

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

Clarence Darrow,)

Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 69

I N D E X.

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

Le Compte Davis,

5595

B. N. Smith,
Official Reporter.

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1 July 26th, 1912. 10 o'clock A.M.

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

4
5 LE COMPTE DAVIS on the stand.

6 MR APPEL: We turn the witness over for cross-examination.

7
8 CROSS-EXAMINATION

9 MR FREDERICKS: Mr Davis, I attract your attention to
10 Thanksgiving Day -- A You say for me to do so?

11 Q I will attract your attention to Thanksgiving Day.
12 You remember on Wednesday before that, that you had an
13 appointment with me that you would call me up at 2 o'clock
14 Thanksgiving afternoon? A Yes sir.

15 Q And didn't you call me up at 2 o'clock? A I did but
16 you were not there.

17 Q No, I was there, and you talked with me. A Not
18 Thanksgiving day; you were away, is my recollection. I
19 would not be positive about that, Mr Fredericks.

20 Q See if I cannot refresh your mind -- your memory.
21 Didn't you call me up at 2 o'clock Thanksgiving afternoon
22 and tell me that you were still working on that proposition,
23 that you didn't know whether you could bring it through or
24 not, and asked me if you couldn't come out and see me at
25 9 o'clock that night, and didn't I reply to you, "There
26 is absolutely no need of your coming out, and I don't want

1 to talk to you about it unless they are both willing to
2 plead guilty." A Yes, I remember that now, distinctly.

3 Q You remember that conversation? A Yes sir.

4 Q Happened just about that way, didn't it? A Yes sir.

5 Q Now, you came out then, about 9 o'clock? A Sometime
6 in the evening; I don't know what time it was. I would
7 presume, though, about 9 o'clock.

8 Q Did you call me up before you came out? A I don't
9 think so.

10 Q And tell me that you would be out in a few minutes?

11 A I don't remember it. I know I had an appointment and
12 I don't think I did.

13 Q I have substantially related all the conversation that
14 occurred over the telephone at 2 o'clock, have I, or
15 does anyother occur to you? A I remember that I said
16 we had difficulty, would have difficulty with John --
17 with Jim.

18 Q Did you tell me what the difficulty was?

19 MR DARROW: Let him finish. A Yes, that is my recollec-
20 tion, I told you that.

21 MR DARROW: Let him finish the answer.

22 THE COURT: Have you finished, Mr Davis? A Yes sir.

23 MR FREDERICKS: Now, had you ever talked to me about
24 whether or not either one of these men were willing -- did
25 you ever admit to me that either one of these men were
26 actually willing to plead guilty up until Thanksgiving

1 Day? A Oh, on Wednesday I told you so, and -- on Monday
2 I told you we would not have any difficulty with Jim,
3 but on Wednesday I told you that there was no difficulty
4 about Jim pleading guilty at all in the matter, and there
5 would be no difficulty with John, if it were left to him
6 alone.

7 Q You remember Mr Darrow and you coming up into my office--
8 the District Attorney's office, rather, on the afternoon of
9 the day Franklin was arrested, and having a talk with me?

10 A No, and I don,t think we did. We were there the day
11 after.

12 Q Wednesday? A yes sir.

13 Q You remember that conversation? A That conversation
14 was along the line I have already said that you and I had
15 a conversation along. We were up there to see the best
16 terms we could get, and it was then that you said that you
17 wouldn't let him off unless he took a term of years, and
18 I insisted on knowing what you meant by a term of years.

19 Q Now, Mr Davis, isn't that the very first time that
20 the question of J. J.'s pleading guilty, or both of them
21 pleading guilty was ever seriously discussed between you
22 and me?

23 MR ROGERS: That calls for a conclusion, "seriously dis-
24 cussed".

25 A I talked with you about it --

26 THE COURT: Wait a moment, Mr Davis. There is an objection.

1 MR ROGERS: That is objected to as calling for a conclu-
2 sion. No objection to what was said, but, "seriously dis-
3 cussed" --

4 THE COURT: I think it calls for a conclusion, "It was
5 seriously discussed". Objection sustained.

6 MR FREDERICKS: It is a conclusion, in a measure, it is true.
7 The objection is sustained?

8 THE COURT: yes sir.

9 MR FREDERICKS: Isn't this what occurred up there on Wed-
10 nesday, the day after Franklin's arrest: didn't you and
11 Mr Darrow come in and sit down, and didn't you say, "Well,
12 what do you want?", and didn't I say, "I want both of
13 these men to plead guilty, and Mrs Bain is sitting out
14 here in the room just adjoining me and wants to come in and
15 tell me a story, and if you are going to do anything, I
16 think you better hurry up about it", and didn't Mr Darrow
17 say, "Well, I don't think we can ever get J. J. to do it,
18 but we will go over and try?" A Is that the end of the
19 question?

20 Q Yes. A That was not the exact conversation; shall I
relate it?

21 Q Yes sir, do so.

22 A My recollection of the conversation is that I came in
23 and I said to you --

24 Q The question was, you and Mr Darrow both being present.

25 A Yes sir, that we realized that the arrest of Mr Frank-
26 lin was a serious matter, and I had come back to see if what

1 you said before would still go, and you said that "what I
2 said then will still go, but there must be a plea of guilty
3 by both these men, and they must plead guilty at the same
4 time". And I said to you at that time, I did not think we
5 could ever get J. B. to consent to J. J. entering a plea
6 of guilty, and you said J. B. would be hung and J. B. would
7 be hung also, and I said that Mr Darrow had come up to
8 have a talk with you also, at the same time, and about
9 that time Mr Ford came in to whisper something in your
10 ear, and then you said to me, "Mrs Bain has come through",
11 after Mr Ford left the room, I said, "Come through with
12 what?", and you said, "With the fact that Mr Bain had
13 been also given money." Now, that is about the conversa-
14 tion that occurred there, Captain, I think, if you will
15 remember it; you will remember Mr Ford coming in, too.

1 Q I would not say that is not correct. It probably is,
2 although I do not just recall it now. Did I ever say to
3 you, or was there ever any discussion with you as to what
4 difference it would make as to whether both these men plead
5 guilty at the same time? Was the matter ever discussed?

6 A That matter was discussed with us, because we wanted to
7 let J. B. plead guilty and take a sentence before he knew
8 that J. J. was going to be sentenced, and you said, "We will
9 do this: we will not let him enter a plea of guilty, not
10 have him enter a plea of guilty in the Times case, which
11 is the murder case, but he may enter a plea of guilty in the
12 Llewellyn case, but they must be entered at the same time."

13 Q Let me refresh your memory a little bit. Don't you
14 recall, at the very first time that the Llewellyn case, that
15 the idea of having J. J. plead guilty in the Llewellyn case
16 came up was Thanksgiving night out at my house? A No, sir,
17 Captain, it came up--

18 Q And I was the one that brought it up?

19 MR. DARROW. Let him finish.

20 THE COURT. Finish.

21 Q You think it came up before? A It came up on the Monday
22 before?

23 Q Monday? A Yes, sir, the Monday before.

24 Q After you left my house that night, Thanksgiving night,
25 you say that we had agreed that so far as we could--where
26 did you go?

A Where did I go? I went back home.

1 Q didn't you go out to Mr. Darrow's house? A No, I called
2 up Mr. Darrow afterwards.

3 Q Thursday night, Thanksgiving night-- A That is my
4 recollection, I called up Mr. Darrow afterwards about it. I
5 wouldn't be absolutely positive, but my recollection now, the
6 picture that is in my mind is that I went home and tele-
7 phoned.

8 Q Well, now, didn't you tell me there you would have to go
9 and see Darrow now and tell him that I had agreed? A I
10 told you that I would go back and see Mr. Darrow and that we
11 would see the boys in the morning, and that we would be ready
12 at that time, I thought, without any question.

13 Q Now, of course, you understood that the District Attorney
14 could not make a bargain as to how many years a man was to
15 get? A Absolutely, I did.

16 Q And that would not be binding or final? A Not be binding
17 or final, but I knew--

18 Q And that--

19 MR. DARROW: Let him finish the answer--

20 A --and I knew you would not tell me he would get that unless
21 you felt so satisfied.

22 Q But all I could do would be to recommend? A That is
23 it, and you said, "If I don't recommend it you can know that
24 I cannot do it, and if I do recommend it you can take my
25 word that I am satisfied that it will go through."

26 Q And if I did not recommend that would mean that it was all

1 off, that they were not to plead guilty? A You would
2 recommend it, so far as that is concerned, but if you didn't
3 tell me that it would go through, why, then it was all off,
4 but you said you were satisfied that it would, and we were
5 satisfied, from what Mr. Steffens had said to us it would.

6 Q And that was to be told to you, of course, before they
7 plead guilty? A Before they actually answered their plea,
8 yes, sir.

9 Q And if that had not been acceded to, that is, if that
10 arrangement had not been made, of course, you would have gone
11 on with the case? A It was not afterwards made, and we
12 did not go on with the case.

13 Q Some similar arrangement was made? A Some similar ar-
14 rangement. If it was to be left entirely to the Judge we
15 certainly would not have done so.

16 Q You would have gone on and tried the case? A Certainly.

17 Q And you never knew until Friday morning that the arrange-
18 ment could be made, did you? A No man ever knows anything
19 positively that comes up, but then we felt satisfied that
20 it would.

21 Q You felt satisfied after Friday morning? A I never
22 doubted your word at all.

23 Q I don't mean about that, I mean my ability.

24 A I mean, when you told me so I felt absolutely satisfied.

25 Q I didn't tell you until Friday morning? A You told me
26 that was your desire, that you would recommend it, you would

1 do everything you could to bring it about, and Friday morn-
2 ing you had not been able to--

3 Q I told you also--read the answer-- (Answer read.)

4 A You interrupted me. Friday morning you told me it
5 would have to be 15 years. I asked you to have the matter
6 postponed until afternoon, that we wanted to talk it over
7 with the boys, because we didn't want John to go in and be
8 called upon to take a sentence of 15 when we assured him it
9 would be only ten.

