

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. 73

I N D E X.

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

Clarence S Darrow

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1s 1 AFTERNOON SESSION. July 30, 1912; 2 PM.

2 THE COURT. The gentlemen and the jury are all present  
3 and you may proceed.  
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5 C L A R E N C E S. D A R R O W,

6 on the stand for further direct examination:

7 MR. ROGERS. Q Mr. Darrow, referring to your conversation  
8 with Mr. Harrington, I call your attention to Mr. Harring-  
9 ton's relation of the alleged conversation in which he  
10 quoted you as saying that you had seen Schmidtie at Chicago;  
11 that he had come to your house, and you remember the con-  
12 versation, do you? A I do.

13 Q After the Times disaster. Did you ever tell him any such  
14 thing as that? A I never told him any such thing in my  
15 life.

16 Q Well, did Schmidtie come to your house in Chicago?

17 A He was never in my house. I wouldn't know him from any  
18 stranger that I never had seen. I did tell him something  
19 from which he might imagine it.

20 Q What was that? A I told Mr. Harrington on one occasion  
21 that somebody had told me that he once was a witness in a  
22 case I tried.

23 Q That Schmidtie was once a witness? A I have been so  
24 told, but I have no more recollection of it than I have of  
25 any childhood occurrence. I never saw him that I know of.

26 Q Mr. Franklin in his testimony quoted you as hearing a  
conversation in which he spoke of Captain White or Cap.

1 White, whatever title he may have, or a man named C. E.  
2 White. As a matter of fact, did you ever hear or know  
3 C. E. White from any source whatever, or Captain White, or  
4 by whatever name he may be known, prior to the commence-  
5 ment of this case or prior to the preliminary examination  
6 of Franklin? A I never heard his name mentioned until  
7 after Franklin's arrest, then, of course, it was published  
8 in the papers. Up to that time I never knew there was such  
9 a person.

10 Q Well, did Mr. Franklin ever mention him to you?

11 A Never.

12 Q Mr. Harrington, speaking of the Lockwood matter, Mr. Harring-  
13 ton said in his testimony that after the arrest of Franklin  
14 you called him into your office and that you appeared  
15 nervous and that you--that he asked you if Franklin could  
16 involve you in the matter in anyway, and that you said,  
17 "Yes, my God, if he speaks I am ruined." Now, did any  
18 such thing as that ever happen in the world? A No such  
19 thing ever happened.

20 Q Do you remember that Harrington came into your office  
21 that day at all? A I have no recollection on the subject.  
22 He might have come but if he did he never heard any such  
23 statement from me, for I never made it and it doesn't sound  
24 like me.

25 Q Did you have any conversation like that, or that in sub-  
26 stance, or words to that effect, or anything of that sort?

1 A nothing from which any such thing could be inferred.

2 Q On looking over the record, I am going to ask you one  
3 more question about that conversation or alleged conversa-  
4 tion out on your porch with Mr. Harrington. A Yes.

5 Q I will ask you if you ever held up a parcel of bills or a  
6 bunch of currency or anything so that Harrington could see  
7 it and say anything to him about the currency or any money  
8 at that conversation, or anything from which the conversa-  
9 tion he attempted to relate could be inferred? A I did  
10 not.

11 Q Did you have any such bunch of money? A I did not.

12 Q Did you tell him that you got any bunch of money or any  
13 piece of money or any amount of money from C. A. Tveitmo's  
14 bank, or anything else of that kind or nature or char-  
15 acter? A I never made any such statement to him.

16 Q I call your attention, now that I am on the Lockwood mat-  
17 ter, to your motive or lack of motive, rather, for attempting  
18 to bribe any juror. Now, I call your attention to the fact  
19 that Franklin was arrested on the 28th for an attempt to  
20 bribe Lockwood on that day. In a general way I call your  
21 attention to the subject and ask you if at that time you had  
22 any expectation or belief that the case of the McNamara  
23 Brothers would be tried by any jury that was being impaneled  
24 at that time, on which this juror, alleged to be bribed,  
25 might sit? A I was very confident it would not be tried.

26 Q Now, in your own way, Mr. Jarrow, tell this jury

1 tell this jury why you believed it would not be tried; why  
2 you didn't have any necessity, even if so minded, to bribe  
3 any juror whatsoever?

p 4 MR. FREDERICKS We do not wish to make too many objections,  
5 but if the witness, in making that answer to that will  
6 relate conversations with some degree of particularity, and  
7 state with whom they were.

8 THE WITNESS. Mr. Fredericks, would you let me make a sug-  
9 gession first to Mr. Rogers?

10 MR. FREDERICKS. Yes.

11 THE WITNESS. About another order for this.

12 MR. FREDERICKS. Yes.

13 THE WITNESS. Will you excuse me, your Honor.

14 THE COURT. Go ahead.

15 MR. ROGERS. I do not want to conclude the Lockwood matter  
16 without Mr. Darrow's explaining why--

17 THE COURT. For the present your other question is with-  
18 drawn?

19 MR. ROGERS. No, sir.

20 THE WITNESS. No.

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1 MR FORD: We object to it, being too general and not di-  
2 rected to some specific subject. The law presumes the  
3 answers will be elicited by questions so that the oppo-  
4 site side may know to what subject matter the witness'  
5 attention is being directed; if they could ask a general  
6 question of this character, they might as well put the de-  
7 fendant on the stand and say, "Are you guilty of this  
8 charge? No. Tell the jury why you are not guilty," and  
9 let him testify to everything. Now, they come down a  
10 little narrower than that; they say, "At that time did  
11 you have any motive for bribing juror Lockwood. No.  
12 Tell the jury why." It is not the evidence itself, but  
13 the question to which we object, and I think we are en-  
14 titled, if the witness desires to tell why he didn't  
15 have a motive for bribing Mr Lockwood, let them ask him,  
16 if such and such a thing was done, if such and such had  
17 such and such a conversation, and let them ask for the  
18 facts question by question and save us interrupting.  
19 Now, the question of this sort will necessarily be a very  
20 long answer, I gather from the testimony of witnesses who  
21 have preceded this witness to the stand, and this witness,  
22 even though he be the defendant, and I do not want to  
23 interrupt his narrative right along with objections,  
24 and therefore, we object to this question as being too  
25 general, indefinite, irrelevant, immaterial, incompetent.

26 MR ROGERS: If your Honor please, the defendant, while a  
witness, is still the defendant; he has a right of say-

1 ing to the jury that he did not do a certain thing and he  
2 has the right to indicate his state of mind at the time,  
3 as your Honor very wisely observed at the time the mat-  
4 ter was brought before your Honor by other witnesses; we  
5 were getting at a state of mind of the defendant. Now, I  
6 have asked him if he ever knew anything about the Lock-  
7 wood matter, if he ever gave Franklin any money for that  
8 purpose, of bribing Lockwood, if he ever knew that they  
9 were to have a meeting down there at Third and Los Angeles--  
10 although I have not asked him that question in so many  
11 words -- but I have merely asked him if he knew anything  
12 about it, if he had anything to do with it, and in answer-  
13 ing here, he has said he did not. Now, he, being the de-  
14 fendant, has a right to say to this jury what his condi-  
15 tion of mind was at the time. I do not need to put that  
16 into a dozen questions, if your Honor please, I merely  
17 am asking him what his state of mind was to show immediately  
18 following his consideration of the Lockwood matter, to show  
19 that he didn't have any reason or any motive of that kind,  
20 believing that the proceedings initiated on the 20th would  
21 eventually result in a plea of guilty, that he did not  
22 have any motive whatsoever, he, knowing the proceedings and  
23 Franklin not knowing them, other persons not knowing them.

24 THE COURT: The only objection here is as to the form of  
25 the question, and the court cannot anticipate what objec-  
26 tions counsel for the prosecution may desire to put in.

1 I think, under the ~~circumstances~~, ~~counsel should direct~~  
2 the attention of the witness to certain places where he  
3 wants him to begin, and let him start from, and asking him  
4 what followed, and give them a chance to object if they  
5 desire. It is merely a matter of form.

6 MR ROGERS: Very well; it is merely a matter of form.

7 THE COURT: But it is the duty of the court to preserve  
8 the rights of the prosecution to interpose proper objec-  
9 tions if they so desire.

10 MR ROGERS: I will withdraw the question, under your Hon-  
11 or's suggestion.

12 THE COURT: And I think it will save unnecessary interrup-  
13 tion.

14 ~~MR ROGERS: Very well.~~

15 Q Mr Darrow, you have spoken of not knowing anything  
16 whatsoever of the attempt to pass any money to Lockwood,  
17 of Franklin's attempting to bribe Lockwood, and not know-  
18 ing anything about Lockwood himself, or White. Now, I will  
19 ask you, pursuant to that, with respect to any lack of  
20 motive that may have existed at that time, whether or not  
21 at that time you believed that any juror that was called into  
22 that case, or was impaneled in that case, Lockwood among  
23 them, or Bain among them, or anybody else among them,  
24 would ever be called on to determine the issue in that  
25 case?

26 MR FORD: We object to that on the ground that the question  
has already been asked in substance, and the witness has



1 answered that he was confident that the jury would not  
2 try that case; it would be settled.

3 MR ROGERS: Very well, with that concession, you may ex-  
4 plain --

5 MR FORD: It is not a concession --

6 MR ROGERS: That answer, if you desire to do so, and say  
7 why you believed thus.

8 MR FREDERICKS: As I stated before, if the witness will  
9 confine himself to the statements of facts.

10 MR FORD: It might be calling for self-serving declara-  
11 tions. We object to it on the ground we objected before,  
12 it is too general and indefinite; might call for self-serv-  
13 ing declarations, and a number of other objectionable  
14 things, and that it is incompetent, irrelevant and imma-  
15 terial, and section 2044 provides --

16 THE COURT: Objection sustained.

17 MR ROGERS: Does your Honor mean to say I cannot ask him  
18 to explain his answer.

19 THE COURT: No sir, I don't mean to say that.

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1 MR. ROGERS. Q Explain the last answer you gave.

2 THE COURT. But Mr. Rogers, I mean to say you cannot ask a  
3 question that will call for a long historical recitation, as  
4 this obviously will, except by question and answer, giving  
5 to the prosecution a proper time to interpose objections,  
6 without feeling forced, as they might, to interrupt the witness  
7 in the middle of a sentence; that is the thing I desire to  
8 avoid. You have a perfect right to start this witness out  
9 in the narration of those negotiations in any way you see fit,  
10 and ask him to recite those instances from time to time by  
11 simply asking him what followed from one to another. That  
12 gives counsel a chance to interpose the objection, and pre-  
13 vents the interruptions that the court desires to avoid.

14 MR. ROGERS. I take an exception to the ruling. I will not  
15 ask any more questions on the subject. You can stand on that  
16 ruling if you want to.

17 Q I call your attention to the matter of Diekelman, Mr.  
18 Darrow, and I will ask you what was the first time that you  
19 knew anything or heard anything about Diekelman? A Well,  
20 I remember the name Diekelman. I don't recall just when  
21 this incident happened, but I can tell you the incident.

22 Q Go ahead. A One day a man came to my office who told me  
23 he lived in the house with his sister where a Burns detective  
24 and his wife lived; that he had learned through telegrams  
25 and otherwise where this Burns detective was and that he wired  
26 his wife to come to Albuquerque New Mexico, --that is, the

1 detective's wife, I mean. And that this man, whose name  
2 I cannot recall, but who was a Burns man, had a man by the  
3 name of Diekelman, who had been a clerk in one of the Los  
4 Angeles hotels, hiding him out at Albuquerque, New Mexico.  
5 I already knew the name of Diekelman as being one who  
6 we, at least, wanted to interview, and find out if he knew  
7 anything about this case--that case, of course. Well,  
8 while the conversation was on Mr. Davis came in, as he was  
9 with me most of the time during the progress of the trial  
10 and the events preceding it, and we went over the subject.  
11 We asked Mrs. Darrow's brother, who was then working with us,  
12 to go to Albuquerque, New Mexico in company with someone  
13 else, to interview Diekelman and get him away from the Burns  
14 man, to take him to Chicago or some other safe place, where  
15 we could get him if we needed him, and to pay his expenses;  
16 and he started. The next I heard of that was newspaper ac  
17 counts and what purported to be newspaper interviews that  
18 Mr. Fredericks was going to arrest my brother-in-law upon his  
19 return, for having tampered with the witness in ~~the~~ <sup>the</sup>  
20 Albuquerque. We had enough on our hands already and I  
21 advised him, that is, my brother-in-law, to stay away  
22 until Mr. Fredericks had a chance to read the statutes, or  
23 something of that sort, and forget it.

