

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. 66

I N D E X.

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

Jos. Lincoln Steffens, 5284 5290

1 Friday, July 19th, 1922. 10 A.M.

2 Defendant in court with counsel. Jury called; all pre-
3 sent. Case resumed.

4 THE COURT: Gentlemen, last Friday night we adjourned over
5 Saturday, and I think we have gained time by doing it,
6 and I make the announcement now so counsel can govern them
7 selves accordingly, when we adjourn tonight, we will ad-
8 journ over until Monday morning. I want to add, I make
9 that statement with some little reservation. Of course,
10 if a witness should be on the stand and it seemed desirable
11 to go on or some condition, but under ordinary conditions
12 that will be the rule today.

13
14 JOSEPH LINCOLN STEFFENS, on the stand for
15 further direct examination:

16 MR ROGERS: Mr Steffens, I want to call your attention to
17 taking a meal at the Alexandria with Mr Darrow. I will
18 ask you if you recall taking such a meal with him? A Yes
19 sir, took several.

20 Q Do you remember one evening when a man came in to see
21 him while you were engaged in your meal? A Franklin, yes.

22 Q Franklin; and have you a recollection what day of the
23 month that was? A No, I think it was the end of what I
24 call the first week; the week beginning November 19th.

25 Q Where were you and Mr Darrow when Franklin came?

26 A We were, as I remember it, we were in the main dining

1 room; not in the grill room, as Franklin says, but in the
2 main dining room, up against the wall, about the third
3 table from this end.

4 Q Do you remember whether or not Mr Franklin sat down at
5 the table with you and Mr Darrow? A Yes, we invited
6 him to a seat, invited him to partake of what we were
7 having.

8 Q Did he do so? A Yes, I think he took something; I
9 don't remember what it was.

10 Q You don't remember what it was? A I think he took a
11 drink. We were having a meal, and I think he took a drink

12 Q Now, do you remember the conversation there between your
13 self, Mr Darrow and Franklin? A Well, yes, I remember
14 it.

15 Q Well, in your own way, just tell us what happened on
16 that occasion, as you recall it.

17 MR FREDERICKS: That is objected -- well, conversations
18 of the defendant?

19 MR ROGERS: A conversation between the defendant, Mr
20 Franklin, and the circumstances surrounding it.

21 MR FREDERICKS: I think that we will object to that upon
22 the ground no foundation has been laid.

23 MR ROGERS: Franklin testified concerning it.

24 MR FREDERICKS: I understand the only way it could be
25 brought in would be by asking Franklin an impeaching
26 question, and then ask this witness the same question.

1 THE COURT: Objection overruled.

2 A Why, it was a conversation that lasted 15 or 20
3 minutes, about some sort of a jury list.

4 MR ROGERS: Did you leave the table or get out of hear-
5 ing of the conversation at all? A No, I was there all
6 the time.

7 Q Did you hear any reference made about "getting busy",
8 or any names mentioned on the jury list? A No, they ran
9 over their lists. They had marks opposite the names, but
10 I don,t know what they were.

11 Q Any lowering of voices; any whispering, any conceal-
12 ment of what was said? A No.

13 MR FORD: That last part, "concealment" of what was said,
14 is a conclusion of the witness. Any lowering of voices,
15 would be a physical fact which the witness can testify
16 to, and we move that answer be stricken out and object
17 to the question because the last portion is calling for a
18 conclusion of the witness as to whether there was any con-
19 cealment or not.

20 THE COURT: Oh, it is in a measure objectionable, but I
21 think harmless.

22 MR FREDERICKS: The court will permit me to add the fur-
23 ther objection it is irrelevant and immaterial, because
24 Mr Franklin did not so maintain. No testimony that
25 there was any concealment. Franklin said he showed him
26 a list, tapped a couple of names on there and said, "That

1 looks better", which would mean absolutely nothing to this
2 witness if he did hear it.

3 THE COURT: Objection overruled.

4 MR ROGERS: Please answer. A They talked plainly about
5 this. Didn't lower their voices; didn't attempt to con-
6 ceal anything.

7 Q Did you see any pointing to --

8 MR FORD: The last part --

9 THE COURT: Strike out the statement, "did not attempt to
10 conceal anything."

11 MR ROGERS: Talked in the ordinary tone of voice during
12 the conversation? A Yes.

13 Q Did you see any special names pointed out or any ref-
14 erence to any particular names on the list, or state
15 whether the discussion was concerning the whole list?

16 A No names that I caught.

17 Q Do you remember whether Franklin said anything to Mr
18 Darrow about sending some men over to his office? A I
19 think that was the result of the conversation. He asked
20 for some men, and I think -- as I remember it, Darrow said
21 that if he could find some men, he would send him over a
22 couple.

23 Q Did Franklin say anything about what he wanted to do
24 with those men? A Not that I remember, except that he
25 wanted help.

26 MR ROGERS: That is all.

CROSS-EXAMINATION

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MR FREDERICKS: Darrow said he would send some men over to Franklin to help him on the jury list? A yes, whatever they were doing, I don't remember what it was.

MR ROGERS: Oh, just one question; I forgot it absolutely. May I have your permission?

MR FREDERICKS: yes.

MR ROGERS: During the course of these conversations, these various conversations with Mr Darrow, Mr Darrow, Mr Older and Judge McNutt, and the other persons that you have mentioned, will you state whether or not either at your suggestion or at Mr Darrow's suggestion, it was stated that there should be no publicity connected with the matter until its final arrangement?

MR FORD: We object to that question on the ground that no foundation has been laid for the asking of it, as to time, place and persons present. As I remember the testimony of this witness, there was only one occasion on which he has testified to, at any rate, when they were all present, and that was Thanksgiving Day. Now, he is covering a number of different transactions as to what was not said on a certain occasion, or, rather, what was said, and we are entitled to the time, place and persons present when such things were said, if they were said.

MR DARROW: Your Honor, that is a misstatement of the evidence. The witness swore they were all together on Monday, the four of us, Monday at the second meeting.

1 MR. FREDERICKS. Maybe I didn't understand the question
2 the same as Mr. Ford. We probably could discuss it.
3 You are asking for a negation.

4 MR. ROGERS. No, I am asking whether during any of these
5 conversations it was stated among them by any person,
6 adherence given by the other persons that there should
7 be no publicity connected with any feature of the matter.
8 Now, if he says there was any such conversation I will
9 meet Mr. Ford's objection by asking him when, and if he
10 can fix the time and place and what was said. This is
11 preliminary entirely before calling his attention to the
12 matter that I am after.

13 MR. FORD. Counsel doubtless has in mind the occasion to
14 which he refers, or at least we presume he has, and he
15 could direct his attention to that very conversation and
16 ask if anything along that line occurred or that particular
17 conversation. Not to be captious, on November 27th, this
18 witness has testified to himself, Mr. Davis and Mr. Darrow
19 being present at the jail with the defendant, Mr. McNutt
20 and Mr. Scott not being there, although he said later the
21 news was so bad that McNutt was sent for. That was on
22 Monday.

23 And after the witness had reported about
24 what he could do with the District Attorney--

25 MR. DARROW. That was not the day, Mr. Ford--

26 MR. FORD. Well, then, he ceased and started out--

1 THE COURT. Mr. Rogers has stated this question is a pre-
2 liminary question directing his attention, and I cannot
3 see any harm, there are often different ways of present-
4 ing evidence.

5 MR. FREDERICKS. The question is to be answered yes or
6 no.

7 A yes.

8 THE COURT. As to whether or not there was such a con-
9 versation?

10 A Yes, I think we had no conversations at which--

11 MR. FORD. The witness is testifying to no conversation--

12 MR. ROGERS. Wait until he finishes.

13 A --I think there were no conversations mentioned where
14 we were all three, or where a few even were, we didn't
15 instruct one another to avoid publicity, and fear of
16 publicity was with us all the time.

17 MR. ROGERS. Q Then that matter was taken up, as you say,
18 at practically each conversation? A Yes, and almost
19 ended with that, or talked about it all the way through;
20 the Erectors telegrams and telegrams in the east startled
21 us and hurried us because we feared it might leak out,
22 our fear--

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24 CROSS-EXAMINATION.

25 MR. FREDERICKS. Q That was in cognizance with the state-
26 ment which you saw in the Tribune of September 3rd, purport-

1 ing-- or December 3rd, purporting to come from Mr. Darrow--

2 MR. ROGERS. Wait a moment. That is no way of getting
3 in a statement.

4 MR. FREDERICKS. I am going to ask this question now.

5 MR. ROGERS. I don't know whether you are, whether you can
6 ask this question or not without objection. I desire
7 to object to reading any purported statement published
8 from the defense without first proving they were made.

9 MR. FREDERICKS. I am asking about it.

10 MR. ROGERS. This is nothing in the world but a subterfuge
11 to get before the jury something which Mr. Darrow never
12 did say.