10 Q you did, then, go over and talk with them to see if
11 they would still take 15? A I did with John.

12 Q You did that very morning? A There was other things I
13 talked with him too, that you put in on Wednesday.

14 Q On Wednesday the day before Thanksgiving? A Yes, that
15 somehow or other had escaped our attention, that is, you
16 wanted a statement in writing of the guilt of the boys. I
17 mean that escaped my attention when I was testifying yester-
18 day, but it didn't escape my attention when I went there on
19 the day of Thanksgiving, because at that time I sat down and
20 wrote out, at the dictation of J. B. McNamara, his connec-
21 tion with the matter, which I afterwards showed to Mr.
22 Darrow, because that was in our presence, and then again we
23 went over there and it didn't suit you, what I told you I
24 had gotten, so you went with me and you and I sat down
25 while J. B. made his statement, and I wrote it down in your
26 presence.

1 Q Are you sure you ever told me that you had gotten a
2 statement prior to that from J.B.?

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1 A Yes, I told you, and gave you the substance of it, Cap-
2 tain, is my recollection, and it didn't suit you, and for
3 that reason you went over yourself. I said, "Come along
4 with me; have you there and let you indicate what you
5 want."

6 ✓ Q Well, then, Mr Davis, you never knew -- nobody knew
7 until Friday morning after a talk with the Judge, that
8 these two cases were actually going off? A Well, I
9 didn't talk with the Judge.

10 Q Well, I mean, after I did. A I only knew it in
11 the manner I have detailed to you and the jury hereto-
12 fore.

13 Q And I told you that Judge Bordwell was not one of the
14 judges who had been handling criminal work, and I didn't
15 know him any better than you did, and I wasn't sure what he
16 would do. A Yes. ✓

17 Q Now, I want to go back to the day when you testified
18 that I first discussed the matter of either one of these
19 men pleading guilty, with you. Now, this that we have been
20 talking about now was in the week of Thanksgiving? A That
21 was in the week of Thanksgiving; yes sir.

22 Q The time when you say I first mentioned this to you
23 was the week before that? A Was the week before and I
24 fixed the day by being the day before Mr Fremont Older
25 came here.

26 Q Well, I think it is in testimony here that Fremont

1 Older was here on Thursday, so that would be on Wednesday,
2 then? A That is my r ecollection, that it was on Wed-
3 nesday.

4 Q And up until Wednesday, you had never had the slight-
5 est intimation from Mr Darrow or Steffens or anybody else
6 that there was anything of that kind in the atmosphere?

7 A No sir. You had spoken to me several times during
8 the course of the trial.

9 Q In a bantering sort of a way? A Yes, in a bantering
10 sort of a way, but I never had an idea there was any nego-
11 tiations going on for this settlement until you spoke to
12 me about it, and I thought then that you were speaking in
13 ~~the~~ bantering manner that you had been during the course of
14 the trial.

15 Q That was Wednesday, the 22nd? A I am pretty posi-
16 tive that that was the day.

17 Q And you didn't mention that to Mr Darrow until next
18 day? A Until next day, when he told me that Mr Older was
19 there and what he had come for.

20 Q So the reason that you didn't mention it to Mr Darrow
21 until the next day, was because from the tone and manner
22 of the conversation and all, you thought I was simply
23 bantering you? A Well, probably if I had it come to my
24 mind, Captain, I would have remembered it afterwards, but
25 it may have been that that didn't make the impression on
26 my mind that it otherwise would have done, and I didn't do

1 it until the day that Mr Older came.

2 Q Well, as a matter of fact, weren't we talking at
3 that time more or less in a bantering way, without being
4 very serious about it at all? A Well, I thought you were
5 until you told me you had the paper that they had made you
6 the proposition, and you said Mr -- you didn't call him
7 Lincoln Steffens, you had some name for him, what was it,
8 some pet name.

9 Q We will call him Lincoln Steffens. A You had a pet
10 name for him. You said he had come in here and was bringing
11 it about, and I knew Mr Steffens was here then when you
12 said you had a paper, I thought certainly there was some-
13 thing in it.

14 Q Now, did I tell you at that time that Lincoln Steffens
15 had ever offered to have both these men plead guilty, or
16 just one of them? A At that time?

17 Q On Wednesday? A At that time you told me that he
18 had offered to let them both plead guilty because I said
19 I would never consent at that time that J. J. enter a plea
20 of guilty to anything.

21 Q Because J. J. was the representative of organized labor
22 and a plea of guilty on his part would be a confession of
23 organized labor to this offense, is that the reason?

24 A The reason was that I thought you didn't have probably
25 as good a case against J. J. as you had against the other
26 man, and that you would let him go.

1 Q That we couldn't put it over? A Well, you may have
2 it in that light, I didn't say. I didn't think -- I knew
3 you had a strong case against him because you told me you
4 had telegrams and letters -- he had told me heretofore you
5 didn't. When I went to him and told him you had them he
6 had to admit you did.

7 Q You knew there was a lot of telegrams, clocks and
8 bombs, and one thing and another tied up by judicial pro-
9 ceedings, and one thing and another back in Indianapolis,
10 both your side and our side was fighting for possession of
11 them? A I saw it in the press.

12 Q You knew that fact? A I knew it as well as I could
13 know it from that kind of testimony. I didn't doubt it.

14 Q You knew it, being an attorney and an associate of Mr
15 Darrow, and your side of the case, you knew your side was
16 fighting for that stuff, and we were, too? A Yes, I knew
17 we were fighting for it.

18 Q Where was this conversation, Mr Davis, up in my office--
19 I say, up in my office -- where was this conversation on
20 Wednesday the 22nd of November, that you had with me?

21 A It was in your room when I was there with reference to
22 the steel rail and also with reference to some dynamite
23 papers.

24 Q Wrappers on some dynamite? A Something, I don't know
25 whether it was wrappers or dynamite.

26 Q Was it in my own office, or was it in room 26 down

1 the hall? A I think we were in both places.

2 Q Do you know how much of the conversation occurred in
3 room 26? A I don't think -- I don't know that any of it
4 occurred there. My recollection was that it was in your
5 room, but I do know that you told me that the steel was in
6 room 26, and so forth. I know the steel rail was in your
7 room for a long time.

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1 Q That was the iron beam? A The iron beam.

2 Q That was broken by the dynamite at the time of the ex-
3 plosion. So you came up to my office on another matter al-
4 together at that time, not connected with these men plead-
5 ing guilty or anything of the kind? A No.

6 Q You hadn't any thought about them pleading guilty at
7 that time? A Not at that time.

8 Q And didn't you tell me at that time when I suggested it
9 to you that I never could get a conviction of J.B. with
10 that jury, that the jury would never convict him, J.B.,
11 the fellow that was on trial? A I probably did, because
12 I wouldn't have said to you that you could, under any cir-
13 cumstances.

14 Q Well, don't you remember that you did say that? A I
15 don't remember that I did, but I say I probably did. I
16 wouldn't have said whatever I thought.

17 Q Now, then, just what was that conversation as you rem-
18 ember it, the entire conversation so far as it referred to
19 these men pleading guilty?

20 MR. DARROW. This was Wednesday the 23rd?

21 MR. FREDERICKS. This was Wednesday the 23rd up in my
22 office--Wednesday the 22nd up in my office the day before
23 you met Lincoln Steffens. A Well, I came in and was
24 talking about the business that I had and you said "Now,
25 what is the use of fooling around about this? What is the
26 use of fo oling any longer? Why don't you come through and

1 quit this horde play?" You said, "You know you are going
2 to plead guilty. You know the boys are going to plead
3 guilty and why don't you come through and do it?" I said,
4 "I wasn't hired to enter a plea of guilty for these men;
5 they could do it without me, if they wanted to plead guilty."
6 You said, "There is no use talking that way to me; this
7 proposition has been made to me and you know that Mr. ~~Stinken~~
8 Leffens["]--I know that you reversed the name some way,["] has
9 been taking this up with the committee, and they have made
10 a proposition to me to let him plead guilty," I said,
11 "What are you giving me?" You said, "I am giving you
12 straight goods," something like that. Well, I said, "I never
13 heard anything about it and you have got to show me."
14 You said, "Well, if you haven't heard anything about it,"
15 you said, "Old Boy, they are keeping you in the dark about
16 something." Well, I said, "I don't believe so. I think
17 I know pretty much about the case," You said, "Well, I
18 can get the paper and show you the direct proposition that
19 has been made to me." I said, "I would like to see it or
20 I would have to see it," and you went for the paper in your
21 desk somewhere but you didn't bring it out."
22 Q Well, you thought I was bluffing, to be frank about it?
23 A I had an idea you was bluffing pretty good until you
24 commenced to talk about Mr. Steffens. I thought there might
25 be something Mr. Steffens was doing in that matter I hadn't
26 heard anything about.

1 Q Or anybody else knew anything about except him?

2 MR. APPEL. That is asking for his opinion and conclusion.

3 THE COURT. Objection sustained.

4 MR. FREDERICKS. I withdraw the question.

5 THE COURT. The question is withdrawn.

6 MR. FREDERICKS. Q Is that about all the conversation?

7 A Well, we talked some more about the business--

8 Q About that part of it, of course? A Yes. You said to
9 me, "You take hold of this Darrow and make him come through
10 and tell you what he is doing", and I said, "I never had
11 any trouble yet that I know of to make him come through and
12 tell me what he was doing," he was leading counsel in this
13 case and I presume when he wanted me to know it he would
14 let me."

