

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. 67

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Jos. Lincoln Steffens,		5346	5384	5421

AFTERNOON SESSION, July 19, 1912; 2 P.M.

JOSEPH LINCOLN STEFFENS,

on the stand for further cross-examination.

THE COURT. You may proceed, gentlemen.

MR. FREDERICKS. Stipulate the jury is present.

Q Now, Mr. Steffens, getting back on the track again where we left off, I was asking you just before the noon adjournment, and when you left over to the jail the agreement had not been reached. That was about 11 o'clock Thanksgiving morning. A Towards noon, yes.

Q And you replied, "No, it had not been reached. They didn't get a thing until later in the afternoon." A That is right.

Q When you left there where did you go, if where you went had anything to do with this matter? A Oh, I went for an automobile ride, just a pleasure ride.

Q A matter of pleasure and recreation? A Yes.

Q Very well, I will not inquire. None of those people went with you who were over in the jail? A No, I left them all in the jail.

Q Now, when you came back at 5 or 6 o'clock who did you meet at the jail? A They were all there, I think; I am not quite clear that Judge McNutt was there, but I am quite sure Davis was there and the others.

Q Davis and Scott and Darrow and the two McNamaras? A Yes.

1 Q Did you meet them all in one place? A Yes, I knocked
2 on the door where I had left them. When I went in they seemed
3 to be just arising.

4 Q They were there where you left them? A It was all
5 over, yes.

6 Q They had had dinner in the meantime? A I don't know;
7 I didn't ask that, but it was all over.

8 Q When did you have dinner that day? You didn't have dinner
9 over there at the jail, did you? A No, no.

10 Q By dinner I refer to the noon meal, thanksgiving day.

11 A No, I didn't dine with them.

12 Q And what was said then when you went in at 5 or 6 o'clock,
13 and who said it first? A Oh, they didn't turn to me. They
14 were busy at their own thing. I walked in--I could see
15 by the way they were talking with one another--

16 Q I know, that would be your conclusion, Mr. Steffens.

17 A I understand.

18 Q What did you hear said, if you remember? A I don't
19 remember; I don't remember what was said.

20 Q You remember the substance of what was said? A No,
21 because it was not said to me. They were just arising. I
22 suppose I asked perhaps Darrow or Davis if it was all over.
23 I don't remember distinctly. I remember I seen knew it was
24 all right.

25 Q That it was all agreed? A Yes.

26 Q That is, both brothers had agreed to plead guilty?

1 A That J.B- had consented to have J.J., that was the
2 only point.

3 Q That both had agreed to plead guilty? A Yes.

4 Q And that conclusion that they told you that they had
5 come to between the time you left in the morning and the
6 time when you came back at 6 o'clock? A Yes, or 5; I think
7 it was rather earlier than 6.

8 Q Now, Mr. Steffens, you wrote an article some days after
9 that in regard to this transaction of the affair at the
10 jail, also including the entire matter which was published
11 in the Express and elsewhere, did you not? A Yes.

12 Q And that was written on the day after they actually
13 plead guilty, was it not? A Yes, written that night--
14 that afternoon and night.

15 Q And you attempted to state there what your memory was
16 of the facts, did you? A Yes.

17 Q You have read that article over, I suppose, or have
18 you lately? A No.

19 Q Haven't read that over before taking the stand? A No.

20 Q Well, you read it over at the time it was published, I
21 presume? A Yes, I dictated it, of course.

22 Q And it correctly recited the facts as you remembered
23 them at that time, did it? A Pretty near. Of course
24 it was a newspaper story, rapidly written--dictated, not
25 written.

26 Q You intended to recite the facts? A Yes, as I remember

1 it was pretty close to the facts.

2 Q It was your intention to state the facts, that is the
3 question? A yes.

4 Q Now, I have here what purports to be a clipping or copy
5 of that document, and I want to show a portion of it to
6 you to refresh your memory. I show it to counsel if they
7 wish to see it.

p 8 MR. ROGERS. The whole article, may I see the whole article?

9 MR. FREDERICKS. You want to see the whole article. I
10 didn't suppose you did. (Handing same to counsel.)

11 MR. ROGERS. Which page did you call my attention to?

12 MR. FREDERICKS. Why, the parts I referred to you will
13 find either with a mark around them or with an underscore.
14 The part I was going to call your attention to then, you
15 will find on page 7, over in the right hand column, in
16 regard to what happened at the jail that day.

17 THE COURT. We might save a little time by passing the
18 sheets as you finish them up to Mr. Steffens so he can be
19 looking them over at the same time.

20 MR. ROGERS. Yes, sir. (Papers handed to witness, who
21 examines same.)

22 THE COURT. That is what you intended to do, is it not?

23 MR. FREDERICKS. I intended to ask him if he—that is all
24 right.

25 THE COURT. I did not want to interfere with your method
26 of examination, only to save time.

1 MR. FREDERICKS. That is all right.

2 MR. DARROW. page 7 is the one he refers to particularly,
3 the part that is marked.

4 A (Witness examines same.)

5 MR. ROGERS. It is well to read the whole matter, if he is
6 to be interrogated about it, it might as well be done at
7 one time as another.

8 MR. FREDERICKS. Very well.

9 MR. ROGERS. I meant to say, the witness might desire to
10 read the whole article, if he is to be interrogated con-
11 cerning the article.

12 THE COURT. Yes.

13 A No, I will only read the parcels he wants to question
14 me about. Would you mind to let me see each time the parts
15 you want to inquire about?

16 MR. FREDERICKS. Yes. Q Now, in regard to this part here
17 where you describe what occurred over at the county jail
18 on the morning of Thanksgiving, if you will just read that
19 (Handing paper to witness.)

20 A Out loud?

21 MR. FREDERICKS. Oh, no, no. (Witness reads paper.)

22 A Yes.

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1 MR FREDERICKS: Now, I will ask you, Mr Steffens, if you
2 did not immediately after these men had plead guilty, as
3 you have narrated, write this article to the Express and
4 other papers; which you say you afterwards read over and
5 found to be correct, say as follows: "Thanksgiving day
6 was the crucial day. The terms had been negotiated down
7 to a point where there were only two differences. Harry
8 Chandler went
9 to see the district attorney to ask him to concede
10 one point and counsel for the McNamara boys went to the jail.
11 I went with the latter group." That is to the jail.

11 A Yes sir.

12 Q "And the story of what happened there, I shall tell
13 later. All that need be said now is that Jim" -- That
14 would be J.B.? A Yes.

15 Q "--(who had consented four or five days before to plead
16 guilty himself, objected to having his brother Joe do the
17 same --" Joe refers to J.J.? A Yes.

18 Q "-- J. J. was willing. He --"(J.J.) "gave his con-
19 sent after 5 or 10 minutes talk, and I sat with Jim while
20 the lawyers talked to Joe." Now, having refreshed your
21 memory is it not -- was that statement correct? A Yes,
22 that is correct.

23 Q Well, then, it is a fact that J. J., or that J. E. had
24 consentedd four or five days before, and that J. J. gave
25 his consent after 5 or 10 minutes talk there that morning,
26 there for the first time? A Oh, no. He consented for-

1 mally -- J. J. always consented, and J. J. consented to
2 the term of years; that is, giving his consent to the terms
3 as we brought them in, then the hitch came as I described.
4 J.B. didn't think his brother would be willing to go and
5 convict labor, but J. J. was willing to do that.

6 Q That is the point here. A We tried to get J.B.'s con-
7 sent.

8 Q That is the point here; "J. J. gave his consent after
9 5 or 10 minutes talk, and I sat with Jim while the law-
10 yers talked to Joe." Now, just before that you said
11 that J. B. had agreed to plead guilty several days before;
12 didn't you mean there that J. J. had not so agreed until
13 that very morning? A Perfectly natural for J. J. to
14 consent after 5 minutes, because although his brother
15 didn't know it, he had consented to take a sentence. All
16 he had to agree to then was the term.

17 Q But you say that J. B. had consented four or five days
18 before to plead guilty? A That was about Sunday, yes.

19 Q J. B. Well, if both of them had agreed to plead guilty
20 four or five days before, why didn't you say that here?

21 A Oh, I didn't tell everything in this newspaper story.
22 There were things that didn't go into matters as to the de-
23 tail. That, in substance, gave the public the same im-
24 pression I tried to give you this morning.

25 Q You think it does? A Yes, doesn't it?

26 Q Well, if you ask me, I must answer no. You say here,

1 Q All that need be said now is that Jim --" (J.E.)

2 A just a moment.

3 Q " -- had consented four or five days before to plead
4 guilty himself." A Yes. He had not agreed to have his
5 brother plead guilty.

6 Q Yes, but you don't say that the brother had agreed four
7 or five days before. You say that the brother, after 5
8 or 10 minutes talk, agreed there to plead guilty.

9 A I started the whole paragraph by saying, "All that need
10 be said," is giving this impression. What difference does
11 it make to the public, whether it was on Sunday or Monday.
12 The point I wanted to leave with my labor leaders espec -
13 ially, that J.E. held out --

14 Q It didn't make any difference then, but it may now.

15 A It did then.

16 Q Whether or not J. J. had agreed to plead guilty on
17 Sunday, or whether he had agreed to plead guilty on Thanks-
18 giving Day, that is the point I am making. A May I
19 explain this now?