24 Q Well, as a matter of fact, the first time you heard of  
25 Diekelman he was out of the state, wasn't he? A He was,  
26 had never been subpoenaed in the case by anybody, and we

1 had the same right to take him to Chicago that they had to  
2 take him to Albuquerque.

3 Q Did you have any idea of suppressing his testimony or  
4 getting him in Chicago and hiding him? A He was sent  
5 to the biggest restaurant there, and we had no idea of  
6 hiding him or letting them hide him. A short time after my  
7 brother-in-law returned and stayed with me until the end  
8 of the case and he was not arrested yet.

9 Q Well, did you ever tell Harrington at any time or place  
10 or under any circumstances that you had had Hammerstrom,  
11 that is, your brother-in-law, go to Albuquerque and take  
12 Diekelman to Chicago, so as to get him away, so that he  
13 could not be a witness for the state or anything of that  
14 kind? A Something of that kind but not that.

15 Q What was it? A I told him the facts; that we had--  
16 he knew the facts all the while too;--I will add that--  
17 that we had Mr. Hammerstrom go to Albuquerque to get this  
18 witness away from the Burns agency, who was then hiding  
19 him out, and take him to Chicago, so we could use him if we  
20 needed him.

21 Q Had you been informed then as to what, perchance, he  
22 might testify to if called as a witness? A We had heard  
23 that he was a clerk in a hotel and did not identify  
24 J B McNamara as J B Price. I was not sure. I had  
25 never seen him or none of us had ever seen him--we proposed  
26 to see him.

1 Q When he went to Chicago, so far as your information  
2 went, was he hidden out or as a matter of fact was he taken  
3 to one of the most prominent hotels in Chicago--one of the  
4 best known hotels there? A He was taken to a hotel that  
5 is probably on a street the corner of which more people  
6 pass than any other in Chicago.

7 MR. FORD. Just a moment as to what occurred back there, as  
8 far as this witness is concerned, would be hearsay.

9 MR. ROGERS. No, it is not hearsay. They are trying to --

10 MR. FORD. Pardon me.

11 MR. ROGERS. You are not on your feet.

12 MR. FORD. The court said we need not be on our feet, at  
13 one stage of the case. We object to the question as in-  
14 competent, irrelevant and immaterial. The witness was not  
15 back there, and an answer what happened back there in Chi-  
16 cago must be hearsay, as far as this witness is concerned.

17 MR. ROGERS. I didn't ask for that. I asked for what he  
18 understood. It is his state of mind.

19 THE COURT. Objection overruled.

20 MR. ROGERS. Answer the question.

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1 A I heard Dickelman testify that he stopped at the Morri-  
2 son House; it is on the corner of Clark and Madison. I  
3 guess more people pass there every day than any other cor-  
4 ner. It is not the best hotel, however, but the prosecu-  
5 tion and the Burns people knew where he was from the mo-  
6 ment he left -- very soon after he left Albuquerque, and  
7 they got him.

8 Q Did you have any intention of hiding him out, or depriv-  
9 ing the trial of him as a witness?

10 MR FREDERICKS: We object to that as calling for a conclu-  
11 sion of the witness.

12 MR ROGERS: It is his intention.

13 MR FREDERICKS:" The facts should speak for themselves,  
14 whether a man has guilty knowledge, is for the jury to de-  
15 termine from the facts testified to.

16 MR ROGERS: But the defendant may always testify to what  
17 his intention was.

18 MR FREDERICKS: I doubt it.

19 THE COURT: Objection overruled.

20 A No, I had the intention of getting him away from those  
21 people and using him if I could, and he was given money to  
22 come back if I could not.

23 Q By "those people" whom do you mean? A I mean the  
24 Burns people, especially. Might refer a little more res-  
25 pectfully to the District Attorney's office, but the Dis-  
26 trict Attorney, too.

1 Q I call your attention now, to the matter of Biddinger.  
2 D<sup>o</sup> you know a man named Guy Biddinger, of Chicago? A I  
3 know a Guy Biddinger; I wouldn't say I knew a man by that  
4 name.

5 Q When you first saw him or knew of him, where was he?

6 A I had heard his name in Chicago before I ever saw him.

7 Q In what regard.

8 MR FORD: Let's see that last answer. (Last answer  
9 and question read by the reporter.) Object to that as  
10 hearsay, incompetent, irrelevant and immaterial.

11 MR FREDERICKS: Can't prove reputation that way.

12 MR ROGERS: Not proving reputation.

13 THE COURT: Objection sustained.

14 MR ROGERS: Exception.

15 Q You say you had heard of him in Chicago. What do you  
16 mean by that answer?

17 MR FORD: Objected to as being English and self-explana-  
18 tory; incompetent, irrelevant and immaterial. This wit-  
19 ness is presumed to mean what he says.

20 THE COURT: Objection sustained.

21 MR ROGERS: Exception. Well, when you first met Bidding-  
22 er where was he? A In my office.

23 Q Where? A In the Ashland Block, in Chicago.

24 Q Relate the circumstances of the occasion, what hap-  
25 pened.

26 MR FORD: Objected to upon the ground the foundation as to

1 time is not laid; persons present.

2 MR ROGERS:" The question calls for it.

3 MR FORD: We object to that portion of it which calls for  
4 the substance of it until the time and place is laid.

5 MR ROGERS: This is the defendant, and not an impeaching  
6 witness.

7 MR FORD: A witness, just the same.

8 MR ROGERS: He is not an impeaching witness. He is the  
9 defendant. They are violating every rule of examination  
10 known to the law in the examination of this defendant. We  
11 have a right to explain everything, how it happened, the cir-  
12 cumstances and what this witness' view was, relate what hap-  
13 pened and all about it, if your Honor please.

14 MR FREDERICKS: We might have no objection if we only  
15 knew what time it was.

16 THE COURT: All that is disclosed by the question, it  
17 might have been 20 years ago.

18 MR ROGERS: On the contrary, I am not sufficiently foolish  
19 to ask anything that happened 20 years ago. I refer par-  
20 ticularly to the circumstance of his meeting Biddinger  
21 with respect to this case; the witness knows it; counsel  
22 knows it and everybody knows it.

23 MR FREDERICKS: We didn't know it, because we didn't know  
24 whether they had met before. If it is the first meeting  
25 in regard to this case, we have no objection.

26 MR ROGERS: That is exactly what I mean.



1 THE COURT: The time is now sufficiently fixed.

2 MR FORD: If the court please, there might be an entire  
3 difference or conflict of opinions between witnesses, as  
4 to the dates, and they will be so far apart as evidently not  
5 to refer --

6 THE COURT: I think when this is confined to the first meet-  
7 ing in connection with this case, that that calls for an  
8 answer fixing the date.

9 MR ROGERS: I might, as a matter of fact, go back 20 years,  
10 and ask him when he first met him, as far as that is con-  
11 cerned, and have an absolute right so to do, and the ex-  
12 tent of his friendship and all about it.

13 THE COURT: You have that right to ask that question.

14 MR ROGERS: My question was expressly directed to that.

15 THE COURT: Anyone would have the right to know what time  
16 that was, and make their objection substantially. As the  
17 question now stands, it may be answered.

18 MR FORD: If the court please, Mr Biddinger testified the  
19 first time he met Mr Darrow was at the Union restaurant  
20 on June 5th, and that three days later, about June 8th  
21 or 9th, that he had met Mr Darrow at Mr Darrow's office.  
22 Now, there are two different occasions.

23 THE COURT: You can cross-examine him about that.

24 MR FORD: Well, as I understand the testimony Mr Darrow has  
25 stated here that the first time he ever met Biddinger was  
26 at his office, and consequently, from that I --

1 MR ROGERS: Possibly Biddinger lied.

2 MR FORD: -- I would presume that he claimed that Bidd-  
3 inger is lying, and that he didn't meet him on June 5th.  
4 Now, in order that we may match the testimony together and  
5 see what is denied, we are entitled to the date. Counsel  
6 has a right to go back 20 years, if he wants to, but he  
7 must fix that date.

8 THE COURT: I think this question as now framed calls for  
9 an answer fixing that day, when did you first meet Mr  
10 Biddinger in connection with this case.

11 MR FREDERICKS: If that is the question --

12 THE COURT: That is the question, is it not, Mr Rogers?

13 MR ROGERS: No sir.

14 THE COURT: Let's have the question. That is the way I  
15 understood it. Read the question. (Last question read by  
16 the reporter.)

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5 1 MR. ROGERS. Relate the circumstances of the occasion of the  
2 first meeting with Biddinger.

3 MR. FORD. Objected to upon the ground no foundation as to  
4 time.

5 THE COURT. Objection overruled. Answer the question.

6 A There is a possibility that I might be mistaken. There  
7 were two meetings, one at my office, and the other next  
8 door at the Union Restaurant. I think my office was first.  
9 Barely possible the other was first. It was about the first  
10 of June, there came a man named Turner, whom I had known,  
11 belonging to a detective association in Chicago. He had  
12 done some work for me in Idaho and on various other cases.

13 MR. FREDERICKS. That is Turner?

14 A Turner. Whether Turner saw me before he brought Biddinger  
15 I don't know, but he brought Biddinger. Biddinger told me  
16 that he was working for Burns and very close to him; that  
17 he wanted to furnish me information and get some money for it.

18 MR. ROGERS. Q Information about what? A He wanted to  
19 furnish me information about our case and the people connected  
20 with the organization with whom Burns--who were giving infor-  
21 mation to Burns. Knowing he was a detective I had no doubt  
22 but what he would be glad to make some money. I asked him  
23 what he knew. He told me that a number of members of the  
24 International of Bridge and Structural Iron Workers were on  
25 Mr. Burns pay roll and reported to him regularly and that  
26 he could get me their names; he told me that Burns had men  
everywhere connected with this case; he told me that Burns

1 had men on the Pacific Coast whom we trusted and who were  
2 connected with the Burns agency, still drawing money from us.  
3 I told him that I would be glad to pay him for any informa-  
4 tion he would give me and I told him, in my absence, he  
5 could report any information about such matters to Turner  
6 and told Turner where he could write to me. He promised  
7 to make reports. I didn't hear from him for sometime, I gave  
8 him no money, I told him as the work developed if it amounted  
9 to anything I would. He said when he came here he was  
10 going to have an office next to Burns and he would keep me  
11 posted about our men who were in the confidence of Burns.

12 Q That is, traitors to your camp? A Yes, and he probably  
13 said he would give me other information from Burns's office;  
14 he told me nothing about the matters he related here in  
15 reference to J. B. McNamara but he told me what I have  
16 related; The next time I saw him, I saw him in Los Angeles,  
17 I think a letter or two and perhaps a telegram or two passed  
18 between Turner and myself in reference to his coming, or what  
19 he had, and in reference to a request for money which, to the  
20 best of my remembrance I an<sup>swered</sup> by what he had first. The  
21 next time I saw him I saw him in Los Angeles and I think he  
22 called me up at my house by telephone, but I might be wrong  
23 about that. Anyway, I saw him at the Alexandria Hotel and  
24 he told me again that Mr. Burns was getting all kinds of  
25 information in the central office at Indianapolis, which we  
26 had before suspected, and that he was getting information on

1 this coast, and especially from Clancy, who was a member  
2 of the executive board.

3 Q Executive board of what? A International organization  
4 of Bridge and Structural Iron Workers; he told me also that  
5 he had men in my own office; I already knew he had one;  
6 I had received from the Burns office, through a man I had  
7 there, a report from my office from their man in my office,  
8 so I knew that.

9 Q That is to say, a man in your office had been shipping  
10 reports over to Burns agency and you were getting them back?

11 A I got them back and got them yet, so I knew that much.

12 Q Pardon me, a case of dog eat dog? A I don't know. I  
13 was trying to eat one, anyhow, I don't know how it came out.