15 Q Then all day Monday, the 20th, and all day Tuesday the
16 21st, and all day Wednesday the 22nd, you and Mr. Darrow
17 were working together on this case? A Yes.

18 Q And you were in as close relations, so far as you know,
19 during those three days as you were during the time George
20 Behm was here, weren't you? A Yes, we always worked to-
21 gether.

22 Q And you didn't know that Mr. Darrow and Mr. Steffens on
23 Monday, Tuesday and Wednesday were talking about letting
24 J.B. plead guilty? A No.

25 Q Darrow didn't tell you that? A We did not.

26 Q I suppose you do not maintain that Mr. Darrow never met

1 George Behm except in your presence, do you? A I would
2 be very foolish to. I certainly do not.

3 Q Well, then, on Thursday you met Mr. Older and Mr. Steffens
4 and Mr. Parrow--by the way--I withdraw that question--what
5 time of the day was this on Wednesday you were up to my
6 office, do you remember? A Sometime in the afternoon.

7 Q After court, after 5? A Either before court began, or
8 2 o'clock or after that, sometime in the afternoon. I know
9 it was, it might have been there was an adjournment then--
10 we frequently took adjournments in that case when new
11 panels were sent for, but I couldn't say, but I know it
12 was sometime in the afternoon.

13 Q Are you sure that was not Thursday? A Absolutely
14 positive it was not. I would not say Wednesday nor
15 Thursday. I will say this: I am sure it was the day before
16 Mr. Older came here, I don't know the day of the week.

17 Q Are you sure it was not the day that Older came?

18 A It was not the day older came.

19 Q In the forenoon? A No, sir, it was not.

20 Q What is it that makes you sure? A Because I told them
21 that I had had the conversation on the day before.

22 Q And when was this conversation on Thursday that you had
23 with Mr. Older and Mr. Steffens, what time of the day?
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1 A I think it was about noon; it might have been either
2 a little before or a little after; probably a little after
3 noon.

4 Q Where was it? A I think that we came back from the
5 court room, we found Mr Older had arrived on the train
6 during the time we were in court.

7 Q Well, about noon? A After noon, I think it was, yes
8 sir.

9 Q Where was it? A It was up in Mr Darrow's office,
10 in the Higgins Block.

11 Q In the Higgins Building. And was there anybody present
12 except you, Steffens -- A When it began there was my-
13 self, Mr Darrow, Mr Steffens and Mr Older and Judge Mc
14 Nutt came in shortly afterwards.

15 Q Was Judge McNutt in there while you were talking about
16 J.B. pleading guilty? A Yes sir. He coincided with the
17 views of Mr Darrow and Mr Older, and I differed from him.

18 Q That is, you didn't want him to plead guilty? A Not
19 at that time.

20 Q And they were making no talk there among them about
21 anybody pleading guilty at that time, except J. B., is
22 that correct? A At that time they said that the proposi-
23 tion was satisfactory that J. B. plead guilty, and that J.J
24 go free, and that there should be no prosecutions.

25 Q Any further prosecutions of nobody? A Yes. When I
26 say that I was not willing for Mr J.B. to enter a plea of

1 guilty, I mean this: that for some time I had thought that
2 it was the best thing if he could save his life and enter
3 a plea of guilty, but I was not willing to enter a plea
4 of guilty, until there should be some conference with the
5 persons who were really employing us.

6 Q All right. Now, this is Wednesday or Thursday? A This
7 was the day Mr Older was here --

8 MR ROGERS: Wait a minute --

9 MR FREDERICKS: I thought the man was through; I waited
10 for a while. A Yes. When I am not I will call your at-
11 tention to it.

12 Q And Mr Steffens told you then that he understood the
13 prosecution was willing to permit J.R. alone to plead
14 guilty and dismiss the case? A That is what he said. He
15 said that the committee had assured him, and he had a lit-
16 tle piece of paper, and he said -- my understanding is, that
17 Mr Lissner had furnished him the paper.

18 Q And that is what he showed you? A That is what he
19 showed me.

20 Q Did he show it to you? A He showed it to Mr Older
21 and I saw it myself and read it.

22 Q That is what it provided for, as you said, J.R. should
23 plead guilty and receive any punishment except death,
24 and all other cases should be dismissed? A Something
25 like that. I have never seen it since.

26 Q That is what they maintained was agreed upon? A That

1 is what they said and what I said that you said would never
2 be accepted.

3 Q All right. Now, then, when was it you sent this tele-
4 gram to the representatives of organized labor, either to
5 Mr Nockels or Mr Gompers? A I never sent it. I didn't
6 see it before it was sent. I was told it was sent, and I
7 don't know when it was sent.

8 Q You are the one that insisted on its being sent there
9 that day? A I insisted that we know something more from
10 organized labor about it.

11 Q And there, that day? A I said we ought to that day.

12 Q And the telegram was sent at that day? A I don't know.

13 Q Well, didn't Mr Darrow tell you it was sent? A He
14 said he either had or was going to send a telegram; I don't
15 know which.

16 Q And at that time that telegram was sent there was no
17 talk on the part of Mr Darrow or Mr Steffens about any-
18 body pleading guilty, except J.B., is that correct? A There
19 was after what I said --

20 MR DARROW: Let us have that question.

21 THE COURT: Wait a minute.

22 A I will withdraw that.

23 (Last question read.)

24 MR FREDERICKS: I don't mean what you said, I mean on
25 their part.

26 MR DARROW: My objection to that question is, he says at

1 that time that telegram was sent. They had the tele-
2 gram, I take it. I think it was the day before, but I am
3 not sure, and Mr Davis is not sure; he has already said
4 he is not sure, and I object to the question in that
5 shape.

6 MR FREDERICKS: We think the telegram was sent the day
7 before, but --

8 MR DARROW: That is what I said, I do not want the wit-
9 ness misled.

10 THE COURT: I think he ought to be shown the telegram.
11 A I couldn't say if it was sent either after or before
12 they talked about this, I know what I talked about with
13 them.

14 MR FREDERICKS: Mr Darrow says that the telegram, what-
15 ever telegram was sent was sent the day before.

16 MR DARROW: I think it was, Mr Fredericks, but I wouldn't
17 be sure now. I think you know.

18 THE COURT: We have the telegram; let him look at it.

19 MR DARROW: I think they have the telegram.

20 MR FREDERICKS: I have not the telegram.

21 THE COURT: The telegram is in evidence.

22 MR FREDERICKS: No, that is the telegram to Lincoln
23 Steffens that is in evidence.

24 MR DARROW: We are speaking of another telegram to Mr
25 Gompers.

26 THE COURT: All right. I see.

1 MR FREDERICKS: We are speaking of a telegram to Mr Gom-
2 pers which I am asking this witness, Mr Davis, if that
3 telegram was not sent.

4 THE COURT: My impression was that telegram was in evi-
5 dence, but I recall now it was not.

6 MR FREDERICKS: If that telegram was not sent on his
7 demand and his insistence that Mr Gompers or someone in
8 authority should be notified that he had -- that they
9 were willing that J. B. should plead guilty, providing all
10 other cases should be dismissed, and at that time Mr.
11 Davis, I think the question is pending -- at that time the
12 talk between Mr Steffens and Mr Darrow and Mr Older was
13 that J. B. only was to plead guilty, wasn't it?

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Sp 1 A That was the talk until I spoke to them about what you
2 had said.

3 Q Then you told them that I had said they were both going
4 to plead guilty and they said "No, that is not it at all?"

5 A they said that was not the proposition.

6 Q They said that was not the proposition, so they maintained
7 still the same proposition, that there was only one of them
8 to plead guilty? A That was the understanding that the
9 committee had given them every assurance if one man would
10 plead guilty, then I told them I was satisfied both would
11 have to plead guilty and told them the number of years, and
12 they asked me what you mentioned and I said, "Mr. Fredericks
13 said that the court would have to fix it," and I said to
14 them at that time, "I am sure you never will get a plea "
15 in this case without John entering a plea of guilty to some-
16 thing and taking some sentence."

17 Q I understand that statement, but I do not think the jury
18 would understand it. Just read it again, Mr. Reporter.

19 (Last answer read.)

20 Q You mean you knew the prosecution would not do anything
21 in the matter of this case unless John should plead guilty
22 and take some sentence? A yes, I impressed that on their
23 minds and if they wanted to take the matter of compromise
24 up they might as well take that into consideration right
25 now.

26 Q Yes, but did Mr. parrow tell you that the day before that

1 while they were satisfied only J.B. was going to have to
2 plead guilty, they had already said to Mr. Compers to send
3 a man out here to consult about the matter? A I don't
4 know whether he said he had sent the telegram or was going
5 to send one.

6 Q I show you defendant's Exhibit W; this is a slip of
7 paper, or a similar slip of paper that Mr. Steffens showed
8 you that day--"Party on trial to plead guilty and receive
9 such sentence as the court may administer, except capital
10 punishment, all other prosecutions in connection with the
11 affair to be dropped." A That is my recollection of the
12 contents of the instrument. I could not positively iden-
13 tify that instrument.

14 Q Now, did you talk to them, to Mr. Darrow and Mr. Steffens
15 again that day? A Not that day.

16 Q Or Mr. Older? A No.

17 Q And did you talk to them or did you talk to Mr. Darrow
18 or Mr. Steffens the next day in regard to these pleas of
19 guilty, that would be Friday? A I think Mr. Steffens came
20 in either the next day or the day after that and said that
21 the committee said it would go through on the exact terms
22 that he had mentioned in that--that he had been promised
23 in that slip of paper.

24 Q I want to know how much of that you are sure of, Mr.
25 Davis? A I am sure one or the other of those days Mr.
26 Steffens came in and said that, that he had talked with the

1 committee and that they were satisfied, that he was satis-
2 fied and they had told him that it would go through.