20 THE COURT: Yes.

21 MR FREDERICKS: If you think it needs an explanation.

22 A If the whole labor world and when I got here I found
23 the public also thought that J. J. was the --

24 MR FORD: just pardon me, Mr Steffens. We object to what
25 the labor world thought or what you found the public
26 thought afterwards, as not being in any sense a modifica-

1 tion of his statement. A I am explaining my newspaper
2 article.

3 THE COURT: ~~But~~ the witness go on. Proceed, Mr Steffens.

4 A I felt that they, thinking that, and we discovering
5 that J. J. was the man who held out the hardest, was the
6 stronger man of the two --

7 MR DARROW: Just a moment. You said J.J. I think you
8 made an error there.

9 MR FORD: We object. The witness is allowed to make his
10 statement -- A He thinks I made a slip.

11 MR FREDERICKS: Was it J. J. or J. B. that you meant?

12 A Most of the public thought J. J. was the stronger --
13 the harder fighter, and we discovered in this instance
14 that J. B. was the harder fighter, and that is turning out
15 to be so in prison today.

16 MR FREDERICKS: In prison? A Yes. Today, got J. B. in
17 the dungeon.

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3p 1 MR. FREDERICKS. Q Now, let us just take a little run
2 over this--

3 MR. ROGERS. I may say, you might solve the situation and
4 give us a little expedition, if counsel will put in the
5 whole article, because if he does not I shall and it might
6 as well go in at one time as another, and I don't know if
7 excerpts from an article to be understood ought to be
8 taken up line by line and isolated word by word--the whole
9 statement--

10 MR. FREDERICKS. This is a matter I have endeavored to cover
11 the whole transaction in the jail, and if counsel thinks
12 I have not he can proceed as seems best to him on redirect
13 examination.

14 Q You first talked to Meyer Lissner about this case, you
15 refer to these two men as heroes, didn't you?

16 MR. ROGERS. I object to that as incompetent, irrelevant and
17 immaterial, having no tendency to contradict the witness
18 or in any wise to modify his testimony or being other than
19 corroboration thereof and, moreover, it is not the whole
20 statement which is put in. If counsel puts in the whole
21 statement he is welcome to it.

22 MR. FORD. It is the state of mind of this witness showing
23 his relation to the case, what he thinks, his motive.

24 A I would like very much to explain that.

25 MR. FREDERICKS. All I want is an answer to the question.

26 MR. ROGERS. I do not seem to have any influence with

1 this witness.

2 THE COURT. The court will give him the opportunity. The
3 objection is overruled.

4 MR. FREDERICKS. Read the question, Mr. Petermichel, and
5 let the witness answer the question.

6 MR. ROGERS. Very well, go ahead. Withdraw the objection.

7 (Last question read.)

8 A Will you read the passage now?

9 MR. FREDERICKS. Q Do you want me to read the rest of it?

10 A Just the passage where I use that phrase.

11 Q All right. Wait until I get it, I had it here a while
12 ago. "And we talked about the rare opportunity he,"

13 referring to Lissner, "and his friends had of taking the
14 first step in Los Angeles, they could begin with an act

15 of generosity towards two heroes of labor who were in
16 trouble, with all men looking on." A Yes.

17 Q Is that sufficient? A Yes.

18 Q Now, you did refer to them as heroes of labor? A Yes.

19 Q And you believed they were? A There.

20 Q No. A No, except in this instance I knew they were two
21 heroes in the mind of labor. Labor regarded these two

22 men as heroes if capital could take two men who were regarded
23 as heroes by labor and deal generously by them I felt that

24 capital had a chance to make a fine general impression on
25 labor. I don't call them heroes of labor, I said and

26 implied that they were two heroes of laboring men, as they

1 were. I was glad to explain that, because it was mis-
2 understood at the time. Is the rest of the story all right?

3 Q Is the rest of the story all right? What do you mean?

4 A Don't you want me to answer some more about the story?

5 Q Well, maybe so, I will see. Now, Mr. Steffens--yes;
6 there is another little matter in here I will call your at-
7 tention to. You state in this story, referring to Mr.

8 Darrow, "He carried it--" that is the responsibility or

9 whatever you might say-- "alone at first until a week

10 before he had faith enough in the tempt to talk with his

11 colleagues about it and when he did he took them one by

12 one, not more than one a day, and told them about it." Is

13 that what Mr. Darrow told you? A No, that is still my

14 Impression. When I came back here to refresh my memory on

15 these facts, for instance, I thought--I couldn't believe

16 myself that the telegram to Nockles was sent as soon as it

17 was, the impression that was left on my mind that the early

18 part of this had taken longer than that, it really did--

19 the telegrams I sent other parties made me see we got

20 nearer to results sooner than I thought we had, but that

21 was merely an impression of the work we had done.

22 Q As a matter of fact, Mr. Darrow did tell you then he said

23 nothing to his colleagues about it for probably a week and

24 then he took them one at a time and not more than one in

25 any day and told them about it? A That is a rough

26 statement. I think he may have told them one in the morning

1 and one in the evening. He, I think, did tell them one
2 by one. That is my impression now and he did tell them
3 in succession, for instance, Harriman, he didn't tell him
4 until later..

5 THE COURT. You have not answered the question counsel asked
6 you. Counsel ask^{ed}/you if Mr. Darrow told you this.

7 A No, Darrow didn't tell me this.

8 MR. ROGERS. What is the answer.

9 A No, Darrow didn't tell me this. That is my own under-
10 standing of it.

11 MR. FREDERICKS. Q Do you know which one he told first?

12 MR. ROGERS. If Mr. Darrow didn't tell him the testimony
13 would not be binding in any way. He says it is only his
14 impression of it, Mr. Darrow didn't tell him.

15 MR. FREDERICKS. I suppose it will stand like a good deal
16 of the witness's testimony--

17 THE COURT. That is true.

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1 A If you will let me answer. I think he told me that he
2 had told Judge McNutt. I think I was there when he
3 told Davis, and I think he told Judge McNutt first, and he
4 told Davis second. I don't remember exactly -- he cer-
5 tainly told Harriman last.

6 Q Scott next?

7 MR DARROW: If he knows.

8 MR FRED ERICKS: If you know? A Yes. I don't remember
9 exactly; I am trying to give you the best of my memory.

10 Q When did he tell you he told Judge McNutt? A I don't
11 remember. I think it was pretty early, though.

12 Q Well, we will go back to that. When did he tell Davis?

13 A He must have told Davis before Older or I had been in
14 Los Angeles, because Davis was there when we were talking
15 together.

16 Q I expect that question is a little bit loose. When
17 did he tell Davis that J. J. would plead guilty; that is
18 the question? A I think he told him that on the Monday
19 when Davis came back and reported that you were going to de-
20 mand that J. J. Plead guilty.

21 Q Now, let me refresh your memory by your testimony
22 given yesterday.

23 MR ROGERS: Let us have the page.

24 MR FREDERICKS: I will give it to you in a minute. I
25 will find it. I think it is on page 5262. Did you not
26 testify as follows, going back, in order to get the time,

1 I will begin at the answer at line 6: "This was the conver
2 sation I think, Monday morning, or Monday sometime. Mr
3 Davis came back and reported that he had seen Captain
4 Fredericks, and that Captain Fredericks was asking, in ad-
5 dition to J. B. taking life, that J. J. should take a sen-
6 tence. I don't remember just what it was. I have an im-
7 pression that it was ten years. I remember Darrow and I
8 separately from Mr Davis, who didn't know of the plans,
9 you know, at this moment -- Mr Davis didn't know that Dar-
10 row was willing to consent yet, to have J. J. go too,
11 Mr Darrow and I talked this over, and felt that what
12 Davis reported confirmed what I had reported out of the
13 dark, so to speak. Q -- By Mr Rogers -- What did Mr Dar-
14 row say when Mr Davis reported what the District Attorney
15 had said to him on that Monday? A -- As I remember it,
16 he told Davis that he would not let J. J. go, and he told
17 me to go out and make a fight and say to everybody that J. J.
18 could not go. At any rate, the rest of the week I was tell-
19 ing everybody it would be impossible to settle if J. J.
20 was asked for, too." Now, on Monday, the 27th, is it not
21 a fact, that even Mr Davis didn't know that Darrow was wil-
22 ling that J. J. should plead guilty? A Yes, at that
23 time.

24 Q And Mr Darrow -

25 MR DARROW: What is the answer?

26 (Answer read.)

1 A At that time in the morning, yes.

2 MR ROGERS: At that time in the morning? A Yes, but I
3 think that was the day when Darrow told him.

4 MR FREDERICKS: Were you there when he told him? A I
5 don't remember. Was I? I don't remember whether I was
6 there when he told him, or whether Darrow told me he had
7 told him.

8 Q Then, you don't know of your own knowledge that Mr
9 Darrow did tell Mr Davis that day? A No, except that
10 Davis soon knew.

11 Q Well, soon knew, you know -- A I mean, in the fur-
12 ther conferences we had Davis was there, when the whole
13 thing was talked about.

14 Q Well, how late; the next day, or the next day? A I
15 think the same day.

16 Q You are not very positive about that, are you, or are
17 you? A No, I am not.

18 Q Now, isn't it a fact that at the time Darrow told
19 Davis, as I have narrated here, that he would not let J. J.
20 go, and that the news was so bad that at that time you
21 sent out for Judge McNutt? A Yes.