13 MR. FREDERICKS. The defense did the same way--

14 THE COURT. Mr. Rogers, counsel has a right to ask his ques-
15 tion and if he violates the rule he takes his chances on
16 that, but he has a right to ask his question, the court
17 cannot assume what the article is and if there is any impro-
18 priety about it, on the contrary, until counsel propounds
19 the question, the court assumes there is no impropriety to
20 it.

21 MR. ROGERS. I call the attention of the court to the
22 case of People vs. Dandy, if your Honor, please, in 125
23 Cal. where it is held that the mere asking of such a ques-
24 tion is error.

25 MR. FREDERICKS. I withdraw the question.

26 THE COURT. The question is withdrawn.

1 MR. FREDERICKS. Q Now, Mr. Witness, it was a fact, then,
2 that Mr. Darrow and others told you that if they delayed
3 the matter it undoubtedly would have become public and
4 that which is everybody's business is nobody's business and
5 the consequence would probably have been that any negotia-
6 tions under way would have been declared off and the trial
7 proceed. That was the reason, was it, why you kept it
8 secret? A That is one of the reasons, yes.

9 Q Was there any other reason than that? Wasn't that the
10 reason?

11 THE COURT. Captain Fredericks, I will have to ask to have
12 that question reread, I don't think I got a clear idea
13 of it.

14 (Last question and answer read.)

15 A I don't remember that exact language, though, Mr.
16 Fredericks.

17 MR. FREDERICKS. Q No, I am not pretending to give you
18 any exact language. You feared then that if this became
19 public these negotiations became public--the trial--they
20 would all be off and the trial would go on? A Yes

21 Q How did you figure that would make the trial go on if
22 it became public? A Why, the result showed we were right
23 in our supposition, the utter misunderstanding of what
24 was tried here, that stirred up a storm of public opinion
25 not only here but all over the United States and the thing
26 is not understood yet.

1 Q And you were absolutely certain, even before that, that
2 if it became public before the pleas were secured it would
3 all be off? A We were not certain, we feared that.

4 Q That was in your mind? A Yes, all the time.

5 Q And you believed that? A We believed that, yes.

6 Q And you believe it now? A Yes.

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1 Q And Mr Darrow believed it and so expressed himself to
2 you? A Yes.

3 Q That if there was any publicity given to these nego-
4 tiations they would be all off? A Yes.

5 Q And the trial would have to go on? A Yes.

6 Q Now, Mr Steffens, I want to ask you a few questions
7 which I think are a little personal, but they are to get at
8 your views of things you have. As I understand it, you
9 are an avowed anarchist; is that correct or is it not?

10 MR ROGERS: That is objected to -- A No, that is not
11 true. I am a good ^{deal} worse than an avowed anarchist.

12 Q You are a good deal worse than an avowed anarchist?

13 A Yes sir, I believe in Christianity.

14 Q That is worse, is it? A That is a good deal worse,
15 it is more radical.

16 Q You believe in the doctrines of anarchy and then you
17 go them one better, is that it? A No, that is not a cor-
18 rect statement.

19 Q Well, let me see; haven't you stated here, or didn't
20 you state during the trial, during the campaign of Job
21 Harriman, who was a Socialist candidate for mayor, that
22 while you were supporting Harriman and contributing
23 your money to him, if there was an anarchist running
24 against him you would vote for the anarchist? A I would
25 like to explain that.

26 Q Yes, but say whether you said that, first? A I said

1 something like it, and I want to explain what happened.

2 Q Something like it?

3 MR ROGERS: The witness has demanded an explanation.

4 MR FREDERICKS: The witness has got that right, and I will
5 give it to him, but I want an answer first.

6 MR APPEL: He is unduly attacking that man, absolutely
7 in the line of all law, and this man ought to have the
8 right --

9 MR FREDERICKS: He will get it, but I am going to get
10 answers to my questions, too. A I am willing to answer
11 these questions. I want to be sure to make a complete
12 answer; that is all.

13 MR FREDERICKS: All right, and I want a complete answer
14 first.

15 MR ROGERS: I call for the reading of the record.

16 THE COURT: Wait a moment. Read the record. Let us see
17 what he says.

18 MR ROGERS: I desire to make an objection --

19 MR FREDERICKS: An objection to what?

20 MR ROGERS: You will find out in about ten seconds.

21 THE COURT: Read the record.

22 MR FREDERICKS: I want to know what it is.

23 THE COURT: The court has called for the reading of the
24 record, and that is the only thing before the court now.

25 (record read.)

26 MR FREDERICKS: My position is, an answer "something

1 like it" is not an answer in any way, shape or form.

2 If he will say, "I said that or in substance", very well;
3 that will be an answer but "something like it" is not an
4 answer, and after he has answered, then he may explain if
5 he wishes, and that is, if the court permits it.

6 THE COURT: I think, Mr Fredericks, that the answer "some-
7 thing like it" is equivalent to an answer "in substance".

8 MR FREDERICKS: It has been held by the Supreme Court it
9 is not, your Honor, in an impeaching question; that has
10 been held by the Supreme Court in a number of cases, and I
11 have been reviewing those cases in the last two or three
12 days, in view of some of the questions that have been pro-
13 pounded here by the defense, where they used the words "or
14 something like it", and the Supreme Court has held that
15 that is not the same as "that in substance".

16 THE COURT: Well, I will clear that matter up, if there
17 seems to be or if there can be any doubt about it; I
18 will inquire of MR Steffens if, when he said "something
19 like it", he meant "that in substance". A No, when I
20 said "something like it"; I meant I said something that
21 might have conveyed to another mind that I meant that.

22 MR ROGERS: Now, the witness has demanded a right to ex-
23 plain his answer, and I call for an explanation as he
24 offered, and that he be allowed to finish his said answer.

25 MR FREDERICKS: May it please the court, when the witness
26 has not said that, then there is no explanation needed, or

1 proper or possible. I asked him if he said that, and he
2 has not admitted that he said it. Now, I don't care, if
3 he didn't say that; I don't care what he did say or what he
4 did think, if it was not that.

5 MR ROGERS: Just a moment, sir. We are entitled, in cross-
6 examining a witness to only certain things on cross-examina-
7 tion, as to facts when those matters are in contradistinction
8 from what is brought out on direct may tend to explain the
9 direct; other matters which do not perchance indicate bias
10 or feelings of the witness. Now, these questions, by
11 very great stretch of the imagination and by what I believe
12 to be a violation of the law may be considered to indicate
13 the mind of the witness toward the defendant, and I was
14 not intending to object to them, because, knowing Mr
15 Steffens views, I think there can be no reason why they
16 should not be given. I think they would be elucidating
17 and enlightening to all of us, because we do not often
18 get Christianity preached in a court room, especially
19 where the District Attorney and the People are a part of it,
20 and I have no objection to Mr Steffens going on, but if
21 he is not going to be permitted to go on and give us
22 statements and give us views, if he is going to be taken
23 down here and later misconstrued and misquoted, then I
24 shall ^{object} to everyone of these questions and fight it
25 out with the authorities on that line. If counsel wants
26 to stay on the subject and give Mr Steffens the same chance

1 he would want for himself, then I will let him go into Mr
2 Steffens views on present-day conditions and I venture to
3 say if his mind is a little open he will profit by it,
4 other than that, he is not going into every question --
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4p 1 MR. FREDERICKS. We will take a chance in profiting by it.

2 MR. FORD. The question before the court is a legal one.

3 MR. APPEL. We insist upon the pending question, your
4 Honor, the witness being desirous, as is apparent from his
5 answer, of explaining what he said that might be construed
6 as like the statement of the District Attorney to the minds
7 of others, that he be allowed to state any explanation of
8 his answer, what he really meant and what he really did
9 say.

10 MR. FREDERICKS. We withdraw the objection. We would just
11 as soon let the witness make a speech as counsel for the
12 defense.

13 THE COURT. Very well.

14 MR. APPEL. Have you got that statement of the District
15 Attorney?

16 MR. FREDERICKS. I hope so. I will make it again if there
17 is any doubt.

18 MR. ROGERS. Make it again and we will get two errors
19 then.

20 MR. FREDERICKS. I don't know about that.

21 MR. APPEL. We assign the last statement as error and
22 misconduct.

23 THE COURT. I think that statement of the witness calls for
24 instruction from the court--

25 MR. FREDERICKS. We have withdrawn our objection, let it
26 go.

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THE COURT. There is no objection to your proceeding.

MR. FREDERICKS. He wanted--Mr. Witness, you wanted to explain what you said that might be construed as meaning that if there was an anarchist running against Job Harriman you would have voted for the anarchist, although you were going to vote for Harriman. Go ahead.

MR. FORD. I presume that means the witness is to give what he said.