3 Q Now, I want to talk about this committee a minute and
4 see whether there ever was any committee. Did you ever
5 meet with any committee in connection with this matter?

6 A You mean any of the committee that Mr. Steffens was --

7 Q Yes. A Never.

8 Q I don't mean a committee in relation to your own people,
9 the labor people. A No.

10 Q I mean the committee composed of Mr. Lissner, Tom
11 Gibbon and Harry Chandler or Mr. Slauson or any of those
12 those people. A I never met with the committee, nor
13 I never talked with any individual of the committee at any
14 time about it, either at that time or since that time.

15 Q Did you ever talk with anybody representing the prose-
16 cution in this action except the District Attorney?

17 A Never.

18 Q Do you of your own personal knowledge know that any one
19 else connected with the defense, and I will include Mr.
20 Steffens in that question, talked with anybody in regard
21 to this matter? A I don't know it except that they talked
22 with us.

23 Q Except what he said? A I say, I know they talked with
24 us about it, but as to whether they have talked to any of
25 this committee you have talked about, composed of Mr.
26 Lissner and those people, I don't know.

1 Q you know Mr. Steffens and Mr. parrow talked with you
2 about it? A Yes.

3 Q But you don't know whether there was any committee in
4 existence or whether they ever met any committee, of your
5 own knowledge? A From my own personal knowledge I cannot.

6 Q As a matter of fact, neither one of them ever repre-
7 sented to you that any one except Mr. Steffens had met any
8 committee? A No.

9 MR. APPEL. Your Honor, the word "committee" has got into
10 this, and I allowed it to go in. Mr. Davis here has given
11 indirect examination what Steffens said that a number of
12 gentlemen--now, nobody, as far as the witness himself is
13 concerned, he has not called it a committee except in the
14 sense they were a number of persons, that is a committee,
15 it had an understanding between them, or appointed by some
16 one--I suppose a committee is a number of persons consti-
17 tuted by a larger number to do something or constituted by
18 themselves to do something, but in the interest of someone
19 else, combined together to further some plan or scheme or
20 some proposition.

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1 I suppose that is meant by committee, but I object to the
 2 question of counsel on the other side, because he assumes
 3 that the witness here said, or has ever said, that there
 4 existed a committee. He has simply stated what Mr Steffens
 5 said, but the parties named, or however you may call them,
 6 had assured him of this, and he had said this was going
 7 on and the proposition would go through, but the witness
 8 himself here has never testified that there existed a com-
 9 mittee at all; he is assuming on that line of questions,
 10 and I simply do it out of precaution, so that his testi-
 11 mony may not be misunderstood.

12 MR FREDERICKS: We propose to show, your Honor, that there
 13 was never any committee meeting with Mr Steffens or any-
 14 body else in regard to this matter, until the night be-
 15 fore Thanksgiving, and that all this loose talk in which
 16 some of the witnesses have indulged about going down town
 17 and talking to committees is not true and is not correct,
 18 for there never was any committee. Now, that is what we
 19 propose to show, and that this witness on the stand, I wish
 20 to show that he knew of no such committee of his own knowl-
 21 edge, and then we will follow it by others.

22 MR APPEL: He cannot use this witness for the purpose of
 23 impeaching Mr Steffens as to his understanding of the case
 24 by showing that this witness had no knowledge of the ex-
 25 istence of the fact; you cannot put him on the stand and
 26 say, "Now, you don't know there was a committee of your

1 own knowledge." "No, I don't know." "In fact, you never
2 talked to any committee?" "No." And then use that want
3 of knowledge on the part of this witness to impeach the
4 testimony of Mr Steffens. Mr Steffens' testimony is
5 very clear upon the subject, Mr Steffens said with whom he
6 talked, and they suggested the calling of a number of per-
7 sons, and Mr Steffens has said, your Honor, that not until
8 after the plea of guilty was entered, there was a meeting
9 down there of representative men at which he met a number
10 of gentlemen; that a certain proposition was carried
11 through -- in regard to the collateral matter in reference
12 to the McNamara case --

13 THE COURT: just a moment, before you go away, Mr Petermich-
14 el. Read the question. (Last question read by the re-
15 porter.) I wanted to interrupt you for the purpose of
16 hearing the question.

17 MR APPEL: yes sir, as I say, he assumes that Mr Steffens
18 ever said to this witness that there was a committee.

19 MR FREDERICKS: I understood this witness to use that
20 language himself. A If I may explain what I meant by the
21 committee, was --

22 MR FREDERICKS: I don't care what the witness meant by
23 it, but what Steffens meant.

24 MR APPEL: He has a right to know what the witness meant.

25 THE COURT: I think the witness is right there. He used
26 the word "committee". He has a right to explain.

1 MR-FREDERICKS: No, your Honor, now listen a minute. That
2 is not the point at all. If this witness used the word
3 "committee" he has a right, of course, to explain what he
4 meant by committee, but I don't care what he meant by
5 "committee". I am after what Lincoln Steffens meant by
6 "committee". Now, he is supposed to be reciting here what
7 Lincoln Steffens told him.

8 THE COURT: yes. The witness has just now stated that he
9 used the word "committee" and desires to explain what he
10 meant by "committee".

11 MR FREDERICKS: But if Ma Steffens used the word "committee"
12 and this witness is reciting what Lincoln Steffens said,
13 his explanation won't help any -- oh, well, let him make
14 it.

15 MR APPEL: Whatever this witness meant by the word
16 "committee" would not explain or unexplain what Lincoln Stef
17 fens meant. I insist on his answering what he meant.

18 THE COURT: We have all agreed that the witness is to
19 explain what he meant by the word "committee". A When
20 I used the word "committee, I probably -- it was a number
21 of men who were working together for a common purpose. I
22 didn't know that they had ever been appointed by anybody,
23 or anything of the kind, but they all had one object in
24 view.

25 MR FREDERICKS: Don't you know, Mr Davis, that there
26 wasn't any number of men, that the only men that were con-

1 sulted by Mr Steffens in regard to this matter before
2 Franklin was arrested, was Mr Lissner and Mr Gibbon, and
3 through that they talked Mr Chandler and Mr Brant to me?

4 A Well, I didn't know with whom they talked, Captain.
5 He said -- my recollection there were three men at least
6 mentioned, Mr Earl, I know he mentioned Mr Lissner's name,
7 Mr Gibbon's name, Mr Earl's name, and I didn't understand
8 by him that he talked directly with Harry Chandler, but
9 that some of them had. Those four names were mentioned,
10 Harry Chandler, Earl, Lissner and Tom Gibbon.

11 Q Now, you understand the time we are talking about now,
12 is the time between Thursday, the 23rd, and the day that
13 Franklin was arrested? A That is my recollection.

14 Q That is the time I am asking you about? A Yes sir.

15 Q And come back to where we were -- I asked you if you had
16 ever talked to either Mr Steffens or Mr Darrow after Thurs-
17 day the 23rd, and you said that either Friday or Saturday,
18 Mr Steffens had said that he had seen his committee, and
19 they had agreed with his proposition, that J. B. alone
20 should be punished, was the one that was acceptable, and
21 would go through.

8s 1 MR. APPEL. Wait a moment. I object to that question on
2 the ground the counsel has again more forcibly put in
3 objectionable matter in that question.

4 MR. FREDERICKS. The use of the word committee?

5 MR. APPEL. No, he said Steffens had said "his committee".

6 MR. FREDERICKS. A committee.

7 THE COURT. The question is--

8 MR. APPEL. The question before was "his crowd". Now he
9 says "his committee."

10 THE COURT. The question is amended to say, "a committee."

11 A I wont state sure, but that is my recollection he said,
12 "a committee."

13 MR. FREDERICKS. I don't care which it was. A I can't
14 be absolutely positive as to one word.

15 Q I didn't intend to use the word, "his" in the sense
16 of ownership, but something to tie the words together with.
17 Now, that was Friday or Saturday? A Either Friday or
18 Saturday.

19 Q We have been discussing the matter now for 5 or 10 or
20 15 minutes, are you able to say now any clearer whether it
21 was Friday or Saturday? A No, my best impression would be
22 that it was the next day immediately afterwards.

23 Q That it was the next day? A-Be Friday. Well, then if it
24 was Friday did you see him saturday and discuss the ques-
25 tion of their pleading guilty? A I had no discussion about
26 it on saturday, probably the same thing was mentioned.

1 Q But you don't know Mr. Pavis, do you? A No.

2 Q Well, then, don't say it. Do you remember where you went
3 on Sunday or what you did? A I don't know where I went
4 nor what I did, now, but I know I was not at home until
5 in the evening, when Judge McNutt called up and the maid
6 gave me the message--had already given me the message just
7 as I came in.

8 Q Where did you meet Judge McNutt that Sunday night?

9 A At his house.

10 THE COURT. We will take a recess at this time. (Jury
11 admonished. Recess for 5 minutes.)

12 (After recess.)

13 THE COURT. Proceed, Gentlemen.

14 MR. FREDERICKS. Q Now, go back just a step. You say the
15 conversation that you had with Mr. Steffens either on Friday
16 or Saturday was as to the effect the people downtown or the
17 people representing the prosecution were going to come to
18 his terms and let J.B. plead guilty and let J.J. and the
19 others go. Now, you said it was just possible that you
20 may have had another conversation with Mr. Steffens: you
21 were not sure and I asked you not to relate it. If you did
22 have any other conversation with him, however, on Saturday,
23 it didn't change--it was not any different from the one
24 you have narrated? A Along the same lines.

25 Q That the prosecution was going to come or had agreed
26 to his terms? A That those men had assured him that the

1 matter would go through along the lines laid down in the
2 paper.