22 Q Then when do you think that Davis learned that J. J.
23 was willing to plead guilty? A I think, now that you
24 mention Judge McNutt, I think it was probably when McNutt
25 got there.

26 Q Did he get there that day? A Yes, I think so.

1 Q Well, now, this Monday, the 27th, Davis came back
2 and said that the District Attorney would never consent
3 unless J. J. Plead guilty, and that was the same informa-
4 tion you say that you had been getting from the grape-vine
5 route? A Yes.

6 Q Exactly. Now, let us go back to Monday, the 20th,
7 when you went to Lissner. When was the first time, start-
8 ing then in your mind, when was the first time that you
9 ever got any information as to what the District Attorney
10 would or would not do in regard to the pleas of those men?
11 What day was it? A I cannot recall exactly; it must
12 have been, --

13 Q Let's see if we cannot refresh your recollection a
14 little. When was Fremont Older down here? Thursday, was
15 it not? A Thursday.

16 Q Thursday? A Thursday.

17 MR ROGERS: He arrived on the 23rd, whatever that was.

18 A Yes, Thursday. We wired him the 22nd, and he got down
19 the next morning.

20 MR FREDERICKS: Then, the first information you did get,
21 whenever it was, was that the District Attorney had a case
22 against both these men and that they must plead guilty; is
23 that not correct? A Yes --

24 Q And that --

25 A -- also that the Erectors Association were demanding
26 two men. This is from the East, you know.

1 Q I am only asking you about the District Attorney now.
2 When was the next time, how soon after that that you had
3 any further word back from the District Attorney as to what
4 he was willing to do or desired, on the occasion when you
5 had another communication. A After Mr. Chandler report-

6 ed the protest that came from the east to General Otis--
7 I think he had an inquiry made--my understanding was that
8 he had an inquiry made of you and the District Attorney
9 was taking the same position the Erectors Association was
10 taking in the east.

11 Q The same position that the District Attorney had taken
12 in the beginning, that both men should plead guilty?

13 A Yes.

14 Q All right. Now that continued as the only word--

15 A But understand that first part of the week we still
16 hoped to move you from that position.

17 Q I understand that, I am not talking about that at present.
18 But that was the first word you got from the District Attor-
19 ney that both of these men must plead guilty? That was
20 continued on the rest of that week. You never got any
21 other word from the District Attorney, did you, but that
22 both those men must plead guilty? A You understand when
23 you say I got word from the District Attorney--

24 Q Well. A-- that I got it from the men that I thought
25 were communicating with the District Attorney.

26 Q Yes, what you reported to Mr. Darrow, rather? A Yes,

1 what I reported to Mr. parrow as coming from that source.

2 Q And it was always the same, wasn't it; the same as it
3 was at first? A yes.

4 Q Both these men must plead guilty? A Yes, always the
5 stone wall, as you call it.

6 Q All right, call it the stone wall then. And all that
7 time you were maintaining to the men you were talking with
8 that J.J. should not plead guilty, that is correct?

9 A Yes, trying to get them to use their influence in every
10 possible way.

11 Q To have the District Attorney change his mind? A Yes.

12 Q And that continued on up until Franklin was arrested
13 on the 28th of the month, which was Tuesday; continued
14 on through Wednesday; continued on until Thursday, and
15 that is what they finally did do; they both plead guilty,
16 didn't they? A Yes.

17 Q And you always maintained all of the week ending the
18 25th that J.J. would not plead guilty? You maintained it
19 on Monday; you maintained it on Tuesday; you maintained
20 it on Wednesday and on Thursday you agreed that he would
21 plead guilty? A Yes, I began to fear he would have to
22 plead guilty earlier than that.

23 Q You began to fear he would have to plead guilty about
24 the time that Franklin was arrested on the 28th?

25 A No.

26 Q No? A No, I began to fear it--let me tell when I began

1 to fear.

2 Q Certainly, I thought you were through with your answer.

3 A When I began to see, when on the Monday morning we heard
4 that you were demanding practically the same thing that the
5 Erectors Association were demanding out east, whether it is
6 a supposi^{tion} or not, we believed this was a national thing,
7 the backers of this thing here were the Erectors Associa-
8 tion in the east, and that there was communications and I
9 understood you had reported to them that they had reported
10 back to you, that is the way they learned what was going
11 on here and they reported, according to General Otis, to
12 try to get General Otis to stop these negotiations; always
13 for the cry for two victims, not one.

14 Q Now, you maintained, however, to everybody except Mr.
15 Darrow that J.J. would not plead guilty up until Thanks-
16 giving Day?

17 MR. ROGERS. Now, that is not a correct statement. That
18 is an argument and a statement or else it is a question.
19 If it is a question it needs an answer, if not, it ought
20 to be stricken out.

21 MR. FREDERICKS. I assumed it was a correct recitation of
22 the evidence. However, I will eliminate that part of the
23 question and I will say: What was it, why was it, then,
24 that on Thanksgiving Day you did agree that both these
25 men should plead guilty and why was it you agreed to it
26 then and you had not agreed to it before?

1 MR. ROGERS. That is not a correct statement.

2 MR. APPEL. He has not made any such statement.

3 MR. ROGERS. He has not made that statement.

4 MR. APPEL. He said it all occurred before that.

5 MR. FREDERICKS. An agreement among one party is not an
6 agreement. I am talking of the agreement with the other
7 side.

8 MR. APPEL. That don't make any difference to the agree-
9 ment--

10 MR. FREDERICKS. I withdraw the question and eliminate
11 the word "agreement."

12 MR. APPEL. They said they had agreed before..

13 THE COURT. Now, read the question.

14 MR. FREDERICKS. I am going to make another question.

15 Counsel doesn't like the term agreement.

16 MR. APPEL. I do like the term agreement.

17 THE COURT. Question withdrawn.

18 MR. APPEL. Why is he assuming it was not agreed before?

19 MR. FREDERICKS. Agreed among themselves he said.

20 THE COURT. What is the question?

21 MR. FREDERICKS. I am going to frame it if I ever get a
22 change. Why was it, Mr. Steffens, that you never agreed
23 with the prosecution to do what--to have both these men
24 plead guilty until Thanksgiving day? A You mean agree
25 with you?

26 Q Yes, make it that way, if you wish? A Why, I watched

1 you in court and decided I couldn't do anything with you
2 on a plea of mercy.

3 Q When did you come to that conclusion? A Oh, I beg your
4 pardon. I think I came to the conclusion on Thursday.

5 Q Thanksgiving Day? A Myself, yes, I hoped right up to
6 the last moment to save J.J. McNamara.

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1 Q Well, now, why was it that this was done on Thursday,
2 and not done on the day before or the day after? Was
3 there any reason? A No more reason than we are here to-
4 day and may be here tomorrow, and why aren't we here tomor-
5 row.

6 Q Just happened that way? A Yes, as far as I know.

7 Q You were very much interested in the campaign of Mr
8 Harriman, weren't you? Had brought money out to help him
9 in his campaign, from the East?

10 MR ROGERS: That is a double question. A Yes, I was
11 interested in that campaign. I am interested in all of
12 these forward movements, wherever I can, I raise money,
13 especially if they are lone fighters or poor fighters --
14 haven't any money, and have done it a great many times.

15 Q And you realize that the plea of guilty of these two
16 men, coming just before ^{the} election, in which Harriman was
17 interested, was going to be a serious blow to Mr Harriman's
18 hopes in the campaign, didn't you? A Captain Fredericks,
19 all that time we had got so interested in this thing we were
20 doing that we almost forgot Harriman and his blooming
21 campaign. We were so intent on what we were doing.

22 Q Did you not, back in your memory, did you not at the
23 time realize to some extent it was going to hurt Harriman?

24 A Yes, once in a while crossed our minds, but our things
25 seemed bigger than their thing; that is all.

26 Q Why didn't you have the plea of guilty, then, strung

1 along for five days more when the election would be over?

2 A Because we were under this terror of exposure, and
3 have it leaked out, and, really, it began on the 19th, as
4 I thought there was always this fear somewhere throughout
5 the country, it was known out East, someone would put it
6 to the public. If the public knew it we couldn't --

7 Q You knew the case would have to be tried? A Yes, the
8 case would have to be tried.

9 Q And you were always apprehensive of that? A We were
10 afraid even a week before.

11 Q And were you afraid that the case would have to be
12 tried after all? A Yes, true.

13 Q And that the jury that was being secured would be
14 the jury that would try the case, after all.

15 MR ROGERS: Wait a minute. The witness has not said any-
16 thing of the kind, and that is a question that bears an
17 imputation and an implication. If it was not asked it
18 would be a trick question, if I ever saw one in a court
19 room. I object to it as not cross-examination. He doesn't
20 know who the jury were or anything about them.

21 MR APPEL: Assuming a state of facts, the witness has not tes-
22 tified to. The witness having already said what they
23 were already afraid of; the District Attorney interpo-
24 lates that into the statement of the witness, which was not
25 included in the statement of the witness, your Honor.

26 THE COURT: Objection sustained.

1 MR FREDERICKS: You were willing, Mr Steffens, you and Mr
2 Darrow, that J. B. McNamara should be hanged if J. J. could
3 go free, were you not? A Not for a moment.

4 Q Well, now, let's see: let's have that little slip of
5 paper, Mr Clerk, that was introduced in evidence as defend-
6 ant's exhibit -- something, the last slip of paper that
7 went in. Referring to defendant's exhibit M, you are famil-
8 iar with it, are you? A Yes, I remember it.

