expect to go into and we have gone to  
13 work on it and we would like to finish; we do not want  
14 another witness brought in here.

15 THE COURT. I will not bring in another witness under  
16 those conditions. The question is whether or not to  
17 adjourn at this time until tomorrow morning.

18 MR. FREDERICKS. Is that Mr. Rogers's request?

19 MR. ROGERS. Yes, it is. It is tolerably hot in here--

20 MR. FREDERICKS. I would like to ask one question before  
21 and then I will raise no point.

22 THE COURT. All right.

23 MR. FREDERICKS. Q How do you know that J. J. McNamara  
24 or J. B. McNamara did not know that each of them were to  
25 plead guilty until Thanksgiving day, you said they didn't  
26 know it? A Well, the astonishment and indignation of

1 J.B. when he heard it.

2 Q On Thanksgiving Day? A Yes.

3 Q And you are positive and sure that the two of them  
4 did not know each that the other had agreed to plead  
5 guilty, although you say they had agreed to plead guilty  
6 on Sunday, that they did not know it until Thanksgiving  
7 Day? A J. J. knew about himself and he knew about J.B.  
8 but J.B. did not know about J.J.

9 Q That is the situation? A Yes, as I understand it.

10 Q Are you sure of that? A As sure as I am of any evidence  
11 I have given here.

12 Q You know the two of them were occupying the same cell  
13 all the time? A Yes, sir.

14 Q Freely communicating, with an opportunity of talking to  
15 each other? A Yes. Of course, I didn't know it, but  
16 I inferred it from their behavior.

17 Q That is, you don't know they were both occupying the  
18 same cell? A I know that, I heard that, I understood  
19 that.

20 Q That is the question I asked you, do you know that they  
21 both occupied the same cell? A Yes, I understood that.  
22 I never saw them in their own cell, I saw them in the  
23 corridor or that large room that is a sort of a reception  
24 room.

25 THE COURT Is that all at the present time?

26 MR. FREDERICKS I think so, your Honor.

1 THE COURT' Gentlemen, of the jury, the court is about  
2 to adjourn until morning. (Jury admonished) The  
3 court will now adjourn until 10 o'clock tomorrow morning.  
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