3 Q And that was the last talk you had with him? A That
4 was the last talk I had with him that week.

5 Q You didn't see Steffens on Sunday? A I did not.

6 Q Did you see Darrow on Sunday? A I did not.

7 Q Didn't see anybody in connection with the defense, then,
8 until Sunday night? A That is all.

9 Q When you saw Judge McNutt. A Judge McNutt.

10 Q And where did you see him? A At his home here in the
11 city, I think it is on--just off of Sixth street or on
12 Sixth, I wont be sure.

13 Q That is Judge McNutt that has been referred to at
14 several times as a member of counsel of defense, and who
15 has since died? A Yes, Judge Cyrus McNutt.

16 Q You answered, but it slipped my memory, where was the
17 meeting? A At his home.

18 Q Now, anybody present except you two? A His wife and
19 daughter were in the sitting room and we were in the
20 parlor.

21 Q Well, I mean anybody present in your conversation?

22 A No, sir.

23 Q What was the conversation? A He said to me that Mr.
24 Darrow and he and Mr. Steffens had had a talk with the boys
25 in the jail on that day and spent either the whole day or the
26 whole of the afternoon in jail talking with them in reference

1 to this matter, and that J. B. was perfectly willing to
2 plead guilty and take life, but that he was not willing that
3 J. J. should take a year or a day; that J. B.--that J.J.
4 they had talked to about the matter and told him exactly
5 what I had said with reference to your position in the
6 matter, and that J. J. had expressed a willingness to take
7 10 years, if it was necessary, but that J. B. would not
8 consent to that at all, and he wanted me to take up the
9 matter with you the next day. That was about the substance
10 of the conversation.

11 Q J J said that he was willing to plead guilty if those
12 interested in his end of the affair thought it wise and
13 proper, is that it? A That he was willing to take it if
14 it was necessary, and not to let you know it, to do the
15 best that I could to get him off entirely, according to the
16 original program.

17 Q And only--of course, he was only willing to plead
18 guilty on the condition, or he stated at that time that he
19 was only willing to plead guilty on the conditions that he
20 mentioned, is that correct?

21 MR. APPEL. No, wait a minute. I object to that question,
22 your Honor. There is no, "Of course" about it.

23 MR. FREDERICKS. I will eliminate the "of course."

24 MR. APPEL. The witness has stated what--

25 MR. FREDERICKS. I will eliminate "of course."

26 MR. APPEL. --Judge McNutt said.

1 MR. FREDERICKS. I withdraw the question. It is a fact,
2 is it, Mr. Davis, that Judge McNutt told you that J J
3 was only willing to plead guilty upon the conditions men-
4 tioned?

5 MR. APPEL. Now, wait a moment--we object to that because
6 the question is very indefinite, your Honor. Mr. Davis
7 has not stated any conditions in his answer.

8 MR. FREDERICKS. I will make it a little more definite:
9 On the conditions that he would get 10 years and no more.
10 A He stated it in the language that I have used, that J J
11 said he would plead guilty and take as much as 10 years.
12 There was a portion of that I omitted and that was that he
13 said that labor would be satisfied--that he could make a
14 showing to them, and a statement, and they needn't worry
15 about what labor would say about it.

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1 Q Now, you say you saw me again on Monday? A I saw you
2 again on Monday.

3 Q Up until you saw me on Monday, had you seen Mr Darrow
4 between the time you talked to Judge McNutt and the time
5 you talked to me? A I think, Captain, that I called you
6 up at your home Monday morning before you left; I wouldn't
7 be sure -- I wouldn't be absolutely positive about that,
8 but my recollection is that I did, and I saw you immediate-
9 ly after you got down town at your office that morning
10 before having seen Mr Darrow at all.

11 Q Well, now, you were trying at that time in your talk
12 with me to get me to accept a plea of guilty from J.B.,
13 and let J. J. go? A I was doing my very best.

14 Q Whatever efforts you made were made along that line?

15 A My efforts were to get you to let him go. If you
16 didn't let him go to get the very best terms I could.

17 Q Well, you would not -- A But I didn't intimate to
18 you --

19 Q -- come in to make a bargain with me and say that if
20 you won't let J. J. off, if you won't do that, we will do
21 the best we can? A No sir, I told you that I wanted to
22 get him off and tried to get him off.

23 Q J. J.? A Yes sir, and asked you, though, what
24 would be the least -- what you meant by a term of years, and
25 you said that the Judge would fix that. I said, "No, we
26 would never consent to the Judge fixing it; you must give

1 us some idea before I go and even talk with J.J. about it,
2 and then you gave any idea that ten years.

3 Q Well, you didn't intimate as broadly as that that
4 there was still a possibility of J. J. pleading guilty,
5 did you?

6 MR APPEL: I object to the question, now, because he is
7 asking for his conclusion and opinion, whether it was an
8 intimation or suggestion or any opinion, or even a hint,
9 that is not proper.

10 THE COURT: Yes, it is a matter of what was said.

11 MR FORD: This is cross-examination, now.

12 MR FREDERICKS: This is cross-examination, your Honor.

13 THE COURT: But this question calls for a conclusion of
14 the witness.

15 MR FREDERICKS: Well, all conclusions are not barred.

16 THE COURT: On a matter that is in the province of the
17 jury. Objection sustained.

18 MR FR EDERICKS: Well, Mr Davis, if you were trying to get
19 me to let J. J. off, you wouldn't intimate in the slightest
20 degree, that there was any use of talking about J. J.
21 pleading guilty, would you?

22 MR APPEL: Just a moment. We object to that because that
23 is argumentative, and calling for opinions and conclusions
24 of the witness, what he would do under one circumstance
25 or another, calling for mere possibilities.

26 THE COURT: Objection sustained.

1 MR FREDERICKS: Cross-examination.

2 THE COURT: I know it is.

3 MR FREDERICKS: Did the court rule.

4 THE COURT: yes sir, objection sustained.

5 MR FREDERICKS: Did you mention in the slightest, anything
6 about the possibility of J. J. pleading guilty? A I ask-
7 ed you what you meant by a term of years, and what --
8 and you said that the court would fix the term of years. I
9 said, "There would be no possibility -- be no use to talk
10 with him about it along that line". I said, "What do you
11 mean by a term of years?" And you said, "Ten years."
12 That is about the substance of it.

13 Q Now, didn't I say to you when you asked about this mat-
14 ter, that you were talking about J. B. altogether, and
15 wasn't the entire talk about whether J. B. would plead
16 guilty or not? A No, it was not, Captain. I was trying
17 to get J. J. off absolutely, if possible. I knew what he
18 was willing to take, and I didn't want to take it, nor
19 did I want him to take it, and it was my endeavor to get
20 him off, if possible; if not, to get ten years, if not to
21 get five years, or anything that I could, and get the
22 best intimation from you as to what you would do in the
23 matter.

24 Q And you didn't get it? A Except that you said you
25 would be willing for ten years.

26 Q Well, didn't I say that the judge would have to fix it?

1 A That is what you said at first, but if you will go
2 over it in your own mind, you will remember that I said
3 we would never plead guilty under an agreement of that kind.

4 Q Is that the first time -- A Because I said I don't
5 think it would make any difference.

6 Q That what would make any difference? A That the
7 Judge would make any difference in the sentence, that he
8 would give either one of them.

9 Q You mean that he would give them both life? A That
10 is what I thought. You had expressed the opinion many times
11 that J. J. was more guilty than J. B.

12 Q Because he was the brains of the organization?

13 A That is what you said.

14 Q That is the man -- all right. A However, I knew dif-
15 ferent.

16 Q Well, you may have known that the other brother was
17 the sharper, but you don't mean that you knew that J. J.
18 was not the secretary and direct^{ing} feature of the union --
19 the International Union, to which he belonged.

20 MR APPEL: We object to the discussion relative to brains
21 of the two men, as immaterial and not cross-examination.
22 Makes no difference which one thought or knew.

23 MR FREDERICKS: It was a voluntary statement of the witness.

24 THE COURT: yes, it might have been stricken out. Objec-
25 tion sustained.

26 MR FREDERICKS: All right. Now, that is the second conver-

1 sation that you had with me in regard to this matter; is
2 that correct, Mr Davis? A That is the second conver-
3 sation that I had with you in reference to it.

4 Q And that is the first time that I ever mentioned to
5 you any number of years? A That is the first time that
6 you ever mentioned any number of years.

7 Q And you say that the night before that, J. J. had men-
8 tioned that he would plead guilty if he would get that
9 same number of years?

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Op 1 A He said he was willing to plead guilty and take up to 10
2 years, when they told him it was my opinion from my talk
3 with you that he would have to take a number of years, and
4 they went over the matter with him, so they said, and he
5 said, "I would take up to 10 years".

6 Q And the 10 year matter, so far as you got the information
7 from Judge McNutt was the suggestion which came from
8 J J McNamara?

9 MR. APPEL- I object to that, your Honor, because he is
10 asking him for his opinion. The witness can say what
11 the circumstances were, if any one had told him that or
12 if from some other line those things came--

13 MR. FREDERICKS. I think counsel is correct if he insists
14 upon the rule. I will withdraw it. Q What did Judge
15 McNutt say that J J had told him about the number of years?

16 A He said that J J, when told that it was my opinion that
17 you would insist on him taking a sentence, discussed it
18 with them and said that he was willing to take a sentence
19 providing it was not more than 10 years.

20 Q And then, coming back to the conversation with me on
21 Monday morning following that, did the suggestion of 10
22 years come from me or from you? A It did not come from
23 me because I didn't let you know he was willing to take
24 anything.

25 Q Well, then, it came from me? A Yes, sir.

26 Q Just before that, however, I had said that the judge

1 would have to fix the penalty?

2 MR. APPEL. I object to that, because he has already stated
3 that, your Honor, time and time over.

4 THE COURT. Objection sustained.

5 MR. FREDERICKS. Now, when was the next time--that was
6 Monday the 27th of November, wasn't it? A It was the
7 day before the arrest of Mr. Franklin, Monday.