9 Q It reads as follows: "The party on trial to plead
10 guilty and receive such sentence as the court may admin-
11 ister, except capital punishment. All other prosecutions
12 in connection with the affair to be dropped." A Yes.

13 Q Now, don't you remember that was the second -- at the
14 time you had it here, Mr Brant had had a second meeting
15 with the District Attorney, or had a first meeting with
16 the District Attorney that Mr Gibbon or Mr Chandler told
17 you that the District Attorney would have to have some
18 proposition in writing before he would consider it, and
19 that then you had this written up? A Oh, no; this was done
20 before. I am quite sure of that; this was done on Monday,
21 if there was any such thing, it was ready to be handed to
22 you.

23 Q Then, didn't word come back to you from Mr Brant that
24 there was no use in submitting to the District Attorney
25 this typewritten statement with this clause in it, "except
26 capital punishment", and did not you then send word to

1 the District Attorney, through Mr Brant that they might
2 draw a line through that part, "except capital punishment"
3 and allow it to read this way: "The party on trial to be
4 plead guilty and receive such sentence as the court may
5 administer. The other prosecutions in connection with the
6 affair to be dropped." A Only upon an understanding
7 if that question came up -- I understand what you are driving
8 at -- the question came up and we were willing to leave it
9 out of the agreement, provided, however, that the Dis-
10 trict Attorney or the Judge or the District Attorney for
11 the Judge, would give assurance that he would not hang
12 anybody.

13 Q Well, that was the thing that was -- you wanted a
14 private assurance that the District Attorney would not
15 hang anybody, but you did not say that he might cut out
16 this "except capital punishment"? A No.

17 Q No. A Only, unless there was some other kind of an
18 understanding. There was no moment when either Mr Dar-
19 row or myself would have been interested in any negotia-
20 tion that involved the killing of anybody.

21 Q What word did you send back about cutting out that
22 "except capital punishment", if you remember? A I don't
23 know of a word, except we would take a substitute for it --
24 the Judge, as I remember, was very particular to have it
25 appear that he didn't know anything about any agreement.

26 Q Now, just a moment --

1 MR ROGERS: Wait a moment. Let's have that answer fin-
2 ished.

3 A I can explain that.
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7s 1 MR. FREDERICKS. That is not fair to the court or anybody
2 else. This witness must only testify to what he knows.

3 MR. ROGERS. I think he knows.

4 MR. FREDERICKS. I know he don't know.

5 MR. ROGERS. I think I do know.

6 MR. FREDERICKS. Let's get an answer to the question.

7 THE COURT. The witness is testifying and nobody else.

8 A The Judge knows it because--

9 MR. FREDERICKS. Then let's get an answer.

10 THE COURT. Let's get the answer as far as it went.

11 (Last answer read by the reporter.)

12 THE COURT. Go on and finish the answer.

13 A Well, I saw the Judge and I was willing to take the
14 word of the Judge that there would be nobody hung. I saw
15 the judge on this.

16 MR. FREDERICKS. Q And the judge wouldn't talk to you
17 about it? A Oh, yes, he did. He talked to me a long time
18 in his own private room in the club, and when the article
19 I wrote that you have quoted, when he read it he complained
20 of the language where I said that there was a formal
21 agreement and he asked me to change it and I put in the
22 paragraph, for his special benefit, later down in the story
23 and mangled the story, which I made plain, that he wished it
24 to appear that way. Put it on him, because I didn't
25 think it was quite true.

26 Q You don't mean to say that the judge made any agreement

1 with you in this matter? A No, but I do mean to say the
2 judge knew what was going on.

3 Q That is only your opinion? A Well, I told him.

4 Q You told him? A Yes, I told him.

5 Q Where? A In his own room in his own club.

6 Q When? A And I told him in his chambers.

7 Q When? A I don't remember exactly when but I remember
8 I told him that early--I told him when I first came to court;
9 when I first came to Los Angeles, he sent for me one day,
10 was on the bench after he took a session and he asked me
11 to come back into his chambers. He asked me what I was
12 doing and I told him then what I was doing.

13 MR. ROGERS. I think now it ought to be stricken from the
14 record that Captain Fredericks said the witness doesn't
15 know that the judge knew. I told him he did.

16 THE COURT. The witness is the only one that is testifying.

17 MR. APPEL. Yes, sir.

18 THE COURT. Counsel are always entitled to their opinion.

19 MR. ROGERS. Yes, sir.

THE COURT.

20 A have I answered the last question? / I think so.

21 MR. FREDERICKS. Q Do you remember when it was that you
22 got this word back to cut--and agreed to cut out this
23 clause, "except capital punishment?"

24 MR. ROGERS. Pardon me, that is a misstatement, your
25 honor please, and not cross-examination. He didn't agree
26 to cut out this word "capital punishment." He said he

1) agreed to take a substitute, take the judge's word.

2 MR. FREDERICKS. Cut it out of the written part.

3 MR. ROGERS. No time when either of them agreed to cut out.

4 MR - FREDERICKS. Let him testify.

5 MR. ROGERS. The question assumes something that the witness
6 has not testified.

7 THE COURT. Listen to the amended question. The question
8 is now amended. I think it is a proper one. (Last
9 question read by the reporter.)

10 A I don,t remember the date but I would like to make
11 sure it goes onthe record, at that time I merely pro-
12 posed, and we were willing to take a verbal agreement as
13 a substitute for a written agreement, either from the Dis-
14 trict Attorney or from the judge himself.

15 MR. FREDERICKS' Q This was not any written agreement?

16 A No, sir, this was memorandum, that is all.

17 Q There wasn't anybody going to sign that, was there?

18 A No.

19 Q There wasn't anybody going to sign anything. was there,
20 in the way of an agreement? A No.

21 Q Then this was to be a memorandum of an agreement?

22 A yes, but we were willing to take a verbal agreement.

23 Q You don,t regard this as a verbal agreement?

24 MR. APPEL. It don't make any difference. The District
25 Attorney asked him if he got word from the District Attor-
26 ney at some time in writing and the witness said they

1 had prepared that in view of the fact that the District
2 Attorney might want something in writing, that they had
3 it already to submit to him, and that is right.

4 MR. FREDERICKS. Just one question more, Mr. Steffens. I
5 think you covered it, but I think it was on Direct examina-
6 tion--oh, yes, another matter. There was a part of this
7 agreement that all prosecutions should be dropped in the
8 original--your testimony here--it is in this statement
9 here? A Yes.

10 Q Now, in your conversations over at the county jail with
11 any of the McNamaras, did they make a stipulation that
12 all the prosecutions against others in connection with this
13 affair should be dropped or was that clause dropped out of
14 the matter? A No, we told the McNamaras that our under-
15 standing was that the agreement with you was that all pro-
16 secutions in connection with this affair were to be
17 dropped.

18 Q Now, By "this affair" what do you mean? A Mean the
19 labor cases.

20 Q Well, that is pretty general. You mean the explosion,
21 the Times cases and that men were charged with murder there
22 in the Llewellyn case here? A Yes.

23 Q And you mean the other cases in which it was alleged
24 that J J McNamara and J B McNamara were involved in blowing
25 up bridges also? A You mean--the prosecution so far
26 as this county were concerned.

1 Q It was only in regard to this county? A Yes, not
2 things that happen/ in this county but cases in this county,
3 that Los Angeles was to quit the fight and try another
4 tack.

5 Q You thought that there was going to be an agreement
6 then that nobody, nobody else, no other accomplices to
7 this murder could be prosecuted? A Except the Franklin
8 case.

9 Q Well, I mean to the murder in the Times building. A By
10 this county, yes.

11 Q By this county? A Yes.

12 Q That there would be no prosecution of those fellow against
13 other people, that the idea?

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1 MR APPEL: That has been asked and answered, and time
2 over again.

3 A Wait a moment. I would like to get the question ex-
4 actly. I want to answer it.

5 (Last question read by the reporter.)

6 A I don't know what that question means.

7 MR FREDERICKS: That there would be no prosecution --
8 well, I withdraw it, and put it this way. Didn't you tell
9 Mr Gibbon that you wanted it to be a part of this agree-
10 ment that there should be no prosecution against Johannsen
11 and Tveitmoe and others, but mentioning those two in con-
12 nection with the question of the destruction of the Times
13 building? A Yes. You see my proposition was to have
14 all these attempts to solve labor problems in court
15 abandoned.

16 Q If these two men would plead guilty? A Yes.

17 Q Well, did you ever get any word back from the District
18 Attorney on that point? A I think I will let Mr Davis
19 and Mr Darrow testify as to that.

20 Q But did you ever get any? A No, but I had the consent
21 of businessmen to that. They could see the wisdom of that
22 policy. Then, there was a clause of the agreement which
23 shows that it was complete -- the District Attorney had
24 nothing to do with this. There was another agreement with
25 those gentlemen that we talked with, and others, should
26 meet soon after the pleas of guilty, as they did, in the

1 Chamber of Commerce, and consider how and whether they
2 could not take up the labor problem and they had two meet-
3 ings in the Chamber of Commerce in the direction of carry-
4 ing this out, and they appointed a committee of three,
5 which is still in existence. They have never done any-
6 thing, but there is a committee that we intend to work with,
7 further and tackle the problem of labor that the District
8 Attorney had nothing to do with. That was the agreement
9 between me and these businessmen, but I reported it to
10 the McNamaras and it counted on their minds as part of
11 the settlement because they were much interested in the
12 thought that perhaps their going to jail would lead to the
13 consideration by businessmen seriously, of the labor
14 problem. That is what they were dynamiting for, to get at-
15 tention to their problems. I remember once J.B. said
16 if he thought that we could put that over, he would be
17 willing to hang.