14 Q Go ahead. A I knew that detectives were in every labor  
15 organization in the country and Guy Biddinger said he would  
16 give me specific information and that he was going to San  
17 Francisco within a day or two and he would put me in touch  
18 so I could find out if Mr. Clancy was a traitor to the  
19 cause of his comrades, and he asked for a thousand dollars.  
20 I told him I thought that was too much, at least until I  
21 had got something, but I told him I would give him \$500.  
22 I gave it to him in the buffet--I don't know as I need to  
23 explain that, it is a little buffet down at the--

24 Q One of those hack-like places adjoining the saloon?

25 A Yes, where it was perfectly safe, and Mr. Biddinger did not  
26 tell me it was a careless job at all; I heard that the first

1 time when he testified on the witness stand. I gave it  
2 to him for that purpose, which was perfectly legal, in my  
3 opinion.

4 Q Have you ever had any reason to change your mind about  
5 the legality or ethics of it? A Not only legal but praise-  
6 worthy.

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1 MR FREDERICKS: That is objected to as calling for a con-  
2 clusion of the witness on immaterial matter.

3 THE COURT: Objection sustained.

4 MR FORD: I move to strike out the answer on the same ground

5 MR ROGERS: Let us hear that question and answer --

6 MR FORD: We object to it --

7 MR ROGERS: I am entitled to be heard.

8 THE COURT: Yes, read the question.

9 MR ROGERS: Read the question and answer.

10 (Last question and answer read.)

11 MR ROGERS: I guess it should go out. A I don't know  
12 whether it is the same money that was produced in court,  
13 if it is, Mr Fredericks ought to turn it over to me be-  
14 cause he did not earn it. He told me he was going to go  
15 to San Francisco in a few days and he would wire me when  
16 he got there, and have me to come out, and he suggested that  
17 I had better not use my own name, because Burns might get  
18 hold of the telegram; coming from a detective, I thought  
19 it was a wise suggestion. In a short time I got a wire  
20 and I answered that I would be there, and I went. It  
21 seems to me I called him up at the St Francis. I think  
22 I got Burns on the other end of the telephone instead of  
23 Biddinger, but anyway, I got hold of Biddinger very soon  
24 thereafter and had a conference with him and he told me  
25 that he knew there was going to be a meeting that afternoon  
26 between Burns and Clancey in Mr Older's office.

1 Q Clancey was a member of the executive board of Struct-  
2 ural Iron Workers? A Yes sir; and that he would let me  
3 know so that I could find out and see them come together.  
4 I didn't tell him I wanted to get them together so that  
5 I would get credit for catching them -- I never ask credit  
6 for anything in this world, and certainly not for catching  
7 anybody -- I am not a detective -- he asked me for more  
8 money, and after considerable haggling, I gave him \$200 more  
9 in the Palace Hotel; whether one of the bills was on Bed-  
10 ford, Maine, I don't know -- I gave him \$200, and he was to  
11 notify me, and I gave him my telephone address --

12 Q Notify you of what, Mr Darrow? A When Mr Burns and  
13 Mr Clancey should come together. I never got any notice  
14 and I never saw him again until I heard his story on the  
15 witness stand.

16 Q Well, you remember that he said something about your  
17 suggestion that he get on the train and that somebody  
18 dent his nut for him, or hit him in the head, or something  
19 of that kind, and take something away from him. Did any-  
20 thing of that kind ever happen on the face of the earth?

21 MR FORD: Just a moment. I do not want to be too critical,  
22 but I do not believe Franklin ever used those words.

23 MR ROGERS: Biddinger at Chicago, South Chicago.

24 MR FREDERICKS: yes, those words, Mr Rogers' expression of  
25 the substance of it, is a different thing.

26 THE COURT: I think the substance of it is testified to.



1 MR FREDERICKS: I think the question is a little ambiguous,  
2 and if the court will indulge me to have it read again,  
3 I noticed an ambiguity in the question.

4 THE COURT: yes, read it.

5 (Last question read.)

6 MR FREDERICKS: "Did anything of that kind ever happen"?  
7 I suppose counsel means, was anything of that kind ever  
8 said.

9 MR ROGERS: yes. Did you ever suggest to Mr Biddinger --  
10 withdraw the question. Did you ever suggest or intimate  
11 to Mr Biddinger that he should take a train with any  
12 evidence whatsoever, to get his head caved in and get  
13 somebody to hit him, or that he should be jumped by some-  
14 body and his things taken away from him, or anything like  
15 that, or in substance or purport whatsoever? A The first  
16 time I ever heard of such a thing was when he testified.

17 Q Was any such thing in your mind? A No.

18 Q Or did you ever say such a thing in any form or English,  
19 or slang or anything of the kind? A I would not know how  
20 to carry out such a thing, and I never said it.

21 Q You heard Mr Biddinger's statement about what J. E.  
22 McNamara said to him? A yes.

23 Q At that time, at the time he and J.B.McNamara were on  
24 that train together, did you know that such a man as J.R.  
25 McNamara lived?

26 MR FREDERICKS: That is objected to as immaterial.

1 MR ROGERS: I just want to sink that error of allowing  
2 that testimony in.

3 MR FREDERICKS: There is no contention that he did know  
4 J. E. McNamara did live.

5 MR ROGERS: Then, what in the world is that testimony  
6 put in the record for?

7 MR FREDERICKS: Everything in the world. He found it  
8 out afterwards, and Biddinger became a material witness to  
9 that fact, but at the time that they were on the train, he  
10 might not have known that J. E. McNamara existed.

11 MR FORD: This is what J.E. said, not what Mr Darrow said.

12 MR ROGERS: Yes. I suppose Mr Darrow is to be bound by  
13 the statement made by McNamara to Biddinger at a time when  
14 Mr Darrow didn't know that McNamara lived on earth.

15 MR FREDERICKS: I cannot help but think counsel knows the  
16 reason that was introduced, to show that this man Biddinger  
17 was a witness to a confession made by J. E. McNamara and  
18 as such witness his testimony was that Mr Darrow tried to  
19 induce him to forget that testimony. Now, that is the ma-  
20 teriality of it, but whether this witness knew McNamara  
21 at the time is not material, because it is evidence he was  
22 not hired at that time in the case.

23 THE COURT: Objection overruled.

24 MR ROGERS: Read the question.

25 MR FORD: There is another ground: it has been already  
26 answered, because yesterday he said he never heard of

1 J. F. until after he was arrested.

2 MR ROGERS: It is too bad if it had to be answered twice.

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7p 1 THE COURT. Do you want the question read, Mr. Darrow?

2 A No. It is overruled?

3 THE COURT. Yes, it is overruled.

4 A I never heard there was any such person as either one of  
5 them, either J B or J J, certainly never heard of J B  
6 and if I had ever heard of J J it was so incidental I did  
7 not recall it.

8 MR. ROGERS. Q Did you ever know from any statement of  
9 Biddinger's or anybody's else that J B McNamara ever made  
10 any confession or said anything to Biddinger that you  
11 regarded as material in the McNamara case, or anything of  
12 that kind? A Biddinger never gave me information as to  
13 what he was going to testify to in the case I was trying  
14 against him.

15 Q Did he say anything to you about that? A He said noth-  
16 ing whatever.

17 Q Did you know it or hear of it or suspect it until he  
18 told it on the stand here? A I did not.

19 Q Did you try to induce him to forget it or change his  
20 testimony or anything of that kind? A I made no sugges-  
21 tion of anything of that sort, and I gave him the money for  
22 the purposes I have indicated and for no other. We did have  
23 a letter written to me enumerating certain things that he  
24 knew or had, but I never asked him for anything at any time  
25 or paid him for anything or expected to get anything or tried  
26 to get anything excepting this information. I didn't get

1 that.

2 Q Excepting the information as to the people who were  
3 traitors to yourself in your own camp? A Yes. Neither--  
4 There is one conversation, the only thing he stated there,  
5 perhaps I ought not to suggest it--

6 Q Go ahead.

7 MR. FREDERICKS. Ask your own question so that we know what  
8 it is.

9 THE WITNESS. Captain, it was a statement he was going to  
10 have an office and I was going to come up here and get the  
11 stuff out of the office while he was sleeping.

12 MR. FREDERICKS. All right.

13 A That I never heard of until he testified to it. He did  
14 say he was going to be close to Burns during this case  
15 and would keep me posted.

16 MR. ROGERS. Q I will ask you if you had any idea at the  
17 time of the transactions that there was anything unethical,  
18 illegal in your transaction with an agent of the Burns  
19 agency, a private detective agency, in order to procure  
20 information as to persons who were traitors to yourself,  
21 who, as a matter of fact, were pretending to work for you?

22 MR. FREDERICKS. That is objected to as calling for a con-  
23 clusion of the witness on a question of law.

24 MR. ROGERS. I have a right to a conclusion of the witness.

25 MR. FREDERICKS. As to whether it was illegal or not is a  
26 matter for the jury to determine when properly submitted

1 to them, and even if this witness did not think it was  
2 illegal and perchance it were illegal--I will make a hypo-  
3 theoretical case--even if the witness did not, or a defendant  
4 as a witness, did not know that the act was illegal, never-  
5 theless that if it were illegal it would be ignorance of  
6 the law and would be no justification for his violation, and  
7 therefore the question is immaterial.

8 THE COURT. Objection overruled. Answer the question.

9 A I did not think any information I could get from Burns's  
10 office on the subject could be either unethical or illegal,  
11 and I thought it was absolutely necessary and I know it.

12 Q Mr. Rogers. At that time did you know anything about  
13 the methods of the Burns agency in having members of their  
14 agency employed in their cases on the opposite side, fur-  
15 nishing information at the same time to the Burns agency?

16 MR. FREDERICKS. That is objected to as immaterial.

17 MR. ROGERS. It accounts for a certain incident--

18 THE COURT. Objection overruled.

19 A I had read his stories about it, I had had the experience  
20 in my own office, I had known from 10 or 15 years experience  
21 in trying labor cases that there is not an organization  
22 where they do not have their men and even presidents and  
23 secretaries, and the detective agencies know more about the  
24 business of the unions than the unions do themselves, in  
25 many instances.

26 Q Now, Mr. Darrow, I direct your attention to the matter  
of Mrs. Caplan. Did you ever see Mrs. Caplan, so far as you

1 know? A Yes, I have.

2 Q I call your attention to the alleged spiriting away of  
3 a material witness on behalf of the prosecution, namely  
4 Mrs. Flora Caplan: I will ask you what you had to do with  
5 that, if anything, what you knew about it, if anything, what  
6 you did in that respect, if anything, and what you did not  
7 do. Explain that matter fully. A I do not recall whether  
8 I ever talked with anybody in San Francisco about Mrs.  
9 Caplan with reference to her leaving Los Angeles or not. I  
10 know I did not with reference to her being taken away on  
11 account of a subpoena. I did once talk with Mrs. Caplan  
12 myself in San Francisco to get what information I could about  
13 this case, several weeks before she left this state. I knew  
14 that Mrs. Caplan could not be called as a witness by the  
15 state under any circumstances, and I could not have tried  
16 to get her away for that purpose, because I did not need to.

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1 MR FREDERICKS: We move to strike out that part of counsel's  
2 answer that says, "We knew Mrs Caplin could not be called  
3 as a witness", as a conclusion. Not justified -- well, as  
4 a conclusion.

5 THE COURT: Just showing his state of mind in regard to  
6 that transaction.

7 MR FREDERICKS: Well, he thought so.

8 THE COURT: Whether the conclusion is right or wrong, is  
9 a legal conclusion, makes no difference. Motion to strike  
10 denied.

11 A I did learn from her at the time I talked with her  
12 about how she had been driven from employment and hounded  
13 to death by Burns detectives, whom I had seen working on  
14 the job here, and I might have asked her and her friends  
15 why they didn't get her away; I don't know. I have no  
16 remembrance of it, but I never had any conversation with  
17 anyone with reference to taking her away. Never was  
18 counselled about it, and didn't know it. If I had been  
19 asked I would have said, yes, take her, but I was not asked.  
20 I would have said they had a perfect right to take her to  
21 Chicago or anywhere else where she could live.

22 MR FORD: just a moment. We move the last part of the  
23 witness' answer be stricken out as not responsive to any  
24 question; based upon a hypothetical question not addressed  
25 to him and supposition.

26 THE COURT: Beginning with the words, "I would have said",



1 strike it out.