8 Q Yes. Did Mr. Darrow send you up there that morning?

9 A I came from Judge McNutt. I didn't see Mr. Darrow that
10 morning. My recollection is I telephoned to your house the
11 next morning as soon as I got up and asked you if I could
12 see you before court.

13 Q Did Judge McNutt tell you this, that what he told you
14 was coming from Mr. Darrow, or was he simply suggesting
15 that you come up and see me himself? A No, he said that
16 Mr. Darrow had requested him to tell me to take up the
17 matter of the adjustment with you on Monday and see if I
18 could not bring about the matter that Mr. Steffens--

19 Q All right.

20 MR. DARROW. Let him finish.

21 A --that Mr. Steffens had said was not satisfactory to the
22 others.

23 Q Then you went back after seeing me, you did report to Mr.
24 Darrow? A When I went back I reported. I don't know that
25 I went back before court. I think I went from your office
26 directly down to the court and at noon I reported to Mr.

1 Darrow, just exactly the conversation I had with you and
2 also to Judge McNutt and to Mr. Steffens.

3 Q And did Mr. Steffens and Mr. Darrow walk over and hold a
4 little private conversation there, because you didn't know
5 anything about this matter, and then did Mr. Darrow afterwards
6 come back to you and tell you to go ahead and get J J off,
7 that he never would plead guilty?

8 MR. APPEL. We object to the question, because it calls
9 for a conclusion of the witness, not cross-examination;
10 it calls for something that he wants the witness to appear
11 not to know, something--I don't know anything about--he
12 wants the witness to say there was something said between
13 two persons that he did not hear. That puts up the situation
14 before the witness, and the witness does not say he knows
15 anything about it, he says he reported this matter and I
16 suppose the only question is what Mr. Darrow and Mr. Steffens
17 said, if anything. That is not the idea, your Honor. The
18 witness can state what was said and he can state they were
19 sitting down or standing up or assume any position he wants,
20 he wants to have the whole picture presented to him and he
21 can ask him what sort of light there was in the room, but he
22 must not tell him he didn't know or he didn't hear, assuming
23 there was something between them that occurred there that
24 the witness has not said he knew anything about and not
25 testified to on direct examination, and not cross-
26 examination.

1 MR. FREDERICKS: This is a situation about which Mr.
2 Steffens testified that Mr. Davis had come down--

3 MR. APPEL: Now, to what Mr. Steffens testified--

4 MR. FREDERICKS --and didn't know anything about this and
5 didn't know J J or J B were going to plead guilty, and
6 that Steffens and Darrow went off and talked privately
7 about it and then came back, and I am asking this witness--
8 THE COURT. You cannot ask this witness if those other
9 gentlemen did certain things, because this witness did or
10 did not know.

11 MR. FREDERICKS. I am asking if he knows whether Darrow and
12 Steffens went off and talked privately together.

13 MR. ROGERS. That is not the question.

14 THE COURT. If that is the question that is another ques-
15 tion. The objection is sustained.

16 MR. DARROW. I would like to see the record on that.

17 MR. FREDERICKS. Q When you went down, where did you meet
18 Mr. Darrow that Monday noon and report this matter to him?

19 A We went from the court room directly to his office, I
20 think.

21 Q Was Mr. Steffens there when you got there, did he come
22 with you or did you meet him there? A My recollection is
23 he was waiting for us there.

24 Q He was waiting for you there? A Yes.

1 Q Now, then, after you told Mr Darrow what I had said,
2 did Mr Steffens and Mr Darrow go off and talk privately
3 out of your hearing for a little while? A I do not think
4 so; I have no recollection of any such conversation.

5 Q And then did Mr Darrow come back and tell you, "Well,
6 you go out and tell them J. J. will never plead guilty
7 and he never will plead guilty"? A No. What was said
8 at that time was: when I told exactly what you had said,
9 Mr Steffens says, "We have got a new -- I would like to
10 put this matter before you, that Mr Chandler will go direct
11 ly himself to Mr Fredericks and have a talk with him, that
12 it is the desire of General Otis that the matter be car-
13 ried through upon the same theory and along the same lines
14 that I have already suggested.", and I said, "Whatever you
15 do has got to be done quickly, because Captain Fredericks
16 says it has got to be done right away." You remember you
17 said whatever you had to do had to be done then, and then
18 there was a discussion came up as to whether it was for
19 political purposes or not, which I don't care to go into,
20 unless you do want it.

21 Q No. You mean political purposes of the city campaign?

22 A Yes, about the city campaign.

23 Q No. A But I impressed upon them whatever was to be
24 done with Mr Chandler or anybody else by you had to
25 be done quickly.

26 Q Yes, and that was the 27th of November? A Yes sir.

1 Q And whatever was to be done had to be done quickly?

2 A yes sir, it had to be done quickly, yes sir.

3 Q Well, did you see Bert Franklin up there that Monday
4 noon, the 27th of November? A I do not know; I do not
5 recollect.

6 Q Were you sent back by Mr Darrow to see me again after
7 that about this matter?

8 MR DARROW: You mean on that day?

9 Q I mean on Monday, the time that you had this conver-
10 sation before noon? A I did not go back to see you that
11 day. We had another talk that afternoon with Mr Steffens
12 as to whether Mr Chandler had seen you and he said that he
13 was to see you that afternoon, and I said, "Whatever is to
14 be done, we ought to take it up right away and do it tomor-
15 row", and so Mr Darrow told me to see the Judge, McNutt,
16 to go up there the next morning and make the arrangements
17 with you about it if this other matter didn't come through.

18 Q You didn't go up the next morning? A No, I did not.

19 Q About that? A I didn't come up the next morning at all
20 I was up there the next afternoon about the bail of Mr
21 Franklin.

22 Q Well, on Monday, the matter was left in considerable
23 doubt?

24 MR APPEL: Now, -- A Not to my mind.

25 MR APPEL: Wait a moment. We object to that as asking for
26 a conclusion of the witness.

1 THE COURT: yes. Objection sustained.

2 MR APPEL: The witness has said they told him to come --

3 THE COURT: Strike out the answer.

4 MR ROGERS:" Wait a moment. Will you be kind enough to
5 read the record. (Record read.)

6 THE COURR: The answer is stricken out, and the objection
7 is sustained.

8 MR APPEL: The answer stricken out and the objection is
9 sustained?

10 THE COURT: yes sir, the answer is stricken out and the
11 objection is sustained.

12 Q Monday were you still getting a jury down there in
13 that case -- were you not? A yes sir. My recollection
14 is we examined some jurors, the record would be the best
15 evidence, Captain.

16 Q yes. Tuesday, with the exceptions of the forenoon,
17 when there was another motion on, on account of the death
18 in the family of one of the jurors, were you still getting
19 a jury down there? A I don't remember, I think --

20 Q Tuesday afternoon? A I think Tuesday morning that
21 they were examining -- I know Tuesday morning they were
22 examining the panel, the venire that had been sent out and
23 brought in, because I went there myself.

24 Q And all day Wednesday, they were still getting a jury
25 down there? A I presume we were, but I have no definite
26 recollection, except -- I think they were proceeding with

1 the jury, selecting the jury.

2 Q Thursday was a holiday, Thanksgiving? A Yes sir,
3 Thursday was a holiday, yes sir.

4 Q Friday they plead guilty? A Friday afternoon they
5 plead guilty.

6 Q Wednesday, the night before Thanksgiving, another
7 venire was issued by the court, wasn't it? A I don't know

8 MR APPEL: We object to that now, as not cross-examination.
9 It is a matter of record and it would make no difference --

10 MR FREDERICKS: All right.

11 THE COURT: The objection is sustained. Strike out the
12 answer.

13 MR FORD: It is in the evidence already, and calling the
14 attention of the witness to the transactions on those days.

15 MR APPEL: That wouldn't make any difference.

16 MR FREDERICKS: I think the question is proper, and if I
17 would argue it to the court, the court would see the propriety
18 of it, and would leave it in, but I think the matter
19 is of no importance, and I would rather not take up the time
20 with it.

21 Q Now, you say Mr Franklin was the agent or employe of
22 the defense in the matter of investigating jurors? A He
23 was.

24 Q And that he made you, prior to the beginning of the
25 case, he made you a full report on the 1600 men, practically
26 cally? A He made a report on all that he could find, so

1 he told us, yes sir.

2 Q Which covered the 1600, either found or un-
found.

3 A It covered the 1600, yes sir.

4 Q I am not using the 1600 correctly, but approximately,

5 And you used those reports and supplemental reports he

6 brought you from time to time in examining the jurors,

7 did you, Mr Davis, in court? A At all times.

8 Q At all times? A Yes sir.

9 Q You found them to be reasonably correct, did you?

10 MR APPEL: ~~We object to that as immaterial, asking for a~~
11 ~~conclusion of the witness, and not cross-examination.~~

12 MR FREDERICKS: A state of mind.

13 MR APPEL: The state of mind of whom?

14 MR FREDERICKS: The state of mind of the witness.

15 MR APPEL: The state of mind of the witness has nothing
16 to do with the state of mind of the defendant here, absolute-
17 ly.