18 Q If the others would not be prosecuted? A No, you
19 are misinterpreting, my boy. What he wanted to get was
20 attention to his problem.

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1 Q Now, about this final meeting you had with the
2 business men, as you suggest, I find on page 5276 you testi-
3 fied as follows: "A--They refused to take an active part
4 in the details of any negotiations or any settlement;
5 they felt that they had to be back of law and back of the
6 District Attorney and they wanted to stand by him." That
7 was the final agreement, was it not?

8 MR. ROGERS. Just a moment. He is speaking to the question,
9 he says, "You testified on page 5276, etc." and then he
10 does not read the whole discussion.

11 MR. FREDERICKS. I read a part of it.

12 MR. ROGERS. He only read a part of it, not even a full
13 sentence.

14 MR. FREDERICKS. And I do not intend to read it.

15 MR. ROGERS. I suggest, if he is asking a man if he so
16 testified he ought to read to a full period.

17 MR. FREDERICKS. Not necessarily.

18 MR. ROGERS. Not necessarily? That is what is known as
19 trick stuff.

20 MR. FREDERICKS. That is not what is known as trick stuff.

21 MR. ROGERS. It has been ever since I have been prac-
22 ticing law.

23 THE COURT. Is there an objection?

24 MR. ROGERS. Yes, sir. It is not cross-examination,
25 because it does not pretend to repeat all he did testify on
26 that subject--

1 MR. FREDERICKS. I withdraw the question.

2 MR. ROGERS. All right.

3 MR. FREDERICKS. Q Isn't it a fact, Mr. Steffens, that at
4 the end of this last meeting of the night before Thanks-
5 giving that the final words from those men therewas this,
6 that they would not enter into any agreement or understand-
7 ing with you in regard to thematter at all, that this was
8 a matter of the violation of law and in the hands of the
9 District Attorney and that they would back whatever he
10 did and whatever he thought was right. Wasn't that the final
11 agreement? A No

12 Q No. Well, didn't you say, then, in answer to this
13 question: "Q--Were any definite steps taken or any
14 definite statements made at that meeting--" referring
15 to the meeting with reference to what they would recommend
16 concerning J.J.---"A--No, I think not. They refused to take
17 an active part inthe details of any negotiations or any
18 settlement. They felt they had to be back of the law and
19 back of the District Attorney and they wanted to stand by
20 him, but they did agree there in this resolution if he
21 could be brought to see the idea of mercy at all, they would
22 support him, support the law and do what they could with
23 public opinion?" A yes, and they further agreed--

24 Q Now, isn,t that exactly what I asked you before?

25 A No, because you asked me if that was a final conclu-
26 sion. There was another part of this agreement.

1 Q There was some thing further than that? A Yes.

2 Q Oh, I see. Well, what was further than that? A Well,
3 this agreement to go on after this case had been disposed
4 of in some way--

5 Q Oh, you mean to go on? A And take up--

6 Q Connubiation betwen capital and labor? A Yes, take
7 up the real thing.

8 Q I didn't refer to that, of course. I was referring
9 only to this case, insofar as this case was concerned, the
10 criminal cases in court? A yes.

11 Q That was their last word onthat subject? A yes, you
12 are right on that, they would not take part in the negotia-
13 tions or anything, in any effort to persuade you.

14 MR. APPEL. The details of it, you said in that answer.

15 Q To persuade me to what? A To change your course.

16 They would agree to back anything that we might in any
17 way persuade you to do, it was an effort to have some public
18 opinion or some force of public opinion prepared for an
19 event.

20 Q Did you ever at any time agree with these men that
21 you were dealing with that there should be a confession
22 onthe part of J B McNamara if he plead guilty, detailing
23 the circumstances of the crime? A No. They were
24 opposed all through to a confession. They were willing to
25 plead guilty but not a confession, they would not confess.

26 Q Oh, I mean, did you agree with these men at one time--

1 A No.

2 Q that they would confess? A No. The only thing I
3 suggest/^{ed}was to them, in lieu of that, that I would like to
4 have the McNamaras tell me the facts and let me print
5 them sometime, but that would not be a confession.

6 Q Didn't you ask Mr. Chandler, on Thanksgiving morning down
7 there between 2 and 3 o'clock, to get the District Attorney
8 to forego having a confession? A Yes.

9 Q Well, then, you understood up to that time, then, you
10 thought the District Attorney was demanding a confession,
11 did you? A Right towards the end there began to be a
12 talk of a confession, I think it came from the business
13 men. I don't know where it came from, that if a confession
14 --it was an entirely different thing from a plea of
15 guilty., and I urged Mr. Chandler to do all he could to
16 have that, what seemed to be a new demand, cut out.

17 Q You thoughtt that came from the District Attorney? A No,
18 I think it came from the business men, I think the
19 business men became very eager to have a complete confes-
20 sion, I don't know, it may have come from Burns or from the
21 Erectors or somebody. May I explain that a little further?
22 THE COURT yes.

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1 A We felt the effort of these men, of what was back of
2 these prosecutions in getting these two men to plead guilty
3 and give them some evidence on which to go and try some-
4 one else. Of course, we were as opposed to going on and
5 trying some other poordevils as we were to trying these
6 fellows. We wanted to get an abstract draft of the labor
7 problem, but not including the life or death of an indi-
8 vidual. You cannot get the truth that way, so the oppo-
9 sition to a confession was consistent from the start.

10 Q Mr Ford thinks this question was not asked, and I
11 think it was. I will ask it again and see. Did you not
12 tell Mr Chandler, early Thanksgiving morning, that is be-
13 fore daylight, that You would work all that day to secure
14 the consent of both boys to a plea of guilty? A I told
15 him if he would go back and see his side and get the con-
16 fession dropped out and get whatever else he could, I
17 would go back and talk with my side and do all I could,
18 that is all.

19 MR APPEL: You asked that.

20 MREREDERICKS: I thought I asked it. That is all.

21 THE COURT:" Can you finish your redirect before recess?

22 MR ROGERS: I think so.

23
24 REDIRECT EXAMINATION

25 MR ROGERS: Mr Steffens, this morning in interrogating
26 you with reference to the matter of bribery, did you under-

1 stand from the questions that there was an effort made to
2 get you to answer that you favored bribery or condoned it,
3 or would do anything to get a man loose, who was charged
4 with bribery, or anything of that sort?

5 MR FORD: We object to that question, that portion of
6 the question, "there was an effort to get you to say to con-
7 done bribery", as not redirect examination, and as assum-
8 ing something that is not in evidence, and calling for a
9 conclusion of the witness that the District Attorney made
10 an effort to get him to say he condoned bribery. The only
11 thing in court is the questions asked and the answers
12 given. What efforts the District Attorney is making have
13 nothing to do with the questions propounded to the witness.

14 MR ROGERS: The opening of the question will show --

15 MR FORD: We object to it on the ground it is incompetent,
16 irrelevant and immaterial, not redirect examination, call-
17 ing for a confusion of the witness, assuming something
18 not in evidence, and no foundation laid for the asking of
19 such a question.

20 MR ROGERS: The question is, what did the witness under-
21 stand.

22 MR APPEL: Did he understand whether that was the inten-
23 tion or not?

24 THE COURT: Do you want the question read?

25 MR ROGERS: No sir, but I am satisfied with it.

26 THE COURT: I think the question is bad as to form. Ob-

1 objection sustained.

2 MR ROGERS: Exception.

3 THE COURT: Simply as to the form of the question.

4 MR ROGERS: Speaking of the matter of bribery, I will ask
5 you, Mr Steffens, if you at any time, have written arti-
6 cles upon the subject of bribery of public officials, or
7 if you have written books thereon, and matters of that kind?

8 MR FORD: That is objected to as not being redirect exam-
9 ination, as calling for hearsay, as to what books he has
10 written on that subject, and statements made out of court,
11 by a witness on a matter, do not corroborate the testimony
12 given on this occasion. I call your Honor's attention to
13 a case in the 48th California Reports, in which the court
14 lays down the principle that a statement of the witness
15 as to his opinions, or facts on the present occasion, can-
16 not be corroborated by statements made by him at other
17 times, except under peculiar and exceptional circumstances.

18 THE COURT: I think those peculiar and exceptional cir-
19 cumstances exist here, and the District Attorney has open-
20 ed up that question.

21 MR FORD: Not in view of that case, if your Honor will
22 permit me just a second. The only case in which a witness
23 can detail a statement made on a former occasion is this:
24 if the statement has been made by a witness on the stand
25 and an attempt is made to show that it was fabricated,
26 that the witness has made up that story since the happen-

1 ing of a certain event, then they are permitted to put in
2 evidence, the fact that he had made a similar statement long
3 before the alleged date of fabrication. If counsel
4 wants to show that this witness has now made a statement
5 that he is opposed to bribery, and we should claim that
6 was a fabrication, the witness was not opposed to bribery
7 and tried to show he only took that position for the pur-
8 pose of the situation since yesterday or the day before,
9 then they would have the right to show he had made a sim-
10 ilar statement at a previous date, but it must be a state-
11 ment as to the same fact in issue before the court.