2 MR ROGERS: But you didn't say what you would have said?

3 A I didn't.

4 Q Your view -- your state of mind at that time was that  
5 she was not a material witness for the prosecution, and  
6 could, under no circumstances, be called?

7 MR FORD: Objected to as already having been answered.

8 A And further --

9 THE COURT: Objection overruled.

10 A -- it was that and in addition to that, that the state  
11 could not subpoena a witness a month ahead and keep them  
12 here. They could go away and come back, if they wanted to.

13 MR ROGERS: But, as a matter of fact, Mr Darrow, did you  
14 personally have anything to do whatsoever with taking  
15 Mrs Caplin out of the state? A Nothing whatever.

16 Q Did you pay the bill? A No, I did not; have not been  
17 asked.

18 Q Did you know she was going? A No.

19 Q Did you learn after she had gone, however, that she  
20 was in Chicago? A I am not certain whether I did, I am  
21 not certain about it. Made very little impression on  
22 my mind. I learned sometime that she was away, but I  
23 don't know how nor when.

24 Q Well, did you tell Johannessen to take her out of the  
25 state? A I did not.

26 Q Did you know anything about that joy ride across

1 the Sierras? A I heard Joe tell about it; that is all I  
2 know about it.

3 Q Did you tell Harrington to act for you in that behalf,  
4 or get her out of the state or anything of that kind?

5 A I never had a conversation with Harrington about her,  
6 not that I recall.

7 Q Did you ever say to Harrington under any circumstances  
8 or at any place, that under no circumstances was he to  
9 tell anybody where Mrs Caplin was, as it might involve you  
10 or anything like that? A He says I said that in December,  
11 doesn't he?

12 Q Wait a moment, and I will take a look. A When he was  
13 boarding with me.

14 MR FREDERICKS: That is my memory of it.

15 MR ROGERS: Yes. Wait a moment, I will get the exact time.  
16 It was in the holiday season -- no, the Christmas holidays.

17 A No sir, I never had any such conversation with him.

18 I didn't know where she was. I didn't care where she was,  
19 and didn't care to keep the state in ignorance, even had I  
20 known, and never said it or anything like it. I don't know  
21 that Harrington ever knew where she was.

22 Q Now, did you ever tell Harrington something to this  
23 effect or anything like it; his testimony is as follows:  
24 Why, he told me that he had known about it and that he  
25 had spoken to Tveitmoe and Johanneson when he was up in  
26 San Francisco the week before about their going away, and

1 that there were reasons for her going." Did you ever

2 tell him anything of that kind? A No sir, I didn't.

3 Q As a matter of fact, did you ever talk with Tveitmoe  
4 and Johannsen about her going away? A I never talked with  
5 them about the matter of them taking her away. It is  
6 possible at the time I interviewed her, which was weeks  
7 before, I might have asked why they didn't protect her,  
8 and take her away from the Burns men. I don't know; I have  
9 no recollection of it, but such a thing is possible.  
10 But I never did know about their taking her or had any-  
11 thing to do with that matter.

12 Q As a matter of fact, as a lawyer, you knew she could  
13 not be a witness for the prosecution? A I did.

14 MR FREDERICKS: That is objected, <sup>to</sup> may it please the court--

15 MR ROGERS: It is elementary.

16 MR FREDERICKS: It is not elementary. It is a matter of law  
17 she could be called as a witness.

18 THE COURT: It has been testified to in two places; now,  
19 twice is enough.

20 MR ROGERS: Is there anything further, Mr Darrow concerning  
21 the Caplin matter which has been produced as a collateral  
22 matter, that occurs to you? A I don't recall anything, Mr  
23 Rogers. I think that is covered.

24 Q As a matter of fact, it is in testimony here Mr Tveitme  
25 paid those bills in reference to the automobile ride  
26 across the mountains. As a matter of fact, did you tell

1 Tveitmoe to pay those bills? A I did not.

2 Q Now, I will take you back, if you please, to the mat-  
3 ter of Behm. I will ask you if, after Behm came here, if  
4 you spoke to him in any way or to any substance or effect  
5 that he was to change his testimony before the grand jury  
6 or was to reply in any particular way to any question un-  
7 truthfully before the grand jury, or have you ever said to  
8 him that he was to perjure himself or make untruthful or  
9 improper statements before the grand jury, or anything  
10 of that kind whatsoever. A No.

11 Q Now, in your own way, tell what happened between you  
12 and he after he came here with reference to his testimony  
13 before the grand jury and his refusal to testify; the ci-  
14 tation for contempt and so forth, with which you are doubt-  
15 less familiar.

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1 A I saw him soon after he came here. He was with Mrs.  
2 McManigal and her children most of the time. I saw him  
3 often with Mr. Davis about the matters connected with this  
4 case, and I presume I saw him when Mr. Davis was not there.  
5 I never told him to tell his nephew, Ortie McManigal, that  
6 he was going to be indicted in Chicago for murder. There  
7 was conversation between all of us as to whether he was a  
8 participant in that matter. I didn't know nor say whether  
9 he was or not, as far as he is concerned. Anyhow, I gave  
10 him no instructions with reference to it and sent no word  
11 to him. He talked with me on several occasions about having  
12 visited McManigal in jail. He told me he thought he was crazy  
13 or fixed, or something of that sort, and he couldn't under-  
14 stand it except that he took after his mother, he was not a  
15 Behm, but his mother who was. He did talk to both Davis  
16 and me and the rest of them at different times about his  
17 visits--

18 Q The rest of them--whom do you mean by that? A I mean  
19 Scott, Harriman and McNutt. After he had been there a  
20 number of days a proceedings was commenced before the grand  
21 jury--they used to begin one when they hadn't anything else  
22 to do, to keep us busy. A Proceedings was begun there  
23 against Behm and he was called in to answer questions, as  
24 the documents put it, as to his effort to get McManigal  
25 to change his testimony. That is where Behm got these ques-  
26 tions--if McManigal ever testified before the grand jury I

1 never knew it and if he did it was very slight testimony.  
2 He was never talked to about getting McManigal to change his  
3 testimony in any regard, as far as I knew, and he had given  
4 none. He was cited <sup>in</sup> to court for contempt after having  
5 refused to answer those questions. First he went before  
6 the grand jury and refused to answer. They furnished him a  
7 list of questions and he brought them back to us and we tried  
8 to teach him to say they were incompetent but he couldn't,  
9 he couldn't be taught.

10 Q What do you mean by that? A Mr. Davis and myself,  
11 especially--

12 Q Tried to teach him to say they were incompetent, what do  
13 you mean by that?

14 MR. FORD. We object to that as irrelevant and incompetent.

15 MR. ROGERS. What do you mean by that?

16 MR. FORD. I? We have an objection before the court.

17 THE COURT. Objection sustained.

18 MR. ROGERS. What did you mean by trying to teach him to  
19 say incompetent? A The objection is sustained.

20 Q No, I have asked a question.

21 THE COURT. A new question now.

22 A I mean as Behm puts it, it didn't concern the case.

23 MR. FORD. We move to strike it out as not responsive to the  
24 question.

25 THE COURT. Motion to strike is denied.

26 A I tried to teach him that they were incompetent, but I

1 couldn't because he was, and finally we arranged he should  
 2 say they didn't concern the case--you have heard that, and  
 3 he made those answers to every question, under our advice.  
 4 MR. ROGERS. Q Whose advice? A Mr. Davis and myself es-  
 5 pecially, but I think the others were consulting at the  
 6 same time, and then he was called back. He was cited for  
 7 contempt and he was arrested. Came to my office in charge  
 8 of a bailiff and I think Mr. Davis was with him when I got  
 9 in rather later in the evening and Mr. Davis gave a check for  
 10 a thousand dollars to the bailiff and he was released. Then  
 11 we had a conference that night with Mr. Behm.

12 Q Well, who is "we"? A Mr. Davis and myself, and I think  
 13 John Terrill, who was here a while about that time. He was  
 14 a lawyer. We had the conference in Mr. Davis's office.

15 Mr. Terrill was a lawyer who was especially employed by Mrs.  
 16 ~~McManigal.~~ We did go over this list of questions with him,  
 17 reading them and having him answer them. We told him what  
 18 questions to answer didn't concern the case. We told him  
 19 to answer the others and answer them, that is all. Neither  
 20 Davis nor I instructed him how to answer anything except  
 21 those that didn't concern the case, at any time. That is,  
 22 I didn't at any time and Davis didn't in my presence. We  
 23 spent probably two hours with him that night, trying to  
 24 get him where he could remember what questions to answer  
 25 didn't concern the case. We were not quite satisfied with  
 26 it, but Davis said that night, after we got through, "You  
 had better come to the office in the morning at 9 o'clock and

1 I will talk to you some more, and then we will go to the  
2 jury room." The next morning he did not come to my office  
3 and I did not see him, but he did go to Davis's office and  
4 went to the jury room and gave the testimony which you have  
5 heard.

6 Q Well, now, did you instruct him how to answer any  
7 questions except as to those questions which you deemed  
8 improper or illegal as a matter of law, which you advised  
9 him to answer were incompetent, or rather, that they did  
10 not concern the case.

11 MR. FORD. Objected to upon the ground that the question has  
12 been fully answered.

13 THE COURT. Objection sustained.

14 MR. ROGERS. We except. Q Did you advise him to answer  
15 any questions except those which he was to object to upon  
16 the ground of incompetency? A You mean how to answer them?  
17 Q Yes. A That is not what--I did not. We told him to  
18 answer them.

19 Q Did you tell him to falsify or to make improper or  
20 illegal statements concerning anything on earth? A Nothing  
21 at all.

22 Q Now, these questions you told him to answer did not  
23 concern the case, state whether or not that appeared to you  
24 at that time to be a good legal objection? A We thought so.

25 Q You and Mr. Davis? A Both of us.

26 Q A question in law he could not be compelled to answer?



1 A We thought so. We certainly had a right to so instruct  
2 him.

3 Q Did you tell him to answer any question whatsoever con-  
4 trary to the truth and the fact? A We did not.  
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1 Q Returning now, for a moment, to Mr Franklin, state  
2 whether or not Mr Franklin ever said anything to you di-  
3 rectly, or indirectly, so you could understand it, or  
4 gather it in any way, about any effort to approach Guy  
5 Yonkin, Frank Smith or John Underwood, or if you ever heard  
6 about it, knew anything about it, knew that he had ap-  
7 proached them or was going to or anything concerning them?

8 A I never had any talk with him about it. I never knew  
9 there were any such people until they were mentioned here.  
10 I might have known at the time that such names were on the  
11 lists, but passed entirely from my remembrance. The first  
12 time I ever heard of it was here.

13 Q Did you direct him to go to these jurors under any  
14 circumstances whatever, and offer them anything, or sug-  
15 gest anything to them, or have anything whatever to do  
16 with his approach of them? A I never directed him to go  
17 to those jurors to give them any money or do anything il-  
18 legal. I often directed him to go and get information con-  
19 cerning various jurors whose names I could possibly re-  
20 peat at this time. Sometimes when the reports were inoom-  
21 plete, or for any other purpose, and I thought they might  
22 be called, and I wanted more information, I often did that,  
23 and so did every other lawyer in the case, but never for  
24 any other purpose.

25 Q I now attract your attention again to the matter of  
26 the alleged bribery of Lockwood, and I will ask you, if at

1 that time, according to your state of mind and condition of  
2 mind there was any reason, motive or necessity for the  
3 paying of any money or any compensation or anything of  
4 value to any juror, talesman, or prospective juror what-  
5 soever?

6 MR FORD: Objected to upon the ground it has already been  
7 answered.

8 THE COURT: Objection sustained.

9 MR ROGERS: Exception. Does your Honor forbid me to go  
10 into that matter?

11 THE COURT: No sir.

12 MR ROGERS: Is your Honor going to prevent me from going  
13 into his state of mind at the time?

14 THE COURT: Mr Rogers, that question, I think, has been  
15 fully answered in almost precisely that form, and the  
16 court at that time stated that it would not forbid you go-  
17 ing / <sup>into</sup> that subject, but, on the contrary, that you have a  
18 perfect right to, but that it must be gone into in the  
19 usual method of questions and answers, so that a proper ob-  
20 jection, if desirable, may be made, and the court is  
21 still of the opinion that that question is asked and  
22 answered, so far as that one is concerned.