THE COURT. The witness is making his explanation of that remark, whatever it was. Now, gentlemen, I want a clear field here for this witness to make his statement.

MR. FORD. Just for a point of information and the witness may understand the court's ruling, that does not mean that the witness may state all the reasons in support of his opinions, or anything of that sort.

THE COURT. I don't think the witness so understands it at all, but he is going to state--

MR. FREDERICKS. State what he did say.

MR. ROGERS. The witness is going to explain his answer, if your Honor please.

THE COURT. Yes, sir.

MR. ROGERS In his own way, not under instruction of counsel, either chief or deputy.

A in the interval between the pleas of guilty and the sentencing of the McNamaras, an officer of the court called upon me at my hotel, and he asked me if I had not brought

1 money from New York to Los Angeles in the interest of
2 Job Harriman--not my money but other money? I said I
3 had. He asked me if I was going to vote for Harriman.
4 I told him I could not vote for Harriman, I didn't live
5 here, but that after seeing how he had behaved and how the
6 churches were behaving, and how public opinion all over the
7 United States was expressing itself about anarchism, and
8 the worst sense of anarchism, hate and violence, that if,
9 there was an anarchist ticket in the field I would vote it
10 in Los Angeles. Now, of course, that was only expressing
11 a feeling, because the anarchists don't believe in taking
12 part in politics, and don't have a ticket in the field. It
13 was an expression of my own.

14 Q Now, Mr. Steffens, I want to attract your attention to
15 the last meeting that you had with the citizens here in Los
16 Angeles prior to Thanksgiving day, and before I start in
17 with that we had better see that that is clear before the
18 jury: There was two McNamaras charged with certain of-
19 fenses, one's name was J.J. he was sometimes called Joseph,
20 is that correct? A Yes.

21 Q And the others name was James or J.B., and that was the
22 one that was actually on trial, that is correct, is it?

23 A Yes.

24 Q And John J or Joseph as he was sometimes called, or Joe,
25 as he was sometimes called, was the Secretary of the Inter-
26 national Union of Structural Iron Workers or some name, I

1 may not have gotten it exactly correct; is that correct?

2 A yes.

3 Q And this Joseph or John J lived in Indianapolis where
4 the headquarters of this institution of this national or
5 international union was, that was his place of residence
6 prior to his being brought here to jail, that is correct?

7 A So I understand.

8 Q Now, that was John Joseph? A yes.

9 Q Or J.J.? A The one we called J.J.

10 Q And they had severed in their trial and John Joseph
11 or J.J. was not then on trial but J.B. was the one that
12 was actually on trial? A That is correct.

13 Q And J.B. was the one who was charged with actually
14 placing the bomb in the Times Building, J.B.? A yes.

15 Q All right. Now, on the last meeting with--now, coming
16 back to my previous question on the last meeting that you
17 had with these citizens, that was on the 29th day of
18 November, is that correct? A It was Thanksgiving Day.

19 Q The 30th? A I think that is right. It was either
20 Tuesday or Wednesday.

21 Q Now, let's get those days in our mind all straight.
22 Thursday was Thanksgiving Day, the 30th? A Yes.

23 Q And Friday was the 1st of December which is the day
24 that they actually plead guilty down here in court?

25 A Yes.

26 Q Going back in that week, Wednesday night, the 29th, was

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the night you had the meeting we just started to ask you about in Mr. Lissner's office with 16 or 17 citizens?

A It may have been Wednesday but I think it was Tuesday. It may have been Wednesday.

1 Q It was Wednesday, I will refresh your memory on that.

2 A Yes.

3 Q Tuesday was the 26th, which was the day which Frank-
4 lin was arrested? A Yes.

5 Q And then Monday was the 27th, and Monday the 27th was
6 just one week after you first went to see Meyer Lissner.
7 You went to see Meyer Lissner in this matter on Monday the
8 20th? A Yes.

9 Q Now, I guess we have got that. Now, at this meeting
10 that you had with the citizens, you labored with them, did
11 you not, to induce them to labor with the authorities or
12 to consent or to approve of permitting J. E. McNamara to
13 plead guilty and of letting J. J. McNamara go; is that
14 correct? A That, among other things, yes.

15 Q Among other things. What was the night before Thanks-
16 giving. Wednesday night. And you did that as earnestly
17 as you knew how? A Yes.

18 Q You were earnestly endeavoring to have them accept the
19 idea of letting J. J. McNamara go? A Yes.

20 Q Now, going back in your negotiations which you have
21 narrated here with Mr Chandler and Mr Lissner or others,
22 did you ever, at any time, say to any of them or intimate
23 to any of them that there was the slightest possibility that
24 J. J. McNamara would plead guilty? A I think not, if
25 there was an exception, it was to Mr Chandler.

26 Q Well, you maintained to Mr Chandler until the night

1 of the 29th, after you had left this meeting and had gone
2 over into his office, and you and he were in his office
3 together up until 2 or 3 o'clock, you maintained up until
4 that day to Mr Chandler that there was no use trying to
5 get J. J. to plead guilty, didn't you? A No, I didn't
6 put it that way, Mr Fredericks.

7 Q How did you put it? A I think that that night, Wed-
8 nesday night, after the meeting with these citizens, I
9 went over to see Mr Chandler, and I think at that time I
10 was frank with Mr Chandler, and that I went back and said
11 that I would try to get consent formally.

12 Q Well, you probably didn't understand my question.
13 I say up until that night you had always maintained to
14 Chandler that there was no hope of getting J. J. to plead
15 guilty, but that night you said that you thought you could
16 -- you would try and get him to plead guilty? A Yes,
17 but you should remember on Thanksgiving day Mr Chandler
18 was looking for you.

19 Q I don't know whether he was or not. A Was looking
20 for you to get you to consent to let J. J. go, one last
21 effort.

22 Q That is, you thought he was. A That is all I am
23 talking about. I don't know who was or anything about
24 you.

25 Q You don't know that anybody saw me? A No.

26 Q You thought Chandler was looking for me? A Yes, I

1 thought.

2 Q You don't know, as a matter of fact Mr Chandler ever
3 saw me? A I think he let someone else see you for him.

4 Q But I want to come back to the point that I was on be-
5 fore, that with the exception of Chandler, and with the ex-
6 ceptions of your conversations with Chandler early on the
7 morning of Thanksgiving that is, really, the night of the
8 29th, as ordinary people consider it, because it was 2 or
9 3 o'clock in the morning. Up to that time you had never
10 for a moment intimated it in any way to any of these peo-
11 ple that there was any possibility of J. J. McNamara plead-
12 ing guilty; is that correct? A I think not.

13 Q Well, that answer may be ambiguous. Is that correct?

14 A I think the statement is correct.

15 Q You think it is correct; that is what I mean. A Yes.

16 Q When did you learn, Mr Steffens, that J. J. McNamara
17 was guilty? A Well, before these negotiations began.

18 Q Sometime before? A yes.

19 Q How long before, approximately? A Well, about the
20 third day after I got here.

21 Q And you got here when? A I don't remember the date:
22 I think it was about the 10th.

23 Q 10th of November? A yes.

24 Q You learned that from him yourself, did you? A I
25 asked Mr Darrow to give me a card to the prisoners, and
26 I went over --

1 Q I know. A And I learned it from them, yes.

2 Q You learned it from J. J. Himself? A Yes, indirectly,
3 I didn't ask him if he did it.

4 Q You satisfied yourself at any rate? A yes.

5 Q That is what I am getting at. And then, during all
6 of these negotiations that you were having with the citizens
7 here in Los Angeles, you were endeavoring to get them to
8 permit J. J. McNamara to go free? A yes.

9 Q Although you knew he was guilty? A Oh, yes.

10 Q And you don't see anything wrong in attempting to get
11 a man free from punishment whom you know to be guilty
12 of a crime against the state, do you, Mr Steffens? A Be-
13 fore I answer that, may I explain it?

14 Q I think you better answer it first.

15 THE COURT: If you answer it at all, you may explain it;
16 calls for your views on the subject.

17 A I distinguish between --

18 MR FREDERICKS: Well, answer yes or no, if you can, and
19 then explain if you wish.

20 THE COURT: yes, you can answer the question yes or no,
21 and then you will have a chance to explain.

22 A You want no or yes?

23 MR FREDERICKS: Read the question. (Last question read
24 by the reporter.) A No, not if that crime is not an
25 individual crime, but what I would call a social crime, a
26 crime that is a result of the feelings of a large part of

1 a people of resentment against certain conditions that I
2 would call more a revolutionary crime, and not a crime,
3 legal crime.

4 Q And you believe that such a crime was the crime of a
5 warfare? A yes.

6 Q And that you were justified and anybody else would be jus-
7 tified in doing anything to assist and protect them in
8 that warfare, do you not? A I will explain that.