18 MR FREDERICKS: But, we are cross-examining this wit-
19 ness.

20 MR APPEL: No sir. We simply asked him -- we showed on
21 the side of the prosecution here, by Mr Franklin, that
22 the reports were made, several duplicates, and given to
23 the different attorneys, and we wanted to show espe-
24 cially, we asked him whether or not it was true that every
25 report he made concerning a juror, that he especially made
26 them to Mr Darrow, and to Mr Davis, and we wanted to show

1 that there was no difference in his reporting to Darrow
2 one thing and reporting to Davis another, but they were
3 consulted together concerning the same juror each time,
4 and that these two people consulted as to the jurors, as
5 to who should remain on the jury, or who should not; that
6 it was not a matter exclusively with Mr Darrow, but Mr
7 Davis was also consulted with reference to the matter,
8 and that Mr Franklin not only consulted with Mr Davis, but
9 he also got the same reports that Mr Darrow did, and we
10 want to show by that testimony, your Honor, that Mr Frank-
11 lin was not exclusively under the control of Mr Darrow,
12 that he did not have his exclusive confidence, that there
13 was no reasons to suppose he was acting in any other way
14 than the manner that he should be acting with reference
15 to one attorney, and also acting in the same manner with
16 reference to the other attorney, that is all there was to
17 it. As to the state of mind of the witness, that cuts no
18 figure. How does he know whether the report was correct,
19 MR FORD: This man has testified
or not? Not only to reports made by Franklin, but
20 he has also testified in regard to occurrences after the
21 28th, in regard to putting up bail money, in regard to con-
22 versations had with Mr Darrow, concerning Mr Franklin's
23 guilt or innocence, and some of those things are perhaps
24 based upon conversations and communications between Mr
25 Davis and Mr Franklin, as attorney and client, but also
26 some with regard to other matters coming within the wit-

1 ness' knowledge, and outside of those communications, now,
2 he has testified --

3 THE COURT: Do you propose to investigate the correctness
4 of Mr Franklin's reports on those 1600 jurors?

5 MR FREDERICKS: Certainly not.

6 MR FORD: We are going into the relations of this witness
7 and Mr Franklin.

8 THE COURT: You have asked him whether or not, generally,
9 those reports were or were not correct.

10 MR FORD: To show whether Mr Franklin was in good faith work-
11 ing for the defense. If this witness found Mr Franklin's
12 reports were not correct, that would be a point this jury
13 wants to know about.

14 MR DARROW: How are you going to know?

15 MR FORD: If the reports were not correct, that is a mat-
16 ter that the jury would want to know about.

17 MR APPEL: That is a matter entirely on the side of the
18 prosecution, and they cannot get, on the cross-examination
19 of our witness, any facts that ought to have been shown
20 on their case. It is not cross-examination and they cannot
21 ask him now, unless we go on, we would have a right to
22 show what he said to one juror and what he said to another,
23 and ask him whether this turned out to be true, and then
24 we would have a right to get the testimony of the jurors
25 when asked on examination, and compare with what Mr Frank-
26 lin reported, so as to show the jury whether it is correct

1 or not, that is the only way of doing it. He cannot come
2 upon the stand and say here, your Honor, whether or not all
3 the reports of Mr Franklin were correct or not. Your
4 Honor will remember that not all of the jurors were ex-
5 amined. Counsel himself says that there was about 1600
6 names, and yet the record here will show, and it is a mat-
7 ter of record in this court now, that not all of those jur-
8 ors were examined, probably 250 or 300 of those jurors were
9 examined. How can this witness determine now whether
10 every report made by Mr Franklin concerning 1600 men was
11 correct, because the answers of 250 of them confirmed the
12 report of Mr Franklin, how would he know even then?

13 MR FORD: I was addressing the court when I was interrupt-
14 ed by counsel. But, they have avowed their intention,
15 time after time, of showing that Mr Franklin was employed
16 by the prosecution in this case, or the National Erectors'
17 Association, or the Merchants & Manufacturers' Association,
18 or by some other organization other than the defense, or
19 the Burns Detective Agency; they have stated that was their
20 intention time and again; they have introduced this wit-
21 ness to testify to Franklin's relations to the case; if
22 they may limit or intend to limit it for one purpose, but
23 no matter what their purpose is, the witness has testified
24 with regard to Franklin's relations to this case. Now, here
25 is one of the attorneys for the defense assisting in the
26 defense of the McNamaras, coming into contact with Frank-

1 lin, and testifying with regard to Franklin's relations
2 to the case, and we certainly have a right to cross-
3 examine him relative and in regard to Franklin's rela-
4 tions to the case. We are not bound, upon cross-examina-
5 tion, to confine ourselves to the purposes which they
6 had in mind. We are bound, simply, to confine ourselves
7 to the subject matter that was introduced, and the sub-
8 ject matter here was the relation of Franklin to the de-
9 fense in that case, and we have a right to cross-examine
10 upon that whole subject matter. We are not bound by the
11 purposes they have in view, or the intentions with which
12 they introduce the evidence upon that matter; we have a
13 right to show that Mr Franklin made reports to the wit-
14 ness on the stand, because he has testified to that upon
15 direct examination. Now, we have a right to go fully into
16 the character of those reports, we have a right to cross-
17 examine him fully upon them to ascertain whether those
18 reports were in writing or made verbally to ascertain
19 whether they were made honestly and legitimately, and
20 for the purposes of the defense, whether they were done
21 with the intent to deceive the defense, because Franklin
22 was working for Burns' detective Agency or the Merchants &
23 Manufacturers or some other organization, that they have
24 promised time and time again they were going to show, had
25 control of these men -- which they have not, in my mind,
26 yet shown.

1 ~~MR APPEL: Now, your Honor --~~

2 MR FREDERICKS: Let us take a ruling.

3 MR APPEL: Your Honor, I have a right to reply --

4 MR FREDERICKS: Then, I am going to withdraw the question
5 I want to get through with this witness.

6 MR APPEL: That settles it, but we would like to answer
7 your demand.

8 THE COURT: The question is withdrawn.

9 MR FREDERICKS: All right, I will withdraw it. I want to
10 get through with this witness and let him go into court.

11 ~~THE COURT: Go ahead.~~

12 MR FREDERICKS: Mr Davis, you say you used the reports of
13 Mr Franklin as you were examining the jury? A Constantly.

14 Q Constantly. How long were we getting that jury?

15 Up until the time we quit? A Up until the time we quit.

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1 Q Well, from October 11 to the 29th of November? A Yes,
2 sir.

3 Q Six weeks or two months. You used those reports
4 of Franklin the first week? A We did.

5 Q And you used them just as diligently on the last week?

6 A Well, I don't know that we did the last day or two.

7 Q Well, the week before the last? A Yes.

8 MR. APPEL. Let him finish.

9 THE COURT. Is there an unfinished answer there?

10 A No.

11 MR. DARROW. You answer that question.

12 MR. APPEL. The last two days after the 27th.

13 MR. DARROW. Read that answer.

14 (Last answer read by the reporter.)

15 MR. FREDERICKS. Q About the last--you used--you relied
16 on them just as implicitly in November as you did in
17 October?

18 MR. APPEL. Wait a moment--the witness has not said anything
19 of the kind.

20 MR. FREDERICKS. Q Well, did you?

21 MR. APPEL. He said not the last day or two.

22 A No, I didn't say that, Mr. Appel. There was one of the
23 young men who gathered the evidence for Mr. Franklin
24 that we came to the conclusion probably didn't go and see
25 some jurors but took what the neighbors said, and we
26 didn't pay as much attention to his reports as we did--

1 but otherwise we gave them the same credence we had in the
2 beginning.

3 MR. FREDERICKS. Q And when Mr. Franklin was arrested on the
4 28th of November you became his attorney? A Yes, sir,
5 that is, associate attorney.

6 Q Well, you became one of his attorneys, I will put it
7 that way, and your answer is yes, sir. And you continued
8 to be one of his attorneys for how long? A I couldn't
9 tell you, but until after the plea of guilty was entered
10 in the first case or until the time of the plea of guilty,
11 is my recollection.

12 Q And this bail money that was put up, you put up for him
13 was \$10,000 in cash? A \$10,000 in cash.

14 Q In currency? A Yes, currency.

15 Q And Mr. Darrow furnished you that, is that correct?

16 A He gave me the check and I got the money.

17 Q Where was Mr. Darrow when he gave you that check? Was
18 he in the bank? A No, I don't know where he was; I think,
19 though, he was at his office.

20 Q Don't you recall, Mr. Davis, that that check was drawn
21 on a blank such as is kept in the office of the bank, one
22 of these tablets and it was not drawn on a check with a
23 perforated side such as Mr. Darrow had in his office?

24 MR. APPEL. Wait a moment--we object to that as the checks
25 are the best evidence. We object to any secondary evi-
26 dence. The checks are the best evidence.

1 A Well, I can answer it, Mr. Appel, in a minute.

2 MR. APPEL. There will be no question if the checks are
3 here.

4 MR. FREDERICKS. The photograph of it is here and has
5 been introduced in evidence.

6 THE COURT. Excepting only that the witness is evidently
7 in a hurry to get through for personal reasons.

8 MR. DARROW. I think Mr. Davis has got it in his head now,
9 Mr. Fredericks.

10 MR. FREDERICKS. But there is an objection.

11 MR. DARROW. Better withdraw it.

12 A I think I can answer it very much quicker.

13 MR. FREDERICKS. All right, I will ask it. Q Where was
14 that check drawn? A My recollection is that it was drawn
15 in his office and on a check that I presented myself, as
16 I always carry that kind of a check. I don't carry any
17 check book, I take just--here is one now off that same
18 bank, Security Savings Bank, that I always carry, go in the
19 bank and pick it up and put it in my pocket and carry it
20 away. Drawn on my check.

21 Q He had also an account in that bank? A He had also
22 an account in that bank.

23 Q And what time of the day was that? A It was somewhere
24 between 11 o'clock and the time I put up the bail which
25 was about 3 .

26 Q Mr. Darrow say anything to you about why he didn't want

1 to go up and go his bail himself? A No, he said nothing
2 about why he didn't want to go and go his bail himself.

3 Q Now, that morning you testified about Mrs. Franklin
4 coming down, and I think you said you met her over in Mr.
5 Franklin's office that morning, didn't you--well, I will
6 ask you? A About noon I met her in Mr. Franklin's own
7 office.