23 MR ROGERS: Well, I confess myself at a loss to know how  
24 to reach the matter of his motives except as to ask if  
25 he had a motive. I asked him if he had any motive, or  
26 in his state of mind he had any necessity or any belief

1 or reason why he should bribe Lockwood, and if he did not  
2 have, why? That is, and absolutely according to my view  
3 of it, it is a proper question. I don't purpose to lead  
4 him.

5 THE COURT: I think it is a proper question, and the ground  
6 for sustaining the objection is solely that it has been  
7 answered, but if it has been answered, it does no great  
8 harm to have it answered again. Go ahead and ask it.  
9 I have <sup>no</sup> serious doubt about it having been answered, I  
10 think it has.

11 MR ROGERS: Then I will ask him; why did you believe, assum-  
12 ing that the question has been answered, why did you be-  
13 lieve there was no reason, necessity, motive or object in  
14 approaching any juror or talesman whatsoever in the  
15 McNamara case, on the 28th day of November?

16 MR FREDERICKS: No objection to that if the witness will  
17 recite facts.

18 MR ROGERS: He is going to recite facts.

19 THE COURT: I assume he is.

20 MR FREDERICKS: But if he makes an argument, why, that is  
21 different.

22 THE COURT: There is no objection to the question, so go  
23 ahead.

24 MRFREDERICKS: We object to it so we may have the right  
25 to strike it out on the ground it calls for a conclusion of  
26 the witness or an opinion of the witness, and is immaterial

1 and self-serving declaration, too general and indefinite.

2 A If the court and MR Rogers permit, it is so near  
3 adjournment, I don't like to take that subject up. There  
4 are two other matters I might suggest you ask me.

5 THE COURT: It is about time for an adjournment.

6 MR ROGERS: I would like to have that question answered.

7 I have put it four times now, and I think I am right.

8 THE WITNESS: If the court is going to adjourn in 10 min-  
9 utes, I couldn't state this matter or anywhere near it.

10 THE COURT: We will take a recess. (Jury admonished. Recess  
11 for 10 minutes.)

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lp 1 (After recess.)

2 MR. ROGERS. There is a question pending.

3 THE COURT. The question was, as the reporter has given it  
4 to me, "Then I will ask you why<sup>did</sup> you believe, assuming that  
5 the question has been answered, why<sup>did</sup> you believe that there  
6 was no reason, necessity, motive or object in approaching  
7 any juror or talesman whatsoever in the McNamara case on the  
8 23th day of November."

9 MR. FORD. Of course, that question might possibly be  
10 answered in two ways, your Honor. Assuming it will be an-  
11 swered in accordance with the testimony of witnesses already  
12 given upon the same subject, I assume the answer will be  
13 one of two things, first it might be answered very briefly  
14 by reason of the fact that negotiations were pending for the  
15 settlement and practically completed; that is one answer  
16 which might be very short and perhaps unobjectionable; the  
17 other might proceed in great detail to tell all the negotia-  
18 tions that were had, without reciting the time and place.  
19 Now, if it is contemplated calling for the short answer we  
20 would have no objection to it, but as calling for a long  
21 answer reciting everything that occurred at various times and  
22 at various places and between various persons, without giving  
23 us an opportunity to object, would be unfair to the prosecu-  
24 tion; we would have ~~the~~ right, to be apprised as to the  
25 subject matter of the answer and ~~that~~ we should be fairly  
26 apprised of that in the question, and the question as it not

1 stands I believe is one that is fairly within the court's  
2 discretion. Section 2044 of the Code of Civil Pro-  
3 cedure provides that the court may control the mode of  
4 interrogation of the witnesses, so as to make it as rapid,  
5 as distinct, as little annoying to the witnesses, and as  
6 effective for the extraction of the truth as may be. Now,  
7 the method provided for extracting of the truth in court  
8 is by question and answer, intended that there should be  
9 a number of questions and a number of answers so as to  
10 cover the full subject matter; it is not contemplated that  
11 one answer may cover the entire subject matter or any  
12 considerable portion of the subject matter, and in fairness  
13 I think if counsel expects a long answer or expects the  
14 witness to narrate all the various transactions which led  
15 him to believe that the settlement was pending, or that the  
16 negotiations were pending, and that the settlement had been  
17 practically reached, he ought to do so by question and  
18 answer, directing the attention of the witness to the various  
19 things that led the witness to that belief. I think we  
20 want to get the facts out in this case, both sides I believe  
21 want to get out what they believe to be the facts in this  
22 case, and we want and we ought to do so by question and  
23 answer, and that this question is not a fair question, par-  
24 ticularly in view of the fact that it is already announced  
25 that if he should answer that question in the form as pro-  
26 pounded by Mr. Rogers he could not do it within 10 minutes;

1 ~~Just before recess he said he could not answer that ques-~~  
2 tion within 10 minutes. We object to the question itself  
3 upon the ground it is general, indefinite, irrelevant--  
4 perhaps not irrelevant but certainly incompetent and based  
5 upon the ground that it is incompetent.

6 THE COURT. Objection sustained.

7 MR. ROGERS. Q Mr. Darrow, relate why, in your own way, in  
8 a manner to expedite this case and bring out the truth,  
9 to suffer as little annoyance for yourself as you may,  
10 relate why on the 28th of November there was no motive,  
11 necessity, object or purpose in bribing any juror or tales-  
12 man?

13 MR. FORD. We reserve our right to object at the proper  
14 time in order to facilitate matters.

15 THE COURT. There is no objection.

16 A I will say, Mr. Ford, I will try to stick as close as  
17 what it ought to be, as I can, and it will be all right  
18 to object at any time without discommoding me.

19 MR. FORD. If you will state the time and circumstances  
20 of each transaction we will probably not interrupt.

21 THE COURT. Go ahead, there is no objection.

22 A As we went on in the preparation of this case it kept  
23 growing on all of us that there was no possible chance to  
24 win the case; we first commenced gathering all the evidence  
25 we could to ascertain all the facts we could and it grew  
26 on us from day to day and from week to week, the exact condi-



1 tion we were in and that our clients were in, which a  
2 lawyer never knows at once, the same as a doctor learns  
3 that his patient is going to die. We felt that owing to the  
4 number of lives lost, the bitter feeling there was in the  
5 community, that it was going to be difficult to avoid the  
6 ~~death penalty~~; we wanted to save their lives, if possible,  
7 and believed that at some time there would be a better  
8 understanding, probably be a commutation or pardon. It had  
9 seemed hopeless to me for sometime and I think to my  
10 associates. On the 19th day of November Mr. Steffens and I  
11 went down to San Diego and had a visit with Mr Scripps, who  
12 read to us an article which he had prepared, or somebody  
13 prepared and sent to him on belligerent rights in labor  
14 controversies on the theory of belligerent rights in warfare.  
15 I made a remark, coming from that statement, that I wished  
16 the people of Los Angeles <sup>could</sup> see it that way and believed  
17 that it was to the best interests of the community and also  
18 right and just to get rid of this case without shedding  
19 any human blood.

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1 that was about all that was said at that time; the next  
2 day Mr Steffens referred to that conversation and we came  
3 up that night from San Diego, and we got our breakfast  
4 at the Van Nuys Hotel --

5 MR FORD: Pardon me, Mr Darrow. Right there, your Honor,  
6 he has testified to what occurred on Sunday, and then  
7 finally on Monday he says, "That night we came up from  
8 San Diego, and I presume he --" A I meant Sunday  
9 night.

10 MR FORD: I meant Monday, when, as a matter of fact, he is  
11 referring to Sunday night. A Sunday night.

12 THE COURT: Sunday night. All right. A Sunday night  
13 we came up from San Diego, and got our breakfast at the Van  
14 Nuys; during the time we were taking breakfast, Mr Steffens  
15 referred to the statement I had made, and he asked whether  
16 I really meant it. I told him I did, but I didn't believe  
17 it would be possible to bring any such thing about; that  
18 the feeling was too bitter on both sides, and the people  
19 were not in a reasoning state of mind and I did not think  
20 it could be done. He said he thought he could, and that  
21 if I didn't object, he would see some people and see what  
22 could be done. I told him I was perfectly willing that  
23 he should do it, but if he saw anybody he must make it  
24 very plain, it did not come from me or from our side,  
25 for if it should get out to the community that we were  
26 making overtures, it would make it that much more diffi-

1 cult to defend these men and save their lives. He said  
2 he would take it up on his own account, and if any propo-  
3 sition came, it would come not from me, but to me. I  
4 cautioned him that he must use great care, I told him that  
5 at all events there would be no use to try to get a set-  
6 tlement unless the Times people, Mr Chandler or Mr Otis,  
7 or both of them, were in favor of it, as it had been their  
8 building that had been destroyed; he understood that sit-  
9 uation and he spoke of taking it up first with Mr Lissner,  
10 and seeing how he could get to them the best way. He came  
11 back to me the same evening, Monday, the 20th, he had with  
12 him the typewritten proposition or statement which has  
13 been introduced in evidence here; he said he had seen Mr  
14 Lissner and Mr Gibbon, and they were to or had communicat-  
15 ed with Mr Chandler -- I am not sure which -- and they be-  
16 lieved that the matter could be put through to permit J.B.  
17 McNamara to plead guilty, receive a life sentence, and end  
18 all other prosecutions in Los Angeles. I told him that  
19 if such a thing could be done, it would take a great burden  
20 off of me, and I thought it would be a good thing both for  
21 capital and labor, especially for the defendants and the  
22 City of Los Angeles. I did not have confidence enough to  
23 present it to any of my associates at that time, or even  
24 to my clients, although I felt that I knew what they would  
25 think about it. He came to me again Tuesday, which was  
26 the 21st --

1 MR FORD: Mr Steffens? A Mr Steffens, yes. -- he re-  
2 ported that Mr Chandler had been seen, that communication  
3 had been started with the District Attorney's office,  
4 that he thought the matter could be brought about. I  
5 urged two things, one was secrecy and the other haste, and  
6 still I did not feel confident enough to take anyone into  
7 my confidence in this matter. I might possibly have talked  
8 with the boys in jail that day, but I do not recall that I  
9 did. On Wednesday he reported again, telling me that he had  
10 no further doubt but what this could be done, and done  
11 in this way, according to the first statement which has  
12 been given to you gentlemen in evidence. I went over it  
13 pretty carefully as to what he had done and how certain he  
14 was as to his grounds; he told me of Mr Chandler's posi-  
15 tion and of conferences he said had been had with the Dis-  
16 trict Attorney, not by him, but through Mr Chandler, and he  
17 believed it could be accomplished. I felt then, for the  
18 first time, that there was a fair chance to succeed; I  
19 had not communicated with anyone, but I wanted to divide  
20 up some of the responsibility, I knew that all the labor  
21 leaders on this coast were then in Atlanta, Georgia, attend-  
22 ing the National Convention of the American Federation of  
23 Labor, including Tveitmoe, Johannsen, Gallagher and the  
24 leaders in this city; Mr Older had been my friend, and in a  
25 general way had sympathized with the cause of labor, so we  
26 sent the wire that day, which was Wednesday, the 22nd, to

1 Mr Older, to come down immediately for this conference,  
2 and at the same time I sent a wire to Gompers. Have you  
3 that telegram, Mr Fredericks?

4 MR FORD: We have not that telegram.

5 MR FREDERICKS: No. I thought we had; it seems to me I  
6 heard it talked about and that is what made me think we  
7 had it. I have never seen it. A There was nothing in  
8 it --

9 MR FREDERICKS:" I heard it talked about here, and it made  
10 me think we had it.

11 A I will state it as near as I can remember. On Wednes-  
12 day I sent this telegram to Gompers at the Atlantic  
13 Convention.

14 Q Wednesday, what? A The 22nd? Q 22nd of November?

15 A The 22nd of November. Asking that either he, Tveit-  
16 moe, Nockels, Gunnery, President of the Moulders Union,  
17 Johannsen, I think, or somebody else of equal authority,  
18 be sent here on the first train. I had thought they could  
19 get here by Saturday night or the first thing Sunday morn-  
20 ing. I didn't hear from that telegram until, I think two  
21 days later; possibly one, when I received a telegram from  
22 Mr Nockels in Chicago, wanting to know if he should come,  
23 and I wired him to come by the first train. That telegram  
24 was sent either Thursday or Friday, the 23rd or 24th, and  
25 I think the 24th.