9 MR APPEL: I submit, he didn't say that.

10 MR FREDERICKS: " I am asking him.

11 MR APPEL: It is not good cross-examination.

12 MR FREDERICKS: Maybe not good.

13 MR APPEL: Let it go here; we can site others --

14 A I will have to have the form of the question whether
15 my answer is yes or no.

16 (Last question read by the reporter.)

17 A No, not until after the crime has been committed.
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6s 1 MR. FREDERICKS. Q Not until after the crime had been
2 committed? A Now I want to explain that.

3 Q Let me make sure we understand: But after the crime
4 had been committed then you think anybody would be justi-
5 fied in helping them out, but not helping them commit the
6 crime? A yes.

7 Q All right. A I want to explain that.

8 THE COURT. Go ahead.

9 A Just to explain my own, personally.

10 MR. FREDERICKS. Certainly.

11 A In all my talks with the McNamaras day after day,
12 we had an argument--arguments, I urging upon them my
13 belief that they and labor were going at this in an en-
14 tirely wrong way, just as capital was; that force was
15 wrong from them just as it was from everybody else, even
16 from the state, and I believe that. But after they had
17 committed this crime, after/^{getting}from them their stories, or
18 perfect understanding that they had been bred up into
19 this, that they had experiences that made them want, in-
20 dividually, to commit these crimes, and that they repre-
21 sented a great mass of American citizens who feel that
22 there is not any other way to get justice in the United
23 States except by crime, thinking that, I could see that
24 those two men, no matter how you punish them, would not
25 solve the problem that produced them, and all my efforts
26 was to get both them, both capital and labor, not together

1 as they all put it, but both to see that there is a problem
2 there that I believe can be solved with reason, that cannot
3 be solved in these court rooms.

4 Q All right, and you believe you were justified in going
5 to any length to protect men such as they were, such as
6 you found them to be, from punishment, under those circum-
7 stances? A I believed that I was right to go to the
8 length that I did go, which was to appeal to the reason of
9 all these men. Now, your question might have left me,
10 if I had answered carelessly, as admitting that I would
11 consent to murder.

12 Q yes. A Or anything else, but I would not do that.

13 Q You would believe that it would be perfectly justifiable
14 under the circumstances of warfare, which you believed
15 to exist, Mr. Steffens, if necessary to save those men, you
16 believe it would be justifiable even to bribe jurors, now,
17 would you not; would it be justified in the man
18 that had them in his charge? A No, my feeling about
19 bribery is exactly like my feeling about murder or the
20 bribery of legislators, or any other force. Is that clear?

21 MR. APPEL. He has not stated the feeling--

22 MR. FORD. Have you finished?

23 A Let's have the answer again.

24 (Last answer read by the reporter.)

25 A It is not clear. I would like to make it clear. I
26 think these crimes are not justifiable, but I think they

1 are understandable. You understand the difference.?

2 MR. FREDERICKS. I don't know that I do. You mean ex-
3 cusable after they are committed? A Very often, yes.

4 Q You don't advocate, as you say, bribery. You said
5 you don't advocate murder, but after the murder or the
6 bribery has been committed, you believe in doing all you
7 can under those circumstances narrated here, to prevent the
8 punishment of the one who did it? A Except to go and
9 commit another crime.

10 Q After the other crime is committed? A I take pretty
11 much the same position, perhaps, if I thought it was a
12 social crime.

13 MR. APPEL. I don't understand whether or not the witness
14 believes in having crime committed for the purpose of
15 saving a man from ^{the} punishment that he deserves after having
16 committed the crime against the law.

17 MR. FREDERICKS. I think the witness's answer is very
18 clear.

19 MR. APPEL. I think Mr. Fredericks is trying to get that
20 idea from the witness, or whether he has it or not, and
21 we don't understand from his answer whether he meant that.

22 THE COURT. Mr. Steffens, have you said just what you want
23 to? I am asking the witness a question. Have you said
24 just what you want to say? A No, Judge, I have not.

25 THE COURT. All right, then amplify your answer.

26 MR. FORD. Just a moment--before the witness answers, your

1 Honor: When a witness demands a right to make an explana-
2 tion, of course, he is entitled to it, but I don't think
3 that counsel has a right to argue at this time what the
4 District Attorney understands or what they understand, and
5 by that way try to get further information from the witness
6 on that point. They will have a right to do that upon re-
7 direct examination if we bring out new matter.

8 THE COURT. Mr. Ford, I don't think the court needs any
9 assistance as to how to direct this witness in making his
10 answers.

11 MR. FORD. But we have a right to object to the conduct of
12 the court or counsel either, when we ask a question, and
13 we object to the question upon the ground that it is
14 incompetent, irrelevant and immaterial.

15 THE COURT. The question has been partly answered and if
16 the witness desires to further explain the answer he may
17 do so.

18 A It is not easy to do that in a short time. We are
19 getting into--getting up into metaphysics there.

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1 MR FREDERICKS: I didn't intend to . . . I just wanted
2 to get your ideas, Mr Steffens, and I think that you have
3 expressed them very clearly there. If you think you have
4 not, why, it is for you to say.

5 A What was the last question and answer?

6 THE COURT: Read the last question or two.

7 (Last questions and answers read by the reporter.)

8 MR FREDERICKS: That answers the question.

9 MR ROGERS: I don't think it does.

10 THE COURT: That is for the witness to say whether it
11 answers the question.

12 A What I mean is, that our legal machinery and our
13 system of punishments cannot and should not be used to
14 solve social problems. That when a big case like the
15 McNamara case comes up under the form of law, as a mere
16 murder case, it is all right to send J. E. McNamara to
17 jail; it is even all right to send J. J. McNamara to jail,
18 but we must not think when we have sent those two indi-
19 viduals away, that we have solved the problem that produced
20 them; that we have dealt even decently with the labor prob-
21 lem, and I am resisting in public opinion that idea,
22 when you get your victim and have -- and the state, be-
23 cause the state also murders -- has got that victim down,
24 and began to wreak its satisfaction out of it, the state
25 is not through with its job, and the public opinion is
26 not through with its job.

1 Q That is not the point exactly, MR Steffens --

2 MR ROGERS: If your Honor please, I give notice right
3 now --

4 MR FREDERICKS: You don,t have to give me any notice.

5 MR ROGERS: I am not giving it to you. I am giving it
6 to the court, and you can keep still until I get through.

7 THE COURT: That is not necessary, MR Rogers.

8 MR ROGERS: If the court please, it is necessary if I am
9 interrupted. I give notice to the court I propose to ob-
10 ject to all questions on cross-examination unless the
11 questions are made. I am permitting this cross-examina-
12 tion, which is not brought out by the direct, and permit-
13 ting it merely from goodnature, because it is not allowed
14 under the law, and we are not objecting. We are perfect-
15 ly willing everything should be brought out, and he may go
16 as far as he likes in questioning Mr Steffens, but he
17 hasn't any right to say, "That is not the point; I don't
18 believe that; I think you have answered the question; I
19 don't care for any more." Interrogation is the only
20 method on cross-examination.

21 MR FREDERICKS: I agree with counsel. I am interrogat-
22 ing him; that is what I am doing. I am trying to inter-
23 rogate him along a certain line, and if I think he has
24 got off of that line, I will try to get him back.

25 THE COURT: Now, what is the question?

26 MR FREDERICKS: What is that last question, if there is one?

1 MR FREDERICKS: Never mind, I will ask another question.

2 Q But, after you say you believed you, perchance, it
3 was all right, to send even J. J. McNamara to jail, but,
4 you believed it was also all right, knowing he was
5 guilty, to try and save him, didn't you? A Yes.

6 Q And you did try to save him, knowing he was guilty.

7 A Very hard, yes.

8 Q Try to save him from punishment? A Try to save him
9 from punishment.

10 Q For the crime you knew he had committed? A Yes.

11 Q Tried it hard? A Yes, tried it hard.

12 Q Was that because you didn't want to see a human ^{being} suf-
13 fer, or was it because you thought that the cause of labor
14 would suffer if the secretary of this prominent union
15 was convicted of this crime? A The cause of labor
16 cannot suffer.

17 Q Well, what was your reason then, for trying to assist
18 a guilty man to escape punishment for his crime? A It
19 was so that a community like this, getting satisfaction out
20 of individuals would think that it had solved its problem
21 and got rid of its labor troubles.

22 Q You wanted them still to think, you think that they
23 would think any stronger if J. J. McNamara went free on
24 the subject, than they would if he were convicted?

25 MR APPEL: Wait a moment --

26 A Yes, I do.

1 MR APPEL: We do not understand that. I do not understand.
2 I don't know what, that the question conveys anything; he
3 asked him whether he thinks that the people would think
4 stronger if he was not sent to the penitentiary than they
5 would if he were sent up. I don't know how strong he wants
6 them to think.