8 Q Isn't this what happened that morning in regard to
9 that: Didn't Mr. Darrow tell you that Mrs. Franklin had
10 'phoned to him, in the Higgins Building there, and in
11 regard to Mr. Franklin being in trouble, and that Mr. Darrow
12 had told her to go over to Governor Gage's office, and
13 that he, Mr. Darrow, would be right over there, and now didn't
14 you then go over there with Mr. Darrow to Governor Gage's
15 office and meet Mrs. Franklin there in Mr. Gage's office
16 that morning? A No, that is all wrong, Captain. When we
17 got to the office we received a message that Mrs. Franklin
18 had sent for one of the attorneys to come over and see her,
19 Mr. Darrow, or myself; I think she mentioned, and we were
20 getting ready to go and was sitting at the desk discussing
21 some matters when the telephone rang again and Mr. Darrow
22 picked it up and spoke as if he was speaking to Mrs. Frank-
23 lin, and said, "We will be over in a little while." And we
24 went, and that was to Mr. Franklin's office.

25 Q When did you first go to Governor Gage's office in
26 regard to that matter?

1 MR. ROGERS. That question, if your Honor please, is
2 ambiguous; "When did you?" You mean the witness or Mr.
3 Darrow?

4 MR. FREDERICKS. The witness.

5 A Mr. Darrow didn't go with me but I went to Mr. Gage's
6 office in the afternoon.

7 Q Of that same day? A That same day.

8 Q Anybody go with you? A Nobody at that time that I
9 remember of, I am positive.

10 Q Did you meet Joe Scott over there? A I did.

11 Q Was Franklin still in jail? A I won't be sure whether
12 I went to Mr. Gage's office after I saw Mr. Franklin at the
13 jail and before I got the bail for him or whether I saw
14 him after I got the bail for him and he was out. My pre-
15 sent recollection is that when I went to Governor Gage's
16 office the first time he was not there, and that I did not
17 see the Governor until Mr. Franklin got out, but I won't
18 be positive about that.

19 Q Well, then, the first time that you went over when Gover-
20 nor Gage was not there, at that time, at any rate, Mr.
21 Franklin was still in jail? A At the time I first went
22 over? I think so, I think that I went to his office as
23 I came back from the jail.

24 Q Didn't you go to his office before you went to the jail?

25 A No, I did not.

26 Q Mrs. Franklin went down to the jail with you, didn't she?

1 A I don't think so. I am trying to think but I don't
2 think she did. I am pretty positive she did not go.

3 Q Didn't you tell Mrs. Franklin there that day that
4 Governor Gage had already been retained to defend Franklin
5 but that he was an old fashioned lawyer and that he insisted
6 that she should also speak to him in regard to it? A I
7 did not, I never used any such expression in reference to
8 Governor Gage in my life and would be the last person to do
9 it.

10 Q Didn't you--I will split the question up. Didn't you
11 tell Mrs. Franklin that you had already--that Governor Gage
12 had already been retained, that she had better speak to him
13 about it? A Not until after I had seen Governor Gage and
14 spoke with him and possibly then I did, though I have no
15 recollection having said so to her then, but I know not
16 before I had seen the Governor.

17 Q Now, when was the first time that you had a conversation
18 with Mr. Darrow after you learned--I withdraw that. When did
19 you first learn that Franklin had been arrested?

20 A I first learned that Franklin had been arrested from some
21 newspaper reporter while I was sitting listening to the
22 examination of the jurors--the venire by Judge Bordwell.
23 He came in and tapped me on the shoulder and called me to
24 one side and he told me so.

25 Q That was in Judge Bordwell's court? A That was in
26 Judge Bordwell's court.

1 Q where were you that morning, Mr. Pavis, prior to that
2 time? A Prior to that time I had been up to your office,
3 came down from your office to where the jurors were
4 being examined--no, from your office I went directly to the
5 United States Court where the case of Fred Thompson was on
6 trial. Mr. Rush was defending him, and had had a sudden
7 stroke of illness and gone up to Mt Lowe and he had tele-
8 phoned me to go and see the court and ask if he could not
9 have a further continuance of a few days, that he was getting
10 better, and the case was to come up on this particular
11 morning, so I went over and called for the District Attorney
12 there and had a talk with him?

13 Q United States District Attorney? A United States
14 District Attorney's office and they consented, and Judge
15 Wellborn also that the matter might go over, and from
16 there I returned immediately to the court room where the
17 jurors were being examined.

18 Q You say you went up to the District Attorney's office
19 that morning, you mean-- A I went to your office.

20 Q Did you see anybody there? A I didn't see you because
21 you were not there. I don't know that I did--who I did
22 see.

23 Q Did you say I was not there? A Not when I was there.

24 Q What time were you there? A Oh, I suppose it must
25 have been about a quarter of nine or something like that.

26 Q Well, you were not into my private office? A No, I

1 just simply inquired at the place. I inquired for you.
2 I think I also inquired for Mr. Browne and neither one of
3 you were there.

4 Q What did you come up there for that morning? A That
5 morning I wanted to see you with reference to the matter
6 we had spoken about on Monday night.

7 Q What time did you leave home that morning? A Well, my
8 usual time, I suppose about 8 o'clock.

9 Q Where did you go from home? A I think I came directly--
10 I don't think I even stopped by my office to your place.

11 Q Right directly to my office? A I think so.

12 Q And you didn't see any one there or do any business with
13 any one there? A No.

14 Q Then where did you go? A I went directly from your
15 place down to the United States court, and there was nobody--
16 Mr. McCormick had not come in there, and they told me he
17 never got in there before half past nine or until quarter
18 to ten, and from there I came back up to Judge Bordwell's
19 court room for a minute and found that Mr. Horton was there,
20 and I asked him if while I was gone he would furnish me a
21 note of what he had taken about the witnesses, the ones
22 that were excused, and so forth, and I again went over to
23 the United States Attorney's office and came back after
24 that.

25 Q Did you use the telephone that morning at any time
26 prior to the time when you were notified of Franklin's

1 arrest? A My telephone?

2 Q Any telephone? A Not that I know of and I am pretty
3 positive I did not.

4 Q You spoke of a telephone message in regard to your case
5 over in the United States Court. That was from Mr. Rush,
6 was it? A Yes, that was a long distance 'phonemessage
7 that I had gotten the night before.

8 Q Did you use the telephone either to receive or to send
9 a message of any kind that morning? A That would be a
10 hard matter to say.

11 Q That you remember of? A Mr. Fredericks, but none that I
12 remember of.

13 Q If you did it was of some matters of such trivial import-
14 ance that it has escaped your attention? A Escaped my
15 attention.

16 Q Did you have any telephone or communications with Mr. Darrow
17 prior to the time when he came into the court room that
18 morning? A I did not.

19 Q I mean that morning. A I did not.

20 Q And how long was it after this newspaper man made this
21 statement to you before you saw Mr. Darrow? A Probably 5 or
22 10 or 15 minutes.

23 Q And you saw him there in the court room? A He was
24 there in the court room.

25 Q And he told you what had happened, did he, right then
26 and there? A He told me that Mr. Franklin had been arrested

1 at that time .

2 Q Well, did he tell you that he was down there on the
3 street and saw him arrested?
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1 MR APPEL: Wait a moment; this is not a cross-examination.
2 We object to that.

3 MR FORD: The witness has been examined to a period of
4 time running up to December 1st.

5 THE COURT: Objection overruled.

6 MR APPEL: We except.

7 A He told me he was there; he said he happened to be
8 coming from some place, and he walked over where the ar-
9 rest was made.

10 MR FREDERICKS: Did he tell you that he had followed the
11 officers on up and Franklin on up to the court house?

12 A He did not.

13 Q Did he tell you he had a talk with Browne that morning
14 down on the street? A He did not.

15 MR APPEL: This is not a cross-examination.

16 MR FREDERICKS: He appeared to be very much agitated at
17 that time, and exercised at that time, did he not, Mr Davis?

18 MR APPEL: This is not a cross-examination.

19 THE COURT: Overruled.

20 MR APPEL: Exception.

21 A About the same as I did, I presume. Anyone defending
22 a man when a matter of that kind appeared, would naturally
23 be excited, because of --

24 MR FREDERICKS: I am asking --

25 MR APPEL: Let him answer.

26 MR FORD: I move the answer be stricken out as not

1 responsive.

2 MR APPEL: Let him answer the question. We insist, and
3 let this jury hear it.

4 MR FREDERICKS: I want them to hear it.

5 THE COURT: Finish your answer.

6 MR FORD: If the court will pardon me, the answer has
7 gone far enough. It is argumentative, and a conclusion
8 of the witness, and not responsive to the question.

9 THE COURT: I don't think so. I heard the answer. Go ahead,
10 finish your answer.

11 A he exhibited the same degree of solicitude about it.

12 MR FREDERICKS: But you don't answer the question.

13 MR APPEL: Now, your Honor, let him answer the question.

14 A That I did.

15 MR FREDERICKS: Did you exhibit any? A I presume I did.
16 I felt it if I didn't exhibit it.

17 Q Well, that is what I want to show, that he exhibited
18 it the same as you did doesn't mean anything to this jury.

19 A Because I knew the effect it would have upon the case.

20 Q Certainly; yes. Then he did appear agitated? A To
21 the extent that I have said.

22 THE COURT: Captain Fredericks, how long will it take you
23 to finish this cross-examination?

24 MR FREDERICKS: I am willing to string along for a half an
25 hour and see if we can make it.

26 THE COURT: The difficulty is the insane court is waiting

1 for me over at the county hospital. If it is going to
2 take / ^{that} length of time it will have to go over until this
3 afternoon.

4 MR FREDERICKS: I guess it will. Might finish it in half
5 an hour. (Discussion.)

6 THE COURT: We will take a recess until 2 o'clock.

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