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Mr. Older arrived here on Thursday morning the 23rd. One of these days, I think before Thursday, at least not later than Thursday, Mr. Fredericks spoke to me in the court room and said, "What is this gink Steffens trying to do?" I said, "I guess you know as much about it as I do, but if there comes a chance for you to dispose of this case in any way that you think you could accept if you were in my place, I want to do it," and there was very little else said at that time between Mr. Fredericks and myself; I think, perhaps, that was all. On Thursday Mr. Older arrived, Thursday the 23rd, I think it was--I am not certain whether I saw him before court or at noon, anyway on that date I took Mr. Davis into my confidence. Mr. Davis had been closer to me than anybody else in the case, and except possibly Judge McNutt, but Mr. Davis had given all of his time to it and was more familiar with criminal practice than any of us, at least, in California. We had a conference, I think first at my office. I told Mr. Davis about what had been done. Mr. Steffens told about what had been done. Mr. Davis told us of his conversation with the District Attorney and reported that he had said if a settlement was reached it would have to be a term of years for J J on the same charge. By the same charge I mean either the Times Building or the Llewellyn Iron Works.

MR. FORD. This was on Friday?  
A Thursday. Thursday the 24th or 23rd.

1 MR. ROGERS. Q What day was Mr. Older here? A The 23rd,  
 2 Thursday. The telegram to Mr. Older was sent on the 22nd;  
 3 that is in evidence here. I think we had two conversations  
 4 that day, at one of which Judge McNutt was present, Mr.  
 5 Older and Mr. Steffens. Mr. Davis said, "I don't think we  
 6 have got any right to do it without consulting organized  
 7 labor." And I told him that there was no one connected with  
 8 --no one high in the council of organized labor on this  
 9 coast at that time except J J McNamara. That I had wired  
 10 for someone from Atlanta and they ought to be here very  
 11 soon, but if there was not it was up to us to act when the  
 12 time came anyhow. He said that so far as he was concerned  
 13 he didn't believe it was right, that the money to defend the  
 14 men had been furnished by organized labor, and he said to me  
 15 he thought it would ruin me <sup>with</sup> labor if I did it without con-  
 16 sulting them. I told him that while the money had been  
 17 furnished largely by organized labor, that organized labor  
 18 was not our client and was not on trial, but these two men  
 19 were our clients and nobody could possibly give us money  
 20 that could in any way influence us in an action that was due  
 21 to our clients; that so far as I was concerned I had no  
 22 right to consider myself, or should not, and that all I  
 23 had to consider was these two men. Judge McNutt said  
 24 at once that was right.

25 MR. FREDERICKS. This conversation was on Thursday?  
 26 A On Thursday.

1 MR. FREDERICKS. Judge McNutt, you had not mentioned he  
2 was there.

3 A I said at one conversation on Thursday he was there.

4 MR. FREDERICKS. All right.

5 MR. FORD. This is the second conversation?

6 A I think it was, Mr. Ford, I wont be quite positive about it,  
7 however. But I was right. That we could consider nobody  
8 but our clients and if they thought it was best and we  
9 thought it was best, we should act, whatever the consequences  
10 were. Mr. Davis didn't quite agree with it at that time.  
11 Mr. Older, of course, didn't feel like giving advice on that  
12 matter. He said he supposed it would be misunderstood by  
13 large numbers of laboring men, who had not believed that  
14 dynamite had been placed there, but that he would do what  
15 he could to make it understood, if it was done. Mr. Davis's  
16 report from Mr. Fredericks caused Steffens to say that the  
17 people with whom he had been dealing had positively agreed  
18 that there should be no prosecution and no plea of guilty  
19 except as to J.B.

20 MR. FORD. Pardon me a moment, your Honor. The witness is  
21 testifying here something about a report of Davis from the  
22 District Attorney. I didn't understand any testimony as  
23 to a report had been given by this witness.

24 A I mentioned that, Mr. Ford.

25 MR. FREDERICKS. It was not a report from me.

26 A ~~X~~ A statement.



1 MR. FORD. A statement about the District Attorney, yes.

2 A I stated what it was, Mr. Ford.

3 MR. FORD. Beg pardon?

4 A I stated what the statement was.

5 MR. FORD. But you just last mentioned a report. I didn't  
6 understand that he had been to the District Attorney.

7 A I mean <sup>in</sup> that the statement I had previously given.

8 MR. FORD. I understood the word report in a different sense  
9 than you used it. Pardon me for interrupting.

10 A All right. What is the last of that answer? (Last  
11 part of answer read by the reporter.) He said that he was  
12 sure that could be done, still sure that it could be  
13 done.

14 MR. FREDERICKS. Steffens said?

15 A Steffens, yes. I said that ought to be carried out in  
16 that way. I think I said, even as early as that, that if  
17 we had to accept something for J J we must do it, for  
18 there was no other way, although I wont state that positively  
19 but I think I stated as early as that. By the next day,  
20 which would be Friday, and possibly on Thursday, Mr. Steffens  
21 came back and said that the Erectors Association in the  
22 east had wired that this matter must not be settled unless  
23 J J took a sentence; that they were more interested in  
24 J J than J B and also that communication had gone on between  
25 the District Attorney's office and the eastern people in  
26 reference to it,

1 but that he believed his people would insist on it going  
 2 through without anything for anybody but J.B. About that  
 3 time ~~was~~<sup>or</sup> some other time -- about that time I would not  
 4 say the exact date, he stated it came to General Otis'  
 5 attention that the Erectors Association were insisting on  
 6 a sentence for J.J., because they had contributed consider-  
 7 able money to the case, \$50,000, or thereabouts, and that  
 8 General Otis had said that he would pay that money back  
 9 to them.

10 MR FREDERICKS: That is what Steffens said to you?

11 A Yes. This is all what Mr Steffens said to me -- that  
 12 he wanted it disposed of. That was about the situation  
 13 on Friday. I think on Thursday, not later than Thurs-  
 14 day, I talked to both of the boys in the jail. J.J.,  
 15 who really done more consulting with us than the other,  
 16 and probably was more familiar with all the affairs than  
 17 J.B., said without hesitation, that it ought to be disposed  
 18 of, and he believed organized labor would come to under-  
 19 stand it if they didn't at once. He thought there was lit-  
 20 tle chance to save J.B.'s life without it, which was the  
 21 controlling interest with him, and that his own case also  
 22 <sup>matter</sup> on the Times was also very dangerous. J.B., from the first  
 23 was willing to plead guilty and take a life sentence, but  
 24 not willing that J.J. should plead guilty. That was the  
 25 situation up to Saturday. On Saturday we were spending  
 26 most of our time over this matter. Court adjourned early

1 and no afternoon session, at least, and I think no morning  
2 session; perhaps there was. Seems not. Saturday was the  
3 25th, and I know we had a drawing of jurors, and I think  
4 there was little else done that day. We spent most of the  
5 time working on this matter --

6 MR FORD: just a moment, if the court please. He says  
7 we. I don't know whether "we" refers to himself and Steffens.

8 MR FREDRICKS: I think that is rather a loose statement,  
9 "We spent most of the day working on this matter."

10 THE COURT: yes. A Yes, I think so myself.

11 THE COURT: You may state who you meant by "we".

12 MR FREDERICKS: This witness' communication was only  
13 through Mr Steffens so far.

14 A Judge McNutt, Mr Davis and I, at least, visited the  
15 jail, and my recollection is Mr Steffens visited it. We  
16 visited it every day while these negotiations were going  
17 on. We were still working that there should be no sen-  
18 tence to anybody but J.B. Steffens felt very confident  
19 that that result would come about. Mr Davis and I felt  
20 very doubtful about it on account of the attitude taken  
21 by the District Attorney. We were pretty well satisfied  
22 Mr Davis, Judge McNutt and myself, by Saturday night, that  
23 we were going to have difficulty in carrying out the origi-  
24 nal proposition, that is, to release everybody but J.B.  
25 On Sunday, made an appointment to go to the jail, Judge  
26 McNutt and I went to the jail in the forenoon and Mr

1 Steffens came later. We went over this matter carefully  
2 with J.J. McNamara and J. B. McNamara separately, and  
3 together. J.B. insisting that he would not let it go  
4 through if J. J. <sup>n</sup> had got to plead guilty, on account of  
5 its effect on labor. He also added it would seriously af-  
6 fect me. I told him I had no right to consider myself,  
7 and that they need not bother about that part of it,  
8 neither did I think labor had any right to be consulted  
9 as far as a lawyer's duty was concerned, it was to his  
10 clients, and I couldn't think they were bound to sacra-  
11 fice their lives under the circumstances when something  
12 better could be done. J. B. agreed to plead guilty and  
13 take a sentence of life imprisonment. All of us expecting  
14 that the time would come, as I still believe, when he  
15 will be commuted or pardoned. We had a separate  
16 conversation with J.J., and he was willing, as he had been  
17 at all times, to accept some sentence. On account of his  
18 brother and on his own account. J. J. said that he would  
19 be willing to accept sentence up to ten years, but, of  
20 course, wanted us to get him off entirely if possible, or  
21 the lowest possible sentence we could. We agreed to do  
22 that; his case was not on trial, and we left the jail  
23 with the understanding that the J.B. case would be disposed  
24 of and then J.J. would enter his plea of guilty and take  
25 a 10-year sentence, if it was necessary, if not, less or  
26 none. I had an engagement that evening, I was anxious to

1 have it closed up as soon as possible; it was getting to be  
2 a great burden, and I did not want anything to happen that  
3 could prevent it, and I asked Judge McNutt to see Davis  
4 that night, and have him see Mr Fredericks in the morn-  
5 ing and close it up. Mr Fredericks and Mr Davis had  
6 always been friends, as I understood it, and he was the  
7 one who always went to Mr Fredericks with any matters in  
8 the case. Judge McNutt and Davis had ~~the~~ conferenc e  
9 on Sunday night, as you have been told -- I was not present--  
10 and on Monday Davis reported to me , to McNutt and to  
11 Steffens that Mr Fredericks had positively agreed that if  
12 J.B. would plead guilty he could have a life sentence, and  
13 if J. J. would ~~plead~~ plead guilty, he should have a 10-year  
14 sentence, but that he would not take a plea of guilty for  
15 J.B., and let J.J. off.

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1 Judge McNutt and Davis and Steffens and I went over it  
2 again on Monday and we all agreed that we would take that  
3 settlement of the matter, if no better could be found;  
4 every one of us advised it and accepted it; Mr. Davis was  
5 to go back, either on Monday night or Tuesday morning--  
6 I think on Tuesday morning, and he was still to insist  
7 on something better with Mr. Fredericks and to urge it in  
8 every way he could. In the meantime Mr. Steffens was to go  
9 back to his men and insist that he could not get a settle-  
10 ment unless the original proposition was carried out, and  
11 urge them to carry out the original proposition, sentence  
12 J B and dispose of all the other matters in Los Angeles;  
13 in the meantime a grand jury had been called in the Federal  
14 court in Indianapolis and they were working on these  
15 cases and it looked as if come of the cases would have to go  
16 there anyway. We left it in that situation; on Monday,  
17 with a thorough understanding between us as to what was  
18 to be done on Tuesday or at the earliest possible moment,  
19 but still determined to get something better if we could  
20 get it--on Tuesday morning, after I got down to the office  
21 I went over to see Mr. Harrington's headquarters, I learned  
22 of the arrest which I have already told you about. The  
23 first thing that entered my mind was as to whether it would  
24 be possible to carry out this settlement and if not, whe-  
25 ther it would be possible to save these men's lives; at  
26 that time I, of course, was shocked and very much broken

1 up over it; I had some talk first with Mr. Davis up here;  
2 I went back to the office and shortly thereafter Mr. Steffens  
3 came in and wanted to know what there was about it--he had  
4 a paper in his hand and I said, "I guess you know as much as  
5 I do from reading the paper," and he asked whether that  
6 was going to interfere with the settlement. I said it would  
7 not so far as I was concerned. I said, "How about your men?"  
8 He says, "I think my men will stand all right, I do not see  
9 why it should make any difference." He suggested to me,  
10 "Suppose they should think that you or any of the rest of  
11 the lawyers were connected with this, then what?" I had  
12 not seriously thought about it; it might have flashed  
13 across my mind, I don't know, but I said to him at once,  
14 "If that question is raised I want you to tell them that  
15 under no circumstances am I to be considered in this matter;  
16 if there is any man there who thinks that I or any other  
17 lawyer in this case has had anything whatever to do with  
18 that, you tell them there is no bargaining on that case,  
19 that they can take care of that case when the time comes,  
20 and all we are proposing to settle was the McNamara cases  
21 and the cases growing out of that, in reference to dyna-  
22 miting". He said, "That is quixotic, why not get rid of  
23 all of them at once?" I said, "No, I never in my life let  
24 my own affairs interfere with my clients and I never will",  
25 I said distinctly, "You go and carry that message to them,  
26 if anything is added," and never at any time either with them

1 or the District Attorney's office, was there any inclusion or  
2 suggestion that this should be included, with my knowledge and  
3 consent. He came back on Tuesday and told me he had seen  
4 the committee, but he still thought it should be carried  
5 out.