7 MR FREDERICKS: The witness understands it.

8 MR APPEL: I know MR Fredericks intends to convey the same
9 idea to the witness, but the question does not seem to con-
10 vey that idea.

11 MR FREDERICKS: I will ask the witness: did you under-
12 stand me? A I didn't understand it that way. I would
13 like to hear it now.

14 MR FREDERICKS: You understood me. You read the question
15 and see if you don't.

16 THE COURT: Read the question.

17 (Last question read.)

18 A Just do it again, please.

19 MR FREDERICKS: Give him the previous question.

20 THE COURT: Read the two or three questions. Let us get
21 at it.

22 (Last two questions read by the reporter.)
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8p 1 A I mean that the more victims they had the more satis-
2 faction they would get, public men, public opinion, the
3 more satisfaction they would get and the less it would do
4 to the labor problem.

5 MR. FREDERICKS. And the less they would think about it?

6 A Yes.

7 Q So that was one of your reasons for wanting J.J. Mc-
8 Namara to go free, is that it? A Yes.

9 Q Without admitting his guilt, go free as an innocent
10 man, is that correct? A I didn't know how he was going
11 free, I didn't know anything about the technique of it,
12 I didn't want him to go to jail and be held there 15 years
13 or even ten.

14 Q You didn't want him to plead guilty? A No, I didn't
15 want him to plead guilty.

16 Q You didn't want him to admit his guilt? A Yes, I
17 wanted him to admit his guilt, but not to the state which
18 would soak him if he did.

19 Q You wanted him to admit it to you? A Yes.

20 Q And to a confessor or something of that kind? A Yes,
21 and I would like to have it possible so that any man could
22 go and admit to the public his guilt. There used to be a
23 place where anybody could go and confess and there is not
24 now.

25 MR. FREDERICKS. We will have to stick to what it is now, I
26 reckon.

1 THE COURT. We will take a short recess at this time,
2 gentlemen. (Jury admonished. Recess for five minutes.)
3 (After recess.)

4 THE COURT. You may proceed, gentlemen.

5 MR. FREDERICKS. Q Now, Mr. Steffens, calling your atten-
6 tion to the morning of Thanksgiving day, what we would
7 probably call the night of the day before, but in reality
8 about 2 or 3 o'clock on the morning of Thanksgiving Day,
9 I will ask you if you didn't say to Mr. Chandler, down in
10 his office, you and he being present and no one else, and
11 about 2 or 3 o'clock on that morning, that Darrow was coming
12 around and that you thought you would not have any trouble
13 with Darrow now, but that you didn't know whether J.J.
14 would finally come through; that you were going to take
15 dinner with the McNamara Brothers that day, Thanksgiving
16 Day, in the jail, and that you were very hopeful of getting
17 J.J. to agree to plead guilty, and did you not add, "If you
18 will see Captain Fredericks and do as much with him as I
19 expect to do with J.J.- this will be the greatest day's
20 work we have ever done in our lives," and at that time did
21 you not take him and shake him by both hands and very
22 earnestly say that to him? A Something like that. I would
23 like to say what it was, what my recollection of it was.

24 Q Just a moment. I will have to have an answer. I will
25 ask you if you said that in substance or in effect.

26 A No, that is evidently the effect he got of what I said;

1 that is not what I said exactly.

2 Q Well, then, you say you didn't say that? A Not
3 exactly.

4 Q You say you didn't say that in substance? A I am
5 afraid that gives the wrong impression. I am willing to
6 tell you what I said.

7 Q I know, but you must answer this first and then you
8 will be permitted, if you are permitted, at least the
9 matter will come up to say. A Yes--then I will answer I
10 said that in substance.

11 Q you said that in substance? A Yes, I will say that.

12 Q Now, then, you want to say what you did say? A Yes.

13 Q That is, you want to explain what you mean, I presume?

14 A Yes, what I remember of saying.

15 Q Just stick to this one point, because we do not want to
16 mix it with something else, please. A Yes. That is
17 the night after the meeting with the business men and as I
18 remember it, I went back and told Mr. Chandler what the
19 result of that meeting was, and as I recollect it, I
20 intimated plainly then, I said to Mr. Chandler that I thought
21 it would be all right if we could get J.J. to come through,
22 his impression had been that up to that time that could not
23 happen, and as I remember it, he, however, was to go out and
24 make one more try, either himself or through his agent,
25 with Captain Fredericks, to get J.J. off, one more try all
26 Thanksgiving Day, and also was to drop out of the requirement

1 another requirement we have not spoken of here.

2 Q What is that? A That is, that there should be some
3 confession.

4 Q Yes. A And as I understood it, during the day he got
5 the consent to have the confession dropped, the demand for
6 a confession from these men dropped, and I came back with
7 the report that we could get J.J.

8 Q Well, now, you see you went over into another day.
9 MR. ROGERS. I say not, if your Honor please.

10 A Yes, I have gone over from Thanksgiving night--

11 MR. FREDERICKS' He says, "I came back with a report."

12 A The night meeting of Thanksgiving lasted, as Captain
13 Fredericks says, to 2 or 3 o'clock in the morning, it
14 really lasted into Thanksgiving day. That is all right.

15 Q Now, then, did you not at that time, Mr. Steffens, take
16 Mr. Chandler by both hands and endeavor to impress him with
17 the tremendous seriousness of your endeavor to get J.J.
18 to plead guilty? A No, Captain Fredericks, that was only
19 part of it.

20 Q Well, did you do that? A I don't remember distinctly.
21 It is likely I did do it, because I was very enthusiastic;
22 it was late in the day and I was tremendously worked up
23 over it. I have not the slightest doubt I expressed my
24 emotions in that way, but I do not remember it distinctly.

25 Q Isn't that a fact that you at that time knew--

26 MR. ROGERS. Before another question is put, now, I do not

1 think the witness noticed that that question was a double
2 question. I didn't object to it but he has answered only
3 one part of it.

4 THE COURT. Read the question and the answer and see if
5 it is completed.

6 MR. FREDERICKS. Let us see. I thought he had answered.

7 MR. ROGERS. The latter part of the question, if your Honor
8 please, contains a statement, "for the purpose of impressing
9 him with the fact," that he was about to make serious
10 efforts to get J.J. to come through.

11 MR. FREDERICKS. Answer that part of it. Was that your pur-
12 pose? A To have him make serious efforts?

13 Q No, was that your purpose, to impress him--I don't mean
14 an ulterior purpose--was that your idea that your manner
15 and all was such as to impress him that you were going to
16 make serious endeavors to get J.J. to plead guilty at that
17 time? A Yes.

18 Q At that same time you say you knew that J.J. had agreed
19 to plead guilty as long ago as Sunday? A Yes, yes. There
20 had to come a time, you understand, when I had to drop my
21 bluff, and I was dropping it that night.

22 Q This was not, then, a result of late hours and agitation,
23 but it was a bluff, this agitation of manner and earnest-
24 ness of manner? A Oh, no.

25 Q No. A No, I don't think so; I don't remember definite-
26 ly.

1 Q What I ask you was, did you not impress him or attempt
2 to impress by your earnest manner and the earnest things
3 you said, that you were going to use your best endeavors to
4 get J.J. to plead guilty? A Oh, no. What I was enthusias-
5 tic about was that I could see then we were going to have a
6 conclusion of this and the things that elated me most was
7 that these men, these business men and Chandler had promised
8 after these pleas of guilty were taken, to sit down here
9 in the Chamber of Commerce in Los Angeles and take up and
10 consider seriously the problem of labor. That was in con-
11 formity with my theory here, that the two victims, we let
12 them go to jail, but we did not drop the problem, these
13 business men promised thereafter, in the course of the next
14 few months, to sit down and hear me and labor leaders, and
15 hear it all over again.

16 Q Was this what you were talking with Chandler? A yes.

17 Q You were talking with Chandler at that time, however, Mr.
18 Steffens, at that time, what you were going to do the next
19 day in your endeavors to get J.J. to plead guilty?

20 A I was talking about that and also asked him, and my elat-
21 tion, and I will explain to you the elements that made me
22 that night--

23 Q But that is what you were talking? A What?

24 Q About your efforts to get J.J. to plead guilty the next
25 day? A We were talking about the whole thing.

26 Q Did you not at that same time and place, say to him,

1 you and he being present, "If we can get them to come
2 through" . meaning the McNamara brothers, "can't you get
3 Fredericks to agree not to prosecute Franklin or Darrow
4 on the bribery business, let us clean the whole slate."
5 Didn't you say that to him too? A yes, and I want to
6 explain that, if you please, before I get through with it.

7 Q Well, having answered yes I don,t see there is any
8 need of any explanation. You said that, did you? A Yes,
9 but I want to explain it.