12 For instance, supposing a witness testified on the stand
13 that he was present and saw a man shoot another man --

14 THE COURT: Mr Ford, you lose sight of the fact that the
15 examination of this witness went into his views upon this
16 particular subject, his opinions, both published and private
17 opinions on the particular subject.

18 MR FORD: yes, and we concede they can ask his opinions
19 on subjects, but they cannot corroborate his opinions on
20 subjects.

21 THE COURT: That is not my understanding of what they are
22 getting at in this matter.

23 MR FORD: This is my understanding, they are trying to
24 corroborate -- he has not yet testified to his opinions
25 of bribery in answer to questions on redirect examination,
26 but suppose he did, suppose the witness says, "I am oppos-
ed to bribery, and I have always been opposed to bribery"
then the question arises, can they corroborate the present
statement of this witness by showing he has written books

1 upon that subject some years ago. We claim that they
2 cannot, that it does not come within the rule laid down
3 for fabricated statements.

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11p 1 That the rule in regard to fabricated statements would be
2 a situation like this; if this witness had taken the stand
3 and had said, "I saw A shoot B on the 1st of January of
4 this year," and we should then attempt to show that the
5 witness was lying, that that was a fabrication made up by
6 himself, that he never made a statement that he had seen A
7 shoot B on the 1st of January, until the beginning of July,
8 and that at the beginning of July he fabricated that
9 statement, then the defense would be allowed to show that
10 the witness had made a similar statement away back in
11 January at the time of the killing. That is the only case
12 in which a witness is allowed to corroborate the testimony
13 given upon the stand, by showing he had made a similar
14 statement at an earlier date.

15 MR. APPEL. We did not ask him, your Honor, to state in
16 this question what he said.

17 MR. FORD just a moment, I have the floor.

18 MR. ROGERS. Let him go on.

19 MR. APPEL. I thought I would put him to the point--

20 THE COURT read the question.

21 (Question read.)

22 MR. APPEL. That is all we ask him, for the facts.

23 MR. ROGERS. It is preliminary, the idea, if your Honor
24 pleases, of accusing Lincoln Steffens, the man who wrote
25 "The Shame of the City" of bribery--

26 MR. FREDERICKS. Let us not have an argument on this witness

1 We will take an argument on this witness when the time
2 comes.

3 MR. ROGERS. I will say here in this court room, as long
4 as I have my voice, and no District Attorney will stop me--

5 MR. FREDERICKS _ I am not trying to stop you.

6 MR. ROGERS. Oh, I do not suppose you are, you recognize
7 the impossibility.

8 MR. FREDERICKS. The court has ruled that we shall not
9 argue about a witness while he is upon the stand, and I do
10 not want to be compelled to.

11 MR. APPEL. They have been arguing here about fabricating
12 statements. What has that to do with this question?

13 MR. FORD. We claim there is no fabricated statement by
14 the witness as to any material fact which can be cor-
15 roborated by showing that the statement is not a fabrica-
16 tion by proof of former similar statements made long ago,
17 and a written statement is the same as a verbal statement.
18 In the case of People vs. Doyel, beginning at page 85
19 of the 48th California Report, it discusses that subject:
20 "When an attempt is made to impeach a witness by proving
21 former statements made by him in conflict with what he has
22 stated before the court, his credit cannot be sustained by
23 proving that he made to other persons before having been
24 called as a witness, the same statement detailed in his
25 testimony." You cannot corroborate a witness, that is
26 flat-footed, you cannot corroborate this witness as to the

1 fact that he is opposed to bribery by showing that he has
2 written books or made statements opposed to bribery or
3 criticising bribery. If they ask him this question, your
4 honor, "Are you opposed to bribery," and he answers "Yes,"
5 they cannot corroborate him upon that point by showing he
6 made statements which agree with his present testimony.

7 A witness cannot be corroborated in that manner. We admit
8 that they have a right to ask this witness whether he is
9 in favor of bribery or whether he is opposed to bribery,
10 and the circumstances of it, but the point we are making,
11 whether he wrote books upon the subject is absolutely
12 immaterial. They can have only one purpose and that would
13 be to try to corroborate his present testimony by showing
14 he made similar statements on other matters. Counsel knows
15 that is the law and that is the reason he tried to inject
16 his statements by way of testimony, that is the reason he
17 testified a moment ago and said he will do it in spite of
18 the testimony, he is doing it in spite of the fact that
19 that is not the law.

20 THE COURT. I have not heard any attorney's testimony.

21 MR. FORD. Mr. Rogers remarked and exclaimed, which he
22 intended as testimony, because he knows the law would not
23 permit him to put it in.

24 THE COURT. That is not testimony.

25 MR. FORD. I am reading from the syllabus, in order to cut
26 it short. "There is only one time when such statements are

1 admissible and they are as follows: " Syllabus, the top
2 of page 86--"Such statements by the witness may, however,
3 be admissible in contradiction of evidence tending to show
4 that the statement made by him under oath is a fabrication
5 of a late date, if the statements are made before their
6 effect can be foreseen, and perhaps in other peculiar cases."
7 But this is a case where the witness will certainly say,
8 "I am opposed to bribery", and they are attempting to show
9 he must be opposed to bribery because years ago he wrote
10 a book or made a statement which was opposed to bribery.
11 That cannot be done and it is clearly in violation of the
12 rule laid down in the case of People vs Doyel and affirmed
13 by numerous other authorities.

14 THE COURT. Suppose the witness were asked if he was not
15 opposed to religion, could they not on redirect show he
16 was a minister of the gospel all his life?

17 MR. FORD. They could show the fact he was a minister of
18 the gospel if the people had claimed he was not a minister
19 of the gospel and perhaps they could go even as far as
20 your Honor suggests, they could go. That would not be
21 equivalent to introducing his statements in regard to
22 religion or books he had written on religion.

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1 THE COURT: BY the same token, if the witness on cross-
2 examination is asked if he is not in favor of bribery,
3 can he not be shown, on redirect, that he has preached
4 the gospel of anti-bribery all his life; the same effect?

5 MR FORD: I do not understand that the defense contends
6 that this witness has made a statement that he is in favor
7 of bribery. They are contending there is no such testimony.
8 Whatever the witness may have testified upon that subject
9 they do not claim is untrue.

10 THE COURT: I do not think the case cited has any appli-
11 cation to the situation. Objection overruled.

12 MR APPEL: Well, we can explain our position in a few words,
13 so that the jury and everybody may understand upon what
14 theory we are offering to show this.

15 THE COURT: Isn't it upon the theory the court has stated?

16 MR APPEL: That is the only reason -

17 THE COURT: Mr Appel, let us not --

18 MR APPEL: Your Honor does not want to hear me?

19 THE COURT: I have ruled your way.

20 MR APPEL: your Honor does not want to hear me on the ob-
21 jection of the District Attorney?

22 THE COURT: Only as a matter of taking time.

23 MR APPEL: On the objection of the District Attorney?

24 THE COURT: The objection of the District Attorney has
25 been overruled.

26 MR APPEL: We ask permission of the court to answer the

1 long statement of the District Attorney, that he does not
2 claim that the statement of the witness shows --

3 MR FORD: We object to any speeches made to the jury.

4 THE COURT: Objection overruled. Let them go on and make
5 the statement.

6 MR APPEL: That the witness has been asked reasons why or
7 asked what the gentlemen referred to by the witness that
8 were negotiating with him to include the Franklin case,
9 which he answered he asked them to include it, by his own
10 volition, and that they, upon that statement of the wit-
11 ness here, they are claiming to base their argument to the
12 jury that he was willing to have a man who afterwards had
13 plead guilty, and being bribe-giver to be released from
14 punishment, and they would make that argument to this
15 jury, and we are trying to show, your Honor, the true
16 condition of his mind.

17 THE COURT: It should be shown at this time by evidence.
18 The argument will come later.

19 MR APPEL: I know, but we have a right to make our posi-
20 tion clear.

21 THE COURT: The objection has been overruled.

22 MR APPEL: Although, if your Honor does not want to hear
23 me any more, I will take an instruction, and I will not
24 say another word.

25 MR ROGERS: Read the question.

26 (Question read.)

1 A Yes, I have spent all my life exposing bribery and cor-
2 ruption.

3 Q You say you have spent all your life exposing bribery
4 and corruption?

5 MR FORD: We object to that on the ground the question
6 is answered.

7 THE COURT: Objection overruled.

8 MR ROGERS: I would like you to relate, -- well, what books
9 you were the author of on that subject.

10 MR FORD: We object to that as incompetent, irrelevant
11 and immaterial, the witness has already answered the ques-
12 tion fully. They are not seeking to impeach their own wit-
13 ness, I hope.

14 THE COURT: No, it is upon a different theory. The
15 question, to my mind is, Mr Rogers, whether the answer to
16 this question does not open the door to introduce these
17 books.

18 MR ROGERS: I shall not attempt it, but if the other side
19 attempts it, I shall not object to it, but I do not want to
20 do that.

21 THE COURT: I think you are entitled to this line of testi-
22 mony.

23 MR ROGERS: All right, I will withdraw it.

24 Q What have you done in that regard? You say you have
25 spent all your life in that respect, exposing bribery and
26

1 corruption. What have you done in that regard?