6 MR. FORD. On Tuesday?

7 A. On Tuesday, towards evening. On Wednesday we had  
8 further conferences over Mr. Fredericks-- Mr. Davis saw Mr.  
9 Fredericks on that day and I think I was with him, I was  
10 with him either on Wednesday or Friday, I wouldn't be sure  
11 which the date was--at that time one of those dates, it was  
12 thought best to call together the larger committee which  
13 had been, as I was informed by Mr. Steffens--which had been  
14 gotten up for the purpose of calling them in if they were  
15 needed, but which had not been called in, and I believe that  
16 Mr. Steffens told me that they met on Wednesday night and  
17 while they were willing to carry out the proposition, they  
18 said they would support Mr. Fredericks in whatever he saw  
19 fit to do, and then they were considering talking about a  
20 larger scheme to bring about some adjustment between capital  
21 and labor in Los Angeles, or at least it was reported back  
22 to me on Wednesday that it would probably go through on the  
23 terms of the 10 year sentence for J J McNamara as had been  
24 agreed and reported, at least had been reported to us by  
25 Davis on Monday, and agreed by all the lawyers who knew of  
26 it, and our clients;



1 but on Wednesday Mr Davis reported that Mr Fredericks  
2 had told him that these cases must both be disposed of to-  
3 gether, they must both come into court and enter a plea  
4 together. That made it possible, that made it necessary  
5 that J.B. should know that J.J. was to serve a sentence, and  
6 J. B. was very set in his ways, and we apprehended it  
7 would take sometime to bring him around to that point of view;  
8 so on Thursday, Thanksgiving Day, Mr Davis and Mr Steffens ,  
9 I believe Judge McNutt and I, went down to jail; after  
10 that Mr Scott came in; we presented the matter; J. J. had  
11 been willing all the while, and of course, raised no ob-  
12 jections to doing it together. J.B. did; he was willing  
13 himself to enter his plea, but was not willing that his  
14 brother should, he objected to it on account of organized  
15 labor, and on account of his brother and on account of  
16 me. We went over the case with him pretty thoroughly  
17 as to the hopelessness of winning it, and as to the chance  
18 that he would be hanged. He said that didn't matter to  
19 him, he could stand that; Davis asked him if he wanted his  
20 brother to be hanged, and we also talked to him about how  
21 it would affect his mother, if one or both of them were hang-  
22 ed, and those two things affected him more than anything  
23 else, and caused him to consent that both pleas should be  
24 entered together; so on that evening, at the jail, or  
25 that afternoon, they had agreed together to carry out  
26 what each had agreed to separately sometime before, and on

1 the next morning, Friday, Mr Davis went to Mr Fredericks'  
2 office -- I am not quite certain whether I was with him Fri-  
3 day or Wednesday, but anyway, the information came that  
4 he could not let the 10-year sentence go through for J.J.,  
5 that is, he was obliged to have 15, but the other could go  
6 through; he said that 15 years sentence was not quite ten  
7 years net, sentence, and that even if it was, he could not  
8 let it go through that way. Of course, we had made no such  
9 arrangement with J.J., so he gave us until the afternoon to  
10 find out. We went back to J.J., and J.B. with the new  
11 proposition -- the matter had gone so far that they felt  
12 that the difference in time could not count and that it  
13 was necessary to accept it as Mr Fredericks had insisted  
14 it should be, and depend on pardon and parole later. At  
15 all events, they did accept it, and we came back; at 2 o'clock,  
16 they plead guilty together, and later they were sentenced,  
17 one to the penitentiary for life, and the other to 15  
18 years in prison.

19 MR ROGERS: Mr Darrow at the time, on Tuesday morning, the  
20 28th, had you made up your mind to have this agreement car-  
21 ried out as it finally was carried out substantially?

22 A I had made up my mind before Tuesday morning the  
23 28th.

24 Q Before Tuesday morning the 28th? A And had consented  
25 to it.

26 Q Had anything happened to change that view or opinion

1 in your behalf, or your desire, up to the morning of the  
2 28th? A Nothing whatever; it was the first chance I had  
3 seen for weeks to save these mens' lives, especially J.B.

4 Q On the morning of the 28th, was it your intent and pur-  
5 pose to carry out the agreement which you understood was  
6 ready to be made, if you could not get any better agree-  
7 ment? A It was. I thought it would be carried out that  
8 day.

9 Q On the 28th, or the 27th, after you had made up your  
10 mind to enter a plea of guilty for these men and to ac-  
11 cept this agreement if you could not do better, of hav-  
12 ing J.B. plead guilty and take a life sentence, and J.F.  
13 plead guilty and take a sentence of 10 years, if neces-  
14 sary, had you any intention of bribing any juror, permiting  
15 it to be done, having any person connected with it do any  
16 such thing whatsoever? A I never had at any time.  
17 There are very good reasons why that would not be possible,  
18 if I had been inclined to do it.

19 Q But, on that morning, particularly, I am speaking of,  
20 for the purposes of the record. A I had no such purposes.

21 Q Did you ever have any idea of bribing a jury in the  
22 McNamara case or any talesman or any juror therein?

23 MR FREDERICKS: We object to that on the ground it has already  
24 been asked and answered fully, the same question.

25 THE COURT: I think it has. Objection sustained.

26 MR ROGERS: Exception. Mr Appel suggests I may not have

1 asked this, I think I have, but, as a matter of pr ecau-  
2 tion, I will ask it again: Did you ever say to Franklin at  
3 any time or at any place or under any circumstances, in any  
4 words whatsoever, in substance or effect, or any language,  
5 that it had been agreed that \$5000 apiece or per juror,  
6 or anything like that could be allowed for purposes of brib  
7 ery or anything from which that might be inferred in any  
8 way?

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17p 1 A I never did. That question was asked me.

2 Q I think it was. Mr. parrow, during the time that is  
3 remaining I will take up the matter of conversations with  
4 Franklin after his arrest, if you will direct your mind to  
5 those. A Yes.

6 Q Now, when you heard that Franklin was arrested or knew  
7 of his arrest, and after the conversation with Mr. Browne,  
8 did you see Franklin yourself? A I saw him that afternoon,  
9 I think?

10 Q Where? A I believe I saw him in his office.

11 Q In whose company or in whose presence? A Mr. DAVIS  
12 was with me.

13 Q At that time, you may say what was said by those persons  
14 who were there present, Mr. Franklin, yourself, Mr. Davis or  
15 any person in the presence of you three, or any of you?

16 A I only saw him a very few minutes. I do not believe I  
17 remember what was said.

18 Q How did you come to see him? A I went over with Mr.  
19 Davis, I think at Franklin's request, I think he asked us  
20 both. Now, I am not very clear about this, but I think I  
21 saw him at the office that afternoon.

22 Q MR. FORD. Tuesday afternoon? A Franklin's office, yes.  
23 I wouldn't even swear I did, but that is the best of my  
24 remembrance at this time.

25 MR. ROGERS. Q At that time Mr. Franklin says that you asked  
26 him how he felt and he told you, "All right," and then you

1 asked him if he felt sore towards you and he said "No",  
2 and that you said you would see him later. Now, have  
3 you any recollection of asking him if he felt sore at you?  
4 A I know I did not then or any other time. I may have asked  
5 him how he felt, I don't know, but I didn't ask him the  
6 other.

7 Q Well, now, did you see Franklin after that? A At times.  
8 Are you going to take up the bond matter?

9 Q Now, with relation to putting up this bond, in your own  
10 way tell how that came about; the circumstances leading  
11 up to it; what representations were made and whatever  
12 may be competent concerning it. A Mr. Davis had seen him  
13 on account of the telephoning by his wife to the office, and  
14 in accordance with Mr. Davis and myself, --the understanding  
15 between Mr. Davis and myself about the matter, he went to see  
16 Franklin at the jail. I told him that I thought he ought  
17 to go, at least one or both of us; that he had been working  
18 for us and his wife wanted it, and he ought to go. Of  
19 course, we agreed on that matter. He went over to see  
20 him, came back and told me that he had talked with Franklin;  
21 that Franklin told him he was trying to catch this man--  
22 Q What man? A Lockwood, in attempting to get a bribe, that  
23 it was a put up job of some sort and Davis said, "I don't  
24 believe Franklin is guilty but I think we ought to give a  
25 bond." He first was going to go on the bond himself with  
26 Judge McNutt, but Judge McNutt said his property was in his

1 wife's name and he couldn't do it, and then Davis said,  
2 "If there was money in the bank belonging to the defense  
3 fund he thought I ought to put it up, and he would stand good  
4 for it," for the bond, and I told him, "All right, if he  
5 thought so I would do it." He assured me that Franklin would  
6 not run away, if he did he would stand good.

7 Q What is, Davis would? A Davis would. Davis took his check  
8 book out of his pocket and gave me a blank check. It was  
9 not done at my office. I have been trying to think where  
10 it was, either at his office--must have been at his office,  
11 I know it was not at mine, I know for two reasons, but I wrote  
12 the check on a blank furnished by him and gave it to him for  
13 that purpose at his request.

14 Q Now, you remember the testimony of Franklin with respect  
15 to conversations had with him? A Yes.

16 Q After his arrest, and are familiar with them. In your  
17 own way you may relate whatever you recall the statements  
18 made between yourself and Mr. Franklin, conversations had  
19 between you and in your presence up to the 14th of January,  
20 as far as you remember. A I didn't have very many with  
21 him, I saw him occasionally and I got information occa-  
22 sionally from Mr. Davis about the matter. He also told me  
23 that he was not guilty; he never told me anything else,  
24 but I never knew what the facts were from him. He spoke of  
25 my having said or Davis having said in my presence that  
26 we would give him \$5,000 to pay his fine and \$3,000 to  
rehabilitate himself. No such conversation was ever had in

1 my presence or by me or to my knowledge at any time.

2 Q Did you ever make any such agreement in any way or  
3 suggestion or intimation? A I never did and he never  
4 asked for it. Sometime after his arrest he told me that  
5 whatever money I had given him he had saved nothing, that  
6 it had all gone for men who worked for him and expenses  
7 connected with the office. I had never kept any tab on him  
8 because it was impossible to do it, no way of keeping tab  
9 on how many men he had or where they went or how it was  
10 spent, I always took his word for it. Never tried to do it  
11 in any other way. He told me he had never had anything  
12 himself, and I talked over with him about what he thought he  
13 ought to have. He had gotten \$300, as I recall it, after-  
14 wards, from Mr. Davis for some emergency, I think at the time  
15 his daughter was married,

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1 and he told me that he thought if I gave him \$1000 it would  
2 be about right. I discussed it a little while with him and  
3 said, "All right, if he thought that was right to let it  
4 go", and Mr Davis had the money at that time to pay it, and  
5 he paid the \$1000 with my knowledge and consent and agree-  
6 ment. Q-Now, coming to the 14th day of January, a conver-  
7 sation between yourself, Mr Davis and Mr Franklin, you  
8 recall the incident as testified to by Mr Franklin?

9 A I recall it very well.

10 Q Now, in your own way, this conversation in Mr Davis'  
11 office or in Mr Rush's office -- A Yes.

12 Q -- part of the office of Davis & Rush, a conversation  
13 between you, Franklin and Davis, I call your attention to  
14 that. Now, state what that conversation was, and whether  
15 or not the things which Mr Franklin testified to occurred,  
16 whether they were said or not, and what was said. Fully  
17 relate. A About all that I recall of his saying --  
18 have you got that there?