10 THE COURT. Go ahead and explain it.

11 MR. FREDERICKS. All right.

12 A That had nothing to do with anybody but me, that was my
13 own effort and it was in the direction of having Los Angeles
14 get rid of its cases, to have no prosecution of labor at
15 all, direct or indirect, and it was directly against the
16 advice and instructions of Mr. Darrow.

17 Q And whether or not Franklin or Darrow, either one of them
18 were guilty of this charge made no difference, you wanted
19 them to be allowed to go free, whether they were guilty or
20 innocent, because you regarded that as a class, or part of
21 the class fight, if they were guilty, is that correct?

22 A I really regarded the fate of these little individuals--
23 yes, I mean Franklin and Darrow and the McNamaras and all
24 of us, as unimportant compared with forcing public atten-
25 tion to the economic problem of labor.

26 Q Well, now, Mr. Franklin at that time was charged in the
courts with bribery in connection with this affair and you

1 asked Chandler to use his efforts with the District Attor-
2 ney that that charge, a charge or any charge which might
3 be placed against Mr. parrow of a like nature should also
4 be put down and out? A In the interest of cleaning the
5 whole thing out.

6 Q Yes. A Yes, that is right. I will tell you the truth.

7 Q notwithstanding that either or both of them might have
8 been guilty of the charge, whether they were or not, you
9 wanted them dismissed? A Yes, these felonies do not look
10 so big as they do to you, Mr. Fredericks, I have seen more
11 of them.

12 Q Perhaps not. Well, you have seen a good many, then.

13 MR. ROGERS. Just a moment. I understand the witness to
14 say, if your Honor pleases, and move to strike out--

15 MR. FORD. The record will show it.

16 MR. ROGERS. I move to strike out the statement, for the
17 purposes of the record--I understand the witness to say
18 what he said to Mr. Chandler was directly against Mr.
19 parrow's orders and authorization or wishes.

20 MR. FREDERICKS. He said that.

21 MR. ROGERS. Therefore, the statement made by Mr. Steffens
22 to Mr. Chandler is immaterial as respects this defendant and
23 cannot be argued as a part of or anything he may have
24 authorized to have done. So far as the witness has pro-
25 ceeded to state his conversations with all these persons
26 upon the theory that he, the witness, was acting for Mr.

1 Darrow, was acting in his behalf and that part of it he
2 sayw was directly and contrary to what Mr. Darrow had told
3 gim and I move to strike it out upon the ground it is a
4 conclusion of the witness and is immaterial. If, however,
5 it was directly against Mr. Darrow's wishes and against his
6 directions, against his views, then certainly it cannot
7 affect the defendant Darrow and is not admissible in
8 evidence.

9 MR. FORD. Our point will be, if it was against the express
10 directions--

11 THE COURT. I do not care to hear from you, Mr. Ford. The
12 motion to strike out is denied.

13 MR. ROGERS. Then I ask for an instruction, if it is left
14 in the evidence, if your Honor please, it must be left in
15 for the limited purposes for which your Honor doubtless
16 admits it. Your Honor certainly cannot admit it as any
17 statement of the defendant or any act of the defendant or
18 any of his desires or binding upon him.

19 THE COURT. It is admitted for the limited purpose stated
20 by the witness, and I think it is very clear in that res-
21 pect. The witness has been testifying as to things he did
22 under and by reason of the authority from Mr. Darrow, and
23 he has selected this item out and he said that was his
24 statement.

25 MR FORD. I assume that will not prevent us from arguing,
26 at the proper time, however, if it was against the directions

1 of Mr. Darrow, the witness must have discussed it with Mr.
2 Darrow.

3 THE COURT. The witness has stated it was against the wishes
4 of Mr. Darrow, or whatever the words are, I wont quote them
5 exactly, but it is left in the record for the purpose
6 stated.

7 MR. FREDERICKS. And it is there and we will use it in
8 every legitimate way.

9 MR. FORD. We will cross that bridge when we come to it.

10 MR. FREDERICKS. Q Now, Mr. Witness, you said--I will have
11 to repeat these things to get you back, and to save repeat-
12 ing, read the last question and answer-- (Read by the
13 reporter) you said that even though Franklin was guilty
14 of this charge you still wanted to have it dismissed, that
15 is correct?

16 MR. ROGERS. He said it now three times and I object to it

17 MR. FREDERICKS. I am calling attention to it. A Only to
18 get all these cases out.

19 MR. FREDERICKS. Q Now, did you regard that as a social
20 crime that should be dismissed by reason of class warfare,
21 as a part of the battle? A No, that would have remained
22 as it has remained, as a sore spot here in the city, that
23 would have interferred with going on tackling your labor
24 problem as it has.

25 Q When did you discuss with Mr. Darrow the question as to
26 whether you should discuss with Chandler the question of Mr.

1 Darrow's complicity in the bribery matter?

2 MR. ROGERS. He has not said that, if your Honor please--

3 MR. FREDERICKS. He said that he did.

4 THE COURT. One at a time.

5 MR. FREDERICKS. He didn't do this under the directions of
6 Mr. Barrow.

7 MR. ROGERS. No, he did not.

8 MR. FORD. He said he had been instructed by Mr. Darrow
9 not to discuss the matter of--

10 MR. APPEL. He has not said that.

11 THE COURT. If this is going to be a discussion between the
12 attorneys--

13 MR. APPEL. No, your Honor.

14 MR. ROGERS. I would like to have the question read and
15 I want to object--

16 THE COURT. Read the question.

17 (Question read.)

18 MR. ROGERS. He has not stated he discussed with Darrow
19 whether he should or should not discuss with Chandler,
20 whether Mr. Darrow should be prosecuted or not. He has
21 said what he did say was against the wishes of Mr. Darrow
22 and he has not said that he had any discussion.

lp 23 MR. FREDERICKS. All right, withdraw the question.

24 Q How did you know this was against the wishes of Mr. Darrow
25 that you should discuss the question of his complicity
26 in the bribery business? A Because I asked Mr. Darrow to let

1 me urge my committee to include the Franklin case in the
2 settlement and he would not let me.

3 Q He told you it would be tantamount to an admission of
4 his guilt, didn't he? A No.

5 MR. APPEL. Let him state what he did say.

6 MR. FREDERICKS. Q What did he say?

7 MR. ROGERS. That is it. Now, let us get it.

8 A I asked him what the effect would be upon these nego-
9 tiations of that arrest and he said none so far as he had
10 concerned, and I suggested to him that, of course, the
11 arrest of his detective for bribery would suggest to other
12 minds his guilt too, and he turned upon me and he said--
13 and, of course, that might interfere with the negotiations--
14 and he turned to me and he said, "If they think that, you
15 go back and tell them to leave my case out of the settlement
16 and I said, "Now, that is foolish, Darrow, because as I
17 understand it, if the thing is allowed to go, all the cases,
18 let it go out," and then the county will be all through with
19 all these labor cases." He said, "If my case or if this
20 Franklin case is going to interfere in any way with the
21 settlement of this matter, with these negotiations, you
22 have it explicitly included," and I went back and I think,
23 to Chandler, I certainly did to others, I said that the
24 case--

25 MR. DARROW. What word is that, "included"?

26 A Should be included, excluded from the settlement, and I

1 begged the men never to heed that, but to have it all
2 excluded from the other point of view.

3 MR. FREDERICKS. Q But that does not change the statement
4 which you say you made that you asked Chandler to see
5 Fredericks and that you said, "If I can get them to come
6 through," meaning the McNamara brothers, "can you get
7 Fredericks to agree not to prosecute Franklin or Darrow on
8 the bribery business?" A No, I did not make any such
9 bargain.

10 Q You didn't say-- A I didn't say something like that--

11 Q What you say now connected with your previous answer--

12 A No, you connected it up. I told Chandler what Darrow's
13 wishes were and I turned, in the interest of the county, I
14 said, "For Heavens sake, Mr. Chandler, rip them all up, get
15 rid of them."

16 Q Did you tell Mr. Chandler Mr. Darrow had asked you not
17 to include his case in the settlement? A I am pretty
18 sure I did. I certainly told others, I said--

19 Q What others? A I think I told that committee that
20 night, and I think I told it to Mr. Lissner and Mr. Gibbon,
21 and I asked them to pay no heed to Mr. Darrow's wishes in
22 that matter, and I reported to them what he asked me to
23 report, to explicitly include that case, and I asked them
24 for my purposes--

25 MR. ROGERS. Specifically include in what, in the settlement?

26 A Mr. Darrow wanted it excluded in the settlement and I wanted

1 it included in the settlement.

2 MR. FREDERICKS: Who, if anybody, was present when you dis-
3 cussed this matter which you have just narrated, with Mr.
4 parrow? A Nobody.