2 MR FORD: We object to that as incompetent, irrelevant and
3 immaterial, and an attempt to corroborate their own wit-
4 ness. I assume it is corroboration -- in a manner not
5 allowed by law -- either that or an attempt to impeach
6 their own witness, for which there is no foundation
7 laid.

8 THE COURT: Objection overruled.

9 A Well, I have written articles that are now in books
10 upon the cities of Chicago, Pittsburgh, St Louis, Minnea-
11 polis, New York, San Francisco, Denver; the states of
12 Pennsylvania, Illinois, Wisconsin, in which I have been
13 showing that all over the United States is going on this
14 constant corruption which is undermining our civiliza-
15 tion and our government, and I am still at that job, but
16 I am also trying to make a distinction between the crime
17 that is merely done by an individual and the crime that is
18 committed by an individual for a group which grows out
19 of social conditions, and I think that those two lines
20 of crime must be handled differently.

21 Q When you said that you learned or were, you say,
22 assured that the McNamaras were guilty some day or two or
23 three after you came here, what did you understand, or
24 were you assured that they were guilty of? I wish to have
25 you explain that answer?

26 MR FORD: Assured by whom?

1 MR ROGERS: Hewas asked oncross-examination when he learned
2 that the McNamaras were guilty, he said that while he did
3 not learn it from them he was assured of it, or that he
4 became convinced of it. I don't know his exact words --
5 from what they said and from the circumstances, and I want
6 to ask him what he felt they were guilty of, that is the
7 question.

8 MR FORD: That is objected to on the ground that the found-
9 ation as to time, place and persons present, is not fixed,
10 and from whom he learned it before, and what it was he
11 learned; it is an attempt to get the substance of a con-
12 versation without first laying the foundation.

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1 MR ROGERS: I did not ask him for a conversation. On
2 cross-examination he was asked if he didn't know they were
3 guilty, or when he became aware they were guilty ,
4 or something like that , and I am merely taking that ques-
5 tion up and asking him guilty of what?

6 MR FORD: We are not claiming that is not redirect, but
7 the rule on redirect is the same as any other time.

8 MR ROGERS: I am not calling for the conversation.

9 THE COURT: Objection overruled. Answer the question.

10 A I went to see them in the jail, first J. J., and af-
11 terwards J. B. I didn't ask them directly if they com-
12 mitted this crime or any other crime, I merely talked to
13 them about their policy in labor, and during the conversa-
14 tion we had, before I talked to them very long, there was
15 an open admission, the conversation was all based on the
16 mutual understanding between them and me that they were
17 guilty, and labor was guilty.

18 MR ROGERS: Guilty of what? A Guilty of most of these
19 dynamitings, the crimes that were charged against them
20 in the United States, but we did not particularize,
21 I did not ask them if they blew up a certain building, or
22 some other building, but I understood they had been using
23 dynamite, that they were using dynamite to injure property,
24 to make explosions that would attract attention to this
25 problem they were trying to force on our attention, and
26 what knocked them out was all an accident that happened,

1 when they killed some people, and that almost pros-
2 trated J.B. that he thought he had killed these men.

3 Q Did you become aware from him or from J. J. or from any
4 person, speaking of the question asked you on cross-examina-
5 tion that they were guilty of intention^{al}/murder, that is,
6 intending to kill anybody, or placing dynamite where it
7 would kill anybody with the intention so to do?

8 MR FORD: I object to that on the ground it does not illus-
9 trate Mr Darrow's state of mind, but illustrates the state
10 of mind of the defendants J. J., and J. B. McNamara,
11 not redirect examination, no foundation laid for it, and
12 asking and calling for hearsay, incompetent, irrelevant
13 and immaterial.

14 THE COURT: Objection overruled.

15 A What is the question. (Question read.) No, it was
16 always uncomfortable to mention the fact that anybody was
17 killed in the Times explosion, because it always seemed
18 to break J.B. down, and he acted as if it was a thing that
19 was not intended, but on the contrary, that it almost pros-
20 trated him, and of course, that was important to me and to
21 everybody else, and to Mr Darrow's state of mind, because
22 we knew they were not murderers, even though they might
23 have killed some men.

24 Q By "murderers" what do you mean?

25 MR FORD: We move to strike out the answer of the witness
26 which stated the impression which he got, which is not

1 responsive to the question, a mere conclusion, instead
2 of stating what was said and done.

3 MR ROGERS: We asked for his impression as to the guilt
4 of these men.

5 THE COURT: The motion to strike out is denied. Gentlemen
6 of the jury, bear in mind your former admonition. We will
7 take a recess for ten minutes.

8 (After recess.)

9 MR ROGERS: Mr Steffens, you were asked if you did not re-
10 gard the conditions in Los Angeles about the time of this
11 trial as a state of warfare. You replied you did. I will
12 ask you what you were trying to do with reference to the
13 warfare? A To get peace and understanding.

14 Q I will ask you if this is the article to which you
15 have made reference in your testimony concerning which you
16 were interrogated as to the sentencing of -- A Yes.

17 MR ROGERS: I offer it in evidence, it being the complete
18 statement and explanatory of the other.

19 THE COURT: Defendant's exhibit --

20 MR ROGERS: headed, (Reading:) "Capital --" A The
21 heading is not mine.

22 Q (Reading:) "End war between capital and labor pleads
23 Steffens. Inside story of events leading up to confessions
24 by the McNamara Brothers. Noted Magazine writer hopes
25 to establish industrial peace, and mutual good will. By
26 Lincoln Steffens. Labor and capital both stand convict-
ed here today, the one of direct crime, the other of

1 inciting to crime. Innocent working men and innocent bus-
2 inessmen may protest the interpretation of the conclusion
3 of the McNamara and all other labor propositions in this
4 county yesterday afternoon. But I was a participant
5 from the beginning, nearly two weeks ago --" This was pub-
6 lished December 2nd. A I think so.

7 MR ROGERS: (Reading:)

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14s 1 "in the negotiations which led up to that result, and I
2 know, not only the facts and considerations which weighed
3 with both parties, but I caught also the spirit of it.
4 And that was fine.

5 "Los Angeles has done something which, if the people
6 here and in the country at large will understand it aright,
7 must put the ancient controversy between labor and capital
8 on a new and a clearer basis forever. This city had
9 labor woden; she could have reaped vengeance on its agents,
10 and the leaders and (excepting Job Harriman) the attorneys
11 of labor know it. But the commanding men in this com-
12 munity didn't do that. They let labor up. And one reason
13 why these capitalists did that was because they knew that
14 they also were at fault.

15 "And having done this thing, in this spirit, they
16 proposé now to go on and do more. They will cross the
17 class line. They promised me, some 20 of them, that they
18 would meet with some of the labor leaders here and con-
19 sider afresh the problem of labor. Now, nothing may
20 come of it, neither side expects too much. But each side
21 has promised not only to listen but to try to understand
22 the other.

23 "In other words, the war between capital and labor is
24 recognized as a war. The compromise of the murder case
25 in court yesterday is to be understood as an acknowledge-
26 ment that J.B. and J.J. McNamara are, as District Attorney

1 Fredericks said a few days ago, "Not criminals, but
2 fanatics." I would use other words; i have talked with
3 these men intheir jail, and I think I know them and
4 something of what they think. They think they are serving
5 a cause; that they are fighters in a war. And they are.
6 And the state's action toward them is, in effect, as
7 I am trying to show, the first step towards a treaty of
8 peace.

9 "The only limitation I must put upon this summary of
10 the matter is this: All the agreements made are without
11 the ken of the court. Judge Bordwell was not a party to the
12 negotiations, nor is he bound by the agreement made. He is
13 considering the case purely as a crime, and from another
14 point of view. But there is an agreement between the attor-
15 neys for the state and for these men, and if the
16 judge decides to exceed it, the cases will go on as before.

17 But I think the judge's conclusion will be in a spirir
18 of the community he represents. " May I inquire whether
19 that paragraph is the one you referred to that you wrote
20 in Judge Bordwell's presence? A I didn't write it in his
21 presence. It was partly for him I wrote it. He wished
22 to have--he wished to have it appear the agreement and
23 negotiations had all gone on without him and he remained
24 free to sentence these men as he pleased. But we understood
25 he was going to sentence them a certain way, and, as a
26 matter of fact, he did.

1 Q You say you talked with him about that matter before
2 you wrote the article? A Yes, I showed him the article
3 when it was half written.

4 Q You showed him the article when it was half written,
5 you say? A Yes, this part he saw.

6 Q This part he saw before it was published? A Yes.

7 MR. POGERS. (Reading) "It is necessary to say this for
8 another reason. Coming in the midst of a hot political
9 campaign and without any explanation, the first news was
10 a shock, especially to the working people and the friends
11 of the socialist candidates. It is amazing how many of them
12 there were who really believed that these men were in-
13 nocent. Some of these people lost their heads; the
14 reporters who went out around the town said many men
15 wept, and wild rumors were flying everywhere. It is wrong
16 to put out a piece of news as unexpected as this without
17 an explanation. It looked for a while as if Los Angeles
18 had gone mad, and certainly some of the good effect which
19 was expected from this event was lost by the way it was
20 thrown to the public.