19 Q Do you want me to relate it to you? A What he said.

20 MR FORD: just a moment. The witness cannot refresh his  
21 recollection of a conversation by what somebody else has  
22 said. A just a moment; don't do it.

23 MR ROGERS: That is all nonsense.

24 MR FORD: Only the memorandum made by himself, under sec-  
25 tion 2047 --

26 THE COURT: The witness has directed Mr Rogers not to do

1 it.

2 MR ROGERS: I was not going to do it for the purpose of re-  
3 freshing his recollection. I will ask you if such and such  
4 a conversation did not happen at such and such a time --

5 A That is the reason I asked you.

6 Q At that time and place did you say -- I withdraw the  
7 last question.

8 MR FORD: I would like to have it read.

9 THE COURT: It is withdrawn.

10 MR FORD: I would like to hear it. I may withdraw my  
11 objection.

12 THE COURT: No, we will not take the time. It is not be-  
13 fore the court. A If you don't mind, Mr Ford, I will tell  
14 you the part of it I wanted to refer to.

15 THE COURT: What is the question you want to form now?

16 MR ROGERS: Mr Darrow, if you wish I will put this ques-  
17 tion to you in the way of contradiction of what Mr Ford or  
18 what Franklin says that was said there, and ask you wheth-  
19 er or not, such a thing happened, or if you prefer you may  
20 relate just what did occur to the best of your recollection,  
21 then I will ask this later. A I will relate what occurred  
22 first.

23 Q Relate what occurred first, according to your recollec-  
24 tion, then I will bring this up. A Mr Davis by telephone  
25 or personally, I am not certain which, asked me to come  
26 to his office on Sunday the 14th in the afternoon. I

1 went there on Sunday the 14th, and met Mr Franklin there.  
 2 Mr Franklin and Mr Davis had had some conversation before  
 3 I got there, as I recall it now. Mr Davis said that Mr  
 4 Franklin would state himself why he came there. Mr Franklin  
 5 said that a few days before Colonel Tom Johnston had come  
 6 to him from Mr Ford, and said to him, Franklin, that if  
 7 he would give testimony that would indict Mr Darrow, they  
 8 would accept a fine from him and take the money that was  
 9 found on White to pay the fine. He says Johnston says to  
 10 him, "Might just as well put it boldly; the one they want is  
 11 Darrow, and if you know anything against any Los Angeles  
 12 people, you are not to tell anything about that, but just  
 13 furnish evidence against Darrow." He said he told Johnston  
 14 that if he told anything against me, it would be a damned  
 15 lie, and he further said he couldn't say anything against  
 16 me. I replied that I knew very well that he couldn't say  
 17 anything against me, and he said, "that if he told all he  
 18 knew and all the business he had ever had with me it would  
 19 not in any way affect me, and could not in any way affect  
 20 me." I said something to him about why it was that they  
 21 should want me, and why didn't they -- why weren't they as  
 22 anxious to get Davis or Job Harriman or anybody else con-  
 23 nected with the case. Well, he says, "They want you, be-  
 24 cause you don't live here, and have been defending labor  
 25 so long  
 26 and that was about the sum and substance of it."

Q Now, did Mr Davis at that time say that if Franklin

1 could convince Mr Ford that there had been another party  
2 who acted as a go-between, between Mr Darrow and Franklin  
3 and give a description of that man, or where he claimed to  
4 be from and the name he gave, that Mr Ford might believe  
5 a statement of that kind, and it would relieve Franklin  
6 of a great deal and relieve Mr Darrow from any complicity  
7 for the reason that it would leave him entirely out of the  
8 matter, anything to that effect or substance and purport?

9 A He did not. We never gave him any intimation of any  
10 sort of a story to tell anybody.

11 Q Now, did he say further at that time that Mr Ford, that  
12 is, Franklin say, that Mr Ford never would believe a story  
13 of that kind; it would be the same old story of the boy  
14 stealing a bicycle and saying he bought it from somebody  
15 and didn't know who it was or anything of that kind?

16 A Nothing of that sort was said by Franklin.

17 MR FREDERICKS: The question was, did Davis say it?

18 A No.

19 MR ROGERS: No, to Davis. A Or by anybody there.

20 Q Franklin testified he said it. Now, did you say then,  
21 "If you mention my name, I want you also to tell what you  
22 know about Job Harriman", or anything of that kind, or sub-  
23 stance or purport? A I did not, anything of the sort.

24 Q Did Mr Davis resent any remark. You said it was not  
25 said. A There wasn't any remark to resent.

26 Q Well, now, did either you or Davis say anything of that

1 kind that I have just quoted you from the testimony of  
2 Franklin, either you or Davis say anything of the kind in  
3 substance, purport or effect, either one of you? A Neith-  
4 er one of us said it there, and I never said it anywhere.  
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19s 1 Q Well, Franklin, on cross-examination said that both of  
2 you said it together and then separately and then together  
3 again and separately again. Now, did either of you in the  
4 presence of each other, so far as you know, under any cir-  
5 cumstances, say anything of that kind, in substance,  
6 purport or effect?

7 MR. FORD. Objected to upon the ground the question has  
8 been fully answered. He has told what occurred and told  
9 what has not occurred. Now, it is merely repetition.

10 THE COURT. Overruled.

11 A I never said it separately and I never said it together  
12 and Davis never said it together.

13 MR. ROGERS. Q Did Davis say then that he thought your  
14 remarks about Farriman was an unfair thing, and did he  
15 further say that in view of the way that Franklin--that is,  
16 did Davis further say that in view of the way Franklin  
17 was standing between Mr. Farrow and something else, doesn't  
18 mention what it is, but standing between Mr. Farrow, that  
19 it was a very poor statement for you to make, implicating  
20 another party, or words to that effect or anything of that  
21 kind in substance?

22 MR. FORD. Objected to upon the ground that the witness has  
23 testified to all the conversation that occurred. The ques-  
24 tion is fully answered.

25 THE COURT. Overruled.

26 A Mr. Davis made no such remark and Mr. Franklin made no

1 such remark.

2 MR. ROGERS. Q Was there then discussed at that time the  
3 question of Mr. Franklin's pleading guilty and taking his  
4 medicine or anything of that kind or substance on the 14th  
5 of January? A I never had any discussion with him or  
6 heard him.

7 MR. FREDERICKS. That is not much of an answer. I suppose  
8 that question tacked onto it--

9 MR. ROGERS. I am taking the testimony of Franklin.

10 Q You might add, Q of that sort.

11 MR. ROGERS. That answers it. Q Did Franklin then say to  
12 Davis in any way, in any words or words from <sup>which</sup> any idea of  
13 this kind could be drawn, that if Davis could assure him  
14 that he would not get over two years in the penitentiary,  
15 that he would plead guilty and say nothing, and then did  
16 Davis say to Franklin that he would let Franklin know  
17 in a day or two, or something of that kind? A No, not in  
18 my presence.

19 Q Do you know of any such conversation? A I do not.

20 Q Or hear of it? A No.

21 Q After January 14th have you any recollection of ever  
22 meeting Franklin and talking to him, seeing him, having  
23 any communication with him? A I don't believe I ever saw  
24 him except a long distance off--quite a long distance off  
25 until I saw him in the court room, after January 14th. He  
26 says he met me once on the street a few days later. It is

1 possible--I don,t recall it.

2 Q Now at any time or place or under any circumstances  
3 did you say or rather did you tell Mr. Franklin how you  
4 happened to be on Main street that morning, or what the cir-  
5 cumstances were; how you happened to be there? A I don't  
6 believe I ever did. What is the particular thing you refer  
7 to?

8 Q This is the answer: "Well, Mr. Ford, I want to be perfectly  
9 fair, not only with the prosecution in this case but with Mr.  
10 Darrow who is on trial, and while I told you a certain thing--  
11 addressing Mr. Ford-- "I am a little inclined at this time to  
12 believe I was mistaken and it was not Mr. Darrow who told  
13 me in regard to who sent the message.

14 "Q Just state what Mr. Darrow told you, to your best recol-  
15 lection at the present time regardless of what you said on  
16 that occasion. A Mr. Darrow said that is how he happened  
17 to be there." Now, I don't know how that comes around.

18 A He says it in another place. If you don't object I will  
19 answer without referring to--

20 MR. FREDERICKS. Go ahead, I know what the subject is.

21 Mr. Franklin testified that you told him how you happened  
22 to be on Main street?

23 THE WITNESS. You remember what it was, don't you?

24 MR. FREDERICKS. I remember what it was.

25 THE WITNESS. Suppose you tell it.

26 MR. FREDERICKS. You told him that you had gotten a telephone



1 message from somebody who wanted you to come down there.

2 THE WITNESS. Did he mention Browne's name?

3 MR. FREDERICKS: I don't know whether he did or not, I am  
4 not sure about that. I think he didn't mention it, but one  
5 of these men from Venice mentioned it.

6 A I never told him that I got a telephone from Browne  
7 to come down there, and I didn't or that I got--that I went  
8 down there to save him or to keep him out of trouble. I  
9 think that covers everything he said, if it doesn't--or  
10 anything of that sort.

11 MR. ROGERS. Q Well, now, did Mr. Franklin say to you that  
12 if you hadn't happened to be at that particular place at  
13 that particular time that he thought he could have turned  
14 the tables on Lockwood, who was a traitor, and put him in the  
15 position that he, Franklin was placed in himself; that it  
16 was his intention to turn Lockwood over to the officer at  
17 <sup>and</sup> Second Main and charge him with taking and accepting a  
18 bribe in the McNamara case to give his verdict for guilty,  
19 and did Franklin say that if you, that is, Mr. parrow, had  
20 not happened to be at that particular place his arrest  
21 would not have taken place until after he could have pulled  
22 off his stunt at Second and Main, or anything like that?

23 A I think he told me something like that on the afternoon  
24 with Mr. Davis but not that.

25 Q You remember what it was? <sup>A--</sup> I think he said that he was  
26 going up there with Mr. Lockwood--that he was going up there

1 to deliver him to the policeman and charge him with  
2 having solicited or taken a bribe, which he had done, and  
3 I think he said if I had not happened to be around there  
4 that is what he would have done, and he was arrested quicker  
5 because I was there. I am inclined to think he said that  
6 that day, but that is what he said and not this statement,  
7 I would not be absolutely sure about that, but I think  
8 some such statement was made.

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1 MR ROGERS: I don't wish to take up any other matters, if  
2 your Honor please, at this time.

3 THE COURT: I see it lacks 5 minutes.

4 MR FREDERICKS: Can the defense give us some idea as to the  
5 length of the time -- is this your last witness?

6 MR ROGERS: You can go and get a good night's sleep and come  
7 in refreshed and able to work sometime tomorrow. Some-  
8 time, either the forenoon. You are going to have a  
9 strenuous time tomorrow.

10 MR FREDERICKS: What I am figuring on, whether you are  
11 going to get through tomorrow.

12 MR ROGERS: yes, we will get through tomorrow.

13 MR FREDERICKS: There is one question I wanted to ask Mr  
14 Steffens on cross-examination, but it seems a little dif-  
15 ficult to locate him. I asked the defense if they could  
16 bring him in and they haven't been able to do so.

17 MR FORD: There is one other thing, your Honor. There was  
18 a quarrel with me the other day by one of the counsel for  
19 the defense, I think it was the defendant himself, about  
20 the date that Franklin went before the grand jury. I  
21 have looked up the records, and find that I was in error;  
22 that he did go before the grand jury on January 20th.  
23 Now, if the date is important, I didn't want to mislead  
24 anybody. It was claimed by the defendant that was the  
25 date, and I find that they are correct.

26 MR ROGERS: Subject to the objection to its relevancy,

1 materiality and competency --

2 MR FORD: We haven't agreed to anything. Let it come up  
3 tomorrow. We haven't entered into any stipulation. We  
4 will take it up outside of court.

5 MR FREDERICKS: We are all tired. Let's take it up in the  
6 morning.

7 MR ROGERS: All right.

8 (Jury admonished. Recess until 10 o'clock A.M., July  
9 31st, 1912)

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