5 Q Where was the discussion? A In his office.

6 Q And when? A I think it was the day of the arrest--
7 of the arrest.

8 Q In the morning or the afternoon? A I think it was
9 about noontime, but I don't remember exactly.

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1 Q Give me the whole conversation that occurred at that
2 time between you and Mr Darrow? A I think it began with me
3 asking him what the effects would be of this arrest upon the
4 negotiations, and he said, none whatsoever, and I think I
5 suggested next to him what it might be thought to mean, that
6 is, that it was an act, not of Franklin's alone, but by
7 the defense. Oh, he said, if they think that, if your
8 people -- meaning my crowd, think that, you go back and
9 tell them that they can try my case, and you see my case
10 is left out of the settlement. Between those two last
11 statements, there was a remark of mine that that was fool-
12 ish. He said, "No, I want you to go back and have my case
13 left out of the settlement " he said. "I don't want my
14 affairs, or any affairs of mine concerning me in any way,
15 to interfere with the case of the McNamaras."

16 Q Didn't he also add, if you made any such proposition as
17 that that that would be conceded as an admission of guilt
18 on his part? A I don't think he thought of that at the
19 time; it couldn't possibly have been, because it was my
20 suggestion, because Mr Darrow -- that apparently had not
21 crossed Mr Darrow's mind, that that interpretation was
22 put on it, and he expressed astonishment, and turned around
23 swiftly, and was astonished at what it meant, and saw his
24 personal affairs were getting mixed up in this other mat-
25 ter, and then he gave me those instructions.

26 Q Was there anything said there about Chandler at that

1 time, about what you should say to Chandler? A Oh, no.
2 Mr Darrow usually spoke of my crowd.

3 Q Why do you call those people your crowd? A That is
4 just slang, like calling the McNamara boys, or calling
5 you Captain; it is just that way.

6 Q I will admit that is slang, but they were not your
7 crowd, were they? A No, they were not my crowd.

8 Q You were deceiving them, were you not? A No, I
9 was not deceiving.

10 Q You were making them believe it was impossible to get
11 J. J. to plead guilty, whereas, you say that you knew on
12 Sunday that it was possible to get him to plead guilty.

13 A I wasn't deceiving them any more than you are deceiv-
14 ing when you ask me a question leading up or where you ex-
15 pect to get me to make a certain statement in your inter-
16 ests, if that is deceiving -- I didn't state all I meant
17 to do on Monday.

18 Q I wouldn't consider that the relations of a witness
19 and a cross-examiner were such as to make one call the
20 other members of his crowds. A No, we have passed the
21 slang now.

22 Q All right. The point is that you were maintaining
23 all the time with these people who you call your crowd,
24 that J. J. McNamara never would plead guilty. You were
25 maintaining it strenuously and earnestly? A That is not
26 a fair question.

1 MR APPEL: It has been asked several times.

2 MR FREDERICKS: Didn't you say you did that on the night
3 of the 29th, on the night before Thanksgiving? A No.
4 Now, Captain Fredericks, you want to get this right your-
5 self?

6 Q I want to get it right. A You are not making points,
7 are you?

8 Q I don't know what you mean by that. I want to get the
9 facts and the truth. A The facts are these; that as
10 soon as I could I found out just what Mr Darrow would con-
11 cede.

12 Q Well --

13 MR ROGERS: Wait a moment.

14 MR FREDERICKS: We will not wait a moment.

15 MR ROGERS: Finish that answer. I call on the witness to
16 finish that answer without interruption. I know it is
17 stinging and hurting; I know the pepper is going in,
18 nevertheless, when a man asks for a question he must get
19 his answer.

20 MR FREDERICKS: I am going to have an answer to the ques-
21 tion and there isn't any pepper going in on this side of
22 the house at present. I want to cross-examine this wit-
23 ness by questions and answers, your Honor, and I don't
24 propose to turn him loose in the interests of the defense
25 to make a speech. That can be done at the proper time.
26 Now, he must answer my question; that is my point.

1 THE COURT: Undoubtedly. Let's get the record and see if
2 there is or is not a question unanswered. That is all
3 there is before the court. (Last question read by the
4 reporter.)

5 MR FREDERICKS: There is no question. It was a conver-
6 sation between us. He asked me a question and I answered.
7 I said I wanted to get the truth and the facts.

8 MR ROGERS: Some questions before that indicate, if your
9 Honor please --

10 THE COURT: Read back some questions.

11 MR ROGERS: Five or six questions. (Testimony read as
12 indicated, by the reporter.)

13 MR FREDERICKS: There is no question pending before
14 this court.

15 THE COURT: I am going to determine that.

16 MR APPEL: I object to that --

17 MR FREDERICKS: If there is a question pending I with-
18 draw it.

19 MR ROGERS: All right. We will not have it withdrawn, if
20 your Honor please, and we object and except. Because he
21 doesn't like the answer he started to get, when a man asks
22 a question he cannot withdraw it after the answer has
23 started because he doesn't like what is coming.

24 THE COURT: Now, gentlemen, I want that read from the re-
25 cord. (Record read by the reporter.)

26 MR FREDERICKS: That was an answer --

1 MR FORD: The question is, didn't you say that to your
2 crowd on the night of the 29th, and he says, no, and he
3 wants to recité the whole conversation or the whole transac-
4 tion again. The question is answered, and we are entitled
5 to have another question. It is not a question of whether
6 we are fair or unfair, it is simply a question of getting
7 an answer to our question.

8 THE COURT: That is a very important question with the
9 court.

10 MR FORD: We always want to be fair; that is not the
11 question before the court. The question is, is this an
12 answer to the question. It is. He has answered it, no.
13 Now, he is not qualifying it in any way, shape or form.
14 He is not **modifying** it; it is not a privilege of the wit-
15 ness, to give an explanation, except insofar as it explains
16 or may modify his answer of yes or no. The privilege of
17 arguing the case or privilege of bringing out further
18 testimony belongs to the attorneys on the other side
19 upon redirect examination, to bring out such further
20 facts, as they desire, The privilege of arguing the truth
21 or veracity of the witness or the truth of the alleged
22 facts before the jury, is also a question for counsel at
23 the proptime. It is not the privilege of the witness
24 at all, and it in no sense constitutes the explanation which
25 the law permits. The law permits an explanation only to
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1 modify or explain an answer; not to argue the matter.

2 THE COURT: The questions directed to the witness were
3 in regard to his dealings with this party of gentlemen re-
4 ferred to as his crowd. After some little colloquy, the
5 cross-examiner said, "I want the facts and the truth."

6 MR FREDERICKS: That was in reply to a question of the
7 witness. The witness asked me a question to which I re-
8 plied and that was my reply.

9 THE COURT: Captain Fredericks; the court is ruling on this
10 matter using its best judgment. I deem that to be a ques-
11 tion calling for the facts, and the truth in regard to
12 this witness' relation with those gentlemen designated as
13 his crowd. The witness has partly answered that question
14 and he may proceed and finish it.

15 A As soon as might be I found out what Darrow would con-
16 cede, and I want to the other side, as far as I could
17 get to it, to find out what they would concede, but I
18 didn't tell either side all that I knew would be granted.
19 I held back just as much as I could.

20 MR FREDERICKS: All right. Now, when was the first time
21 that you mentioned to Mr Darrow anything about the negotia-
22 tions, or he to you? A

23 MR ROGERS: I confess, if your Honor please, I don't
24 understand that question. A When we started about
25 starting them or when we started about the results of them

26 MR FREDERICKS: When did you tell him that you had or

1 would undertake such a thing? A At breakfast on the morn-
2 ing of the 20th, if that was Monday morning.

3 Q Now, I want to come down to this Thanksgiving day af-
4 ter you left Mr Chandler at 2 or 3 o'clock in the morning.

5 I assume that you went to bed or something of that kind,
6 and the next day began -- when you began,--at what time

7 Thanksgiving day began with you;at what time? A I
8 don't remember distinctly, I think it began pretty early.

9 Q You didn't remain up on this all night? A Oh no.

10 Q You went to bed sometime? A Oh, yes.

11 Q What was the first thing you did on Thanksgiving
12 day in regard to the matter of securing the arrangement
13 you had been talking about? A I think I either saw or
14 telephoned Mr Chandler's house. I think I had difficulty
15 in getting him. I was afraid I wouldn't see him, but I
16 think I telephoned to Mr Davis, and got your telephone
17 number. If I remember rightly, I telephoned -- I tried
18 to telephone to you. I think I didn't get you, but I
19 know I had in mind that morning to go myself to you on
20 this matter, where I thought Mr Chandler, who works late,
21 and doesn't get up very early, might be late on the mat-
22 ter, and then a little later in the forenoon --

23 Q Now, did you get any of these people that you tele-
24 phoned to? A Yes, I got Davis and I finally got Chandler,
25 I think.