21 "Nothing but all the facts about the negotiations and
22 the agreement can clear this matter now and make it do
23 its right work and both sides of the controversy have
24 left it to me to present those facts? The beginning of
25 the story was at Miramar, the ranch of E.W.Scripps, near
26 San Diego, on Sunday, Nov. 19. I went down there with

1 Clarence F. Darrow, the chief counsel for the defense,
2 to visit for a day, and we talked, all three of us,
3 about everything under the sun, and finally about the
4 McNamara case. We all three regretted that it couldn't be
5 tried out on its merits, that it would be good for the
6 world to know that there was a group of labor which not
7 only blew up buildings but killed human beings. And some-
8 thing was said about this fact being an indictment against
9 society. Mr. Scripps read a letter he had in his poss-
10 ession, which was a complete statement of the philosophy
11 of direct action. I shall write something about this
12 phrase in a later letter. All the readers need to know
13 at the present is that it covers the belief that force and
14 violence are the only weapons labor has to fight with. We
15 could all see that if this case could be tried so as
16 to develop that theory as a defense, this terrible, true
17 fact could be brought out into the light and dealt
18 with. Someone else suggested that another way to accom-
19 plish the same end was to settle the McNamara cases
20 on the basis of a plea of guilty. Such a plea would give
21 us all a chance to assume that a part of organized labor
22 had actually adopted the policy of force.

23 "I am not clear as to the next drift of the conversa-
24 tion but I remember that Darrow said that the cases, espe-
25 cially against Jim McNamara was a "dead cinch". He
26 thought we would have not only a conviction to base our

1 assumption on but that the boys "would be hanged."

2 "His idea worked in my mind and the next day,
3 on Monday, I decided to see if any men on the capitalist
4 side in Los Angeles would consider a settlement of the
5 cases. I called first on Mr. Meyer Lissner, a man who
6 is one of the leaders in Southern California of the
7 progressive republican party. He looked astonished
8 at the suggestion, but I went on to remind him of the
9 class line and the wound left in San Francisco by the
10 prosecution of the business criminals up there. Then I
11 referred to the condition of European cities, where the
12 class line has been drawn so hard and sharp that the
13 class war is the principal thing in the life of a people.
14 'You have it here,' I said.

15 'You have socialists and labor men lined up against
16 the other class, you have hate all through your system.
17 That's bad. It may be that the class fight is never to
18 end, but why not try some other way than fighting it
19 out?'

20 And we talked about the rare opportunity he and
21 his friends had of taking the first step in Los Angeles.
22 They could begin with an act of generosity toward two
23 heroes of labor who were in trouble with all men looking
24 on and watching. Why not let them go? That was the
25 question. The next step was to see men who would be
26 in a position either to help or hinder. Mr. Lissner sug-

1 gested calling on Thos. E. Gibbon. Mr. Gibbon balked like
2 everybody else at first, but he saw it, and seeing it, he
3 thought he could make anybody see it. He went out and
4 he saw first, I believe, Mr. Harry Chandler, who first said
5 we were all crazy, but then he changed his mind and
6 went crazy himself, so to speak. And I want to say right
7 that in all the interviews with all the men we saw, there
8 was not one that took a small or narrow view of it. It
9 was the big idea of getting the class war out of their
10 city that appealed to them all. Mr. Chandler, for example,
11 declared at first that he couldn't help us, because of the
12 special interest of the Times in the matter: 'We should
13 be misunderstood,' he said, 'and would do you more harm
14 than good.' But the next time we knew, he was out on
15 the job, and from that time on he worked day and night.

16 "When it appeared that the men on that side were
17 willing to make confessions I went to Darrow. The question
18 I put to him was whether he would consider a proposition
19 to compromise. Like everybody else he declared it was
20 impossible and he meant it was impossible both from our
21 side and from the other side. But when I told him how
22 generously the opposition regarded the proposition, he
23 said that it might be a way out and he thought that both
24 his clients, the McNamaras and organized labor could be
25 made to see it. We talked of the larger view of the
26 prospect, of the use of getting the truth out, and he kept

1 going back to the certainty that Jim, as he called J.B.
2 McNamara, would be convicted and might hang. 'I never
3 had a man hang that I undertook to defend' he said, '
4 and I can't bear to think of this boy being killed. He
5 told me to go ahead and see what could be done.

6 "Those of us who were at work therefore went on
7 seeing other men. They all protested, of course, and
8 some of them seemed to find insurmountable obstacles.
9 There was the 'East' for example and they meant the Erectors
10 Association and others who were hot on the man-hunt in
11 Chicago, Indianapolis and New York. No one doubted for a
12 moment that, if these men should be told what the plan was
13 and what the spirit was that moved us, they could be got
14 to come in. And, by the way, it is to put up to them
15 later. But they were telegraphed to and they telegraphed
16 back and some people think they can't say much in a
17 telegram, so they didn't get a clear sense of anything and
18 telegraphed back protesting against any compromise. This
19 had its effect. These men not only replied to the tele-
20 grams they received, they wired also to other men in Los
21 Angeles and we were afraid there would be a leak. The
22 business was hurried and the terms against the McNamara
23 boys was hardened. For it must be understood that what
24 everybody here in Los Angeles saw that if it was to be
25 done at all it must be done handsomely. The first, the
26 local proposition, was that James E. McNamara, the boy on

1 trial, was to plead guilty and that everybody else was
2 to go free. I can't speak for District Attorney Freder-
3 icks; I didn't see him personally; but everybody wished
4 that as few individuals as possible should be punished.
5 Mr. Edwin T. Earle expressed the highest conception of it
6 all.

7 'Let's have done with punishment' he said, 'let's
8 get through with all vengeance.'

9 Mr. Earle is far in advance of his day; his view
10 did not prevail. There had to be one victim at least, and
11 by and by it appeared that there must be two.

12 Meanwhile Darrow was being kept informed of these
13 changes, one by one, and you could see him age under it all.
14 He carried it alone at first. I think it must have been a
15 week before he had faith enough in the outcome to talk with
16 his colleagues about it. And when he did he took them one
17 by one and not more than one a day. Like everybody
18 else they all protested at first, but when they were asked
19 to consider what the case was and what the chances were
20 of getting labor and labor philosophy right/^{ly}understood,
21 they came in; all except Job Harriman. Nobody had the
22 heart to tell him. He is the socialistic candidate for
23 mayor and it was expected that the plea of guilty and the
24 attitude of business men in Los Angeles toward labor might
25 affect the result. So Harriman was kept in the dark of
26 the plan afoot until he got it when the public did. He

1 had been neglecting the case, very naturally, on account of
2 his preoccupation with his campaign, so he knew nothing
3 either of the hopelessness of the case nor of the negotia-
4 tions.

5 "When the negotiations were approaching a settlement
6 it was deemed advisable to take the matter up with a
7 larger body of representative business men. Some
8 twenty or more men were hurriedly invited to Mr. Lissner's
9 office Wednesday evening November 29th. Those that
10 responded were Stoddard Jess, the leading financier of Los
11 Angeles; J. O. Koepfli, former president of the Muni-
12 cipal league and a large employer of labor; R. W. Burnham,
13 local Manager for R.G.Dunn & Company Edwin T. Earle,
14 Proprietor of two newspapers; Fred Baker of the Baker Iron
15 Works; M. P. Snyder, a banker, former mayor of Los Angeles;
16 T. E. Gibbon, leading lawyer and member of the Harbor
17 Commission; Paul Shoup, vice president and general manager
18 of the Southern Pacific Electric Lines in southern Cali-
19 fornia; James Slauson, president of the Chamber of Com-
20 merce; H. W. Frank, a prominent merchant; former United
21 States Senator; Frank P. Flint; W. J. Washburn, promi-
22 nent banker and member of the city council and Meyer Liss-
23 ner. Here again the same comedy was gone through with,
24 only in an exaggerated degree. It was comparatively easy
25 to take one man by himself and show him, but to put the case
26 to group with many divergent views was more difficult.

1 "The first statement fell like a pall upon them.
2 They saw the matter plain enough. They grasped it in
3 one statement, but Fred Baker raised the real question.
4 He expressed for the rest of them his resentment of the
5 troubles labor had caused him and his predicament is
6 typical enough and very real. He and some of his friends
7 were sore about it and they expressed feelings which are
8 not unlike those that drive labor into the use of force.
9 But as the conversation went along it was then presented
10 to them that they also were guilty of wrongs to labor and
11 that part of the fault for the condition in Los Angeles
12 was theirs. And there was no denial of it. This was the
13 spirit which gives the outsider the sense that if Los
14 Angeles really goes at this job it can really do some-
15 thing. Certainly no other city could do more than these
16 men here can towards having at least an understanding, if
17 not with, at least of the needs and feelings and thoughts
18 of labor. And that is what Mr. Baker's mind drove at.
19 He wanted to know, 'What next.'

20 'If this is done', he said, 'When it is done what
21 are we going to do then?'

22 And that was the proposition, of course, and it
23 was taken up there and it was decided to try the experi-
24 ment of a meeting with some labor leaders. In other
25 words, the conclusion was, to back quietly any action the
26 District Attorney should decide to take, and if a com-
promise was arranged not to rest content with that, but to

1 go on and have a conference with labor upon the labor
2 situation in Los Angeles. In all fairness to Captain
3 Fredericks, the District Attorney, it should be said that,
4 so far as I know, he never asked for any such support.
5 I can't go intimately into his part of the negotiations.
6 Another man, whom I have not permission to name, saw Mr.
7 Fredericks and all I heard of this was indirect, but it
8 amounted to this: That the District Attorney knew