26 Q Where were you stopping then? A Alexandria.

1 Q And where did you telephone from? A I don't rem-
2 ember whether from there or from Darrow's office.

3 Q You remember where you got breakfast that morning?

4 A No, I don't remember.

5 Q What did you want to talk to Chandler for? You had
6 left him just a few hours before? A Oh, just to follow
7 up. It was nervousness, I guess.

8 Q Well, who did you -- You say you talked to Davis?

9 A Yes. I think all I asked Davis was your address.

10 Q That is all the conversation with Davis, you got my
11 telephone address? A I think so. You remember that,
12 don't you? I telephoned to you that day? Q No, not that
13 day; you telephoned to me about half past 8 and talked
14 that night, if I may be permitted to testify. All right,
15 now, then -- that is correct, isn't it? You telephoned
16 to me about half past 8? A I think that is right.

17 Q That makes testimony out of it. A Still I am not
18 so sure of that.

19 Q I don't make any point of it now. Now, what was the
20 next thing you did, Mr Steffens, after telephoning to
21 Davis and getting my telephone number? A Then, I think
22 we went to the jail.

23 Q Who went to the jail? A Mr Darrow, Mr Scott, I
24 think, Judge -- I don't remember. I don't remember
25 whether McNutt was there or not. I was there.

26 Q You are sure that Darrow went. How about Davis? A I

1 think Davis.

2 Q This is the first time, remember, you went. When you
3 first went there, I want to know who went there.

4 MR ROGERS: The first time on Thanksgiving Day?

5 MR FREDERICKS: The first time on Thanksgiving Day?

6 A Yes, I understand. I don't think we all went together.
7 I think some came in afterwards, but I am not sure of that.
8 I am pretty sure Davis was there sometime during the day,
9 and I remember I went away about 12 or 1 o'clock.

10 Q All right. Let's see, how long did you stay there that
11 morning? A Oh, it must have been an hour or so.

12 Q What did you do during that hour? A Well, I spent --
13 I was there when they first began to talk to both of the
14 men together.

15 Q Who do you mean by "they"? A Darrow and Scott, I
16 think; Scott came in a little later, I think; I don't
17 know whether he was there the first moment or not, but
18 they soon separated the McNamaras.

19 Q Let's stick to it chronologically. A Let's say
20 Darrow.

21 Q Darrow was there. You say you were there when Darrow
22 first began to talk to the two together, and where were
23 they? A They were brought out of their own cell and
24 brought in to a rather large bed room, sometimes used
25 for that purpose.

26 Q Upstairs or on the same floor with their cell? A I

1 think it was upstairs.

2 Q Wasn't any bed -- A I think it was on the same
3 floor with their cells. It was upstairs, though.

4 Q Was there a bed in the room? A Yes, a bed and a sofa.

5 Q Now, what was the talk between Mr Darrow and those
6 two men at that time, the four of you being present, what
7 was said and who said it? A It was only preliminary.

8 Darrow said he thought they were getting to a point where
9 he thought there was really something going to be done.

10 Q Mr Darrowsaid that? A Yes. He took out J. J. Mc
11 Namara and talked to him first.

12 Q Let's get more, if we can, that was said while the two
13 were present. In addition to the fact he thought they
14 were getting to the point -- A I think that is all
15 that was said at that time, Mr Frédericks. He went out and
16 talked with J. J. -- the important part is what happened
17 afterwards.

18 Q I will come to all that in good time. You say he
19 went out and talked to J. J., Darrow did? A Yes.

20 Q Out of your hearing? A Yes sir.

21 Q You don't know of your own knowledge what was said
22 between the two? A No.

23 Q Left you in there with J. E.? A Yes.

24 Q Alone with J. E.? A No, someone else there.

25 Q Whowas it? A I don't remember whether it was Davis
26 or Scott.

1 Q Well, was it one or the other? A I think so.

2 Q And did you talk then, you and this person, either
3 Davis or Scott or Scott and J. B. McNamara, did you talk
4 together there? A Yes.

5 Q What did you talk about? A Well, J. B. and I went
6 over the same old ground we had been talking about all
7 these weeks.

8 Q I know -- we have got to go over that -- I wish to go
9 over that in detail, and I want you to say what was said
10 at that time between you and McNamara, who said it?

11 A Well, I don't remember, Captain Fredericks, whether
12 I then began to urge J.B. to consent to the whole set-
13 tlement, including his brother; probably not until after
14 J. J. came back, and J. B. heard the whole thing. But
15 then, I took part in the argument.

16 Q Now, don't go into that yet. Let's stop back there
17 with you and Scott or Davis, whichever it was, and J.B.;
18 let's go over that point and then we can go -- what each
19 said. A I don't remember it that way, Captain Freder-
20 icks.

21 Q Well, do the best you can at it. A I mean, I can-
22 not remember exactly the way in which these different
23 things were said -- as they happened.

24 Q That may be. A The first talk by Darrow, he thought
25 they were getting to a point where they could have a settle-
26 ment, everything would come through next day.

1 Q That is when the two were together? A Yes. I don't
2 remember -- he took J.B. out first, and confirmed that old
3 arrangement that J.B. was to come through; then, he took J.J.
4 -- he took the two men out separately, and said things
5 to them that I don't know anything about.

6 Q Yousee that is something we missed on the first time
7 going over. Which one did he take out first? A I don't
8 remember that distinctly. I think, though--

9 Q But he did take --

10 MR ROGERS: I suggest we have answers instead of contin-
11 ually interrupting.

12 MR FREDERICKS: I am not interrupting.

13 MR ROGERS: I think opinions may well differ on that sub-
14 ject.

15 MR FREDERICKS: I think they do differ.

16 MR ROGERS: For which I am duly grateful.

17 THE COURT: Is there a question you have not answered?

18 A He asked me the order in which those conversations
19 happened. I don't remember that order. I don't remember
20 whether J. B. was taken out first, or J. J. was taken out
21 first. When one was out I remained there and talked to
22 the other. I know a great deal of the conversation was
23 passing the time of day. We all felt this thing happen-
24 ing. A great deal of it was unimportant talk, but there
25 was some important things happened that I am willing to
26 tell, but don't know whether they happened then or later.

1 MR FREDERICKS: I want to get them in order, if I can, and
2 if not, we will take them gross. Now, you are sure of
3 this statement that Darrow did say to the two of them that
4 he now thought that things were shaping so that something
5 could really be done?

6 MR ROGERS: That question is misleading.

7 MR FREDERICKS: Well, what was it? A He said something
8 like, "Well, boys, now we are getting down to a point
9 where we can really do business," something like that.

10 Q Up to that time Mr Darrow had expressed some doubt
11 about whether they could really do business, had he?

12 A No.

13 Q He had not? A No, the only doubt in his mind -- in
14 our minds, was whether J.B. would consent to a sentence
15 upon J.J.

16 Q Well, then, you did have that doubt? A Yes.

17 Q That doubt you had up until Thanksgiving day? A Yes,
18 we had that doubt.

19 Q Well, now, let's see if you can give any more conver-
20 sation that occurred that morning during the first hour,
21 or during the hour or so that you were there in the pre-
22 sence of Davis or Scott, whichever it was, yourself and
23 Darrow, confined to that time. A Yes, I think that it
24 began -- the real discussion began after Mr Darrow had
25 taken J.B. out a second time, I think, and told him about
26 J.J. J.J. was all right on both, and J.B. made a kick,

1 and every argument that could be used, was used upon J.B.)
2 to get him to consent to his brother pleading guilty.

3 Q But you say -- go ahead if you are not finished or
4 some further conversation, go ahead.

5 MR APPEL: Your Honor, he is answering the question.

6 THE COURT: Counsel says go ahead. We all say go ahead.

7 A I don't remember whether it was Mr Darrow or Mr Scott,
8 somebody made a plea -- talked to the boy about his mother.

9 MR FREDERICKS: Which boy? A J.B. The fight was on
10 J.B. We had to argue with J.B., and then the case was talk-
11 ed over somewhat, the difficulties of the case, and then
12 I urged my argument that a plea of guilty, if they be-
13 lieved in throwing bombs, the biggest bomb they could throw
14 was a plea of guilty, but Darrow came back to the point,
15 what he was after was to save J.B.'s life, and that
16 didn't seem to interest J.B. so much, saving his life,
17 and he said -- I remember once he said -- Darrow said, "I
18 am thinking of you, J.B." "Yes", J.B. says, "and I am
19 thinking of you, Darrow." And then he talked about how
20 organized labor would feel against Darrow for all this
21 and so it was going on back and forth there, when I fin-
22 ally left, and I think I went off somewhere that afternoon
23 and got back at 5 o'clock, and it was all over, or 6
24 o'clock, whatever it was.

25 Q And when you left, the agreement had not been reached?

26 A No, it had not been reached. They didn't get a thing

1 until later in the afternoon.

2 THE COURT: I think we will adjourn.

3 (Jury admonished. Recess until 2 P.M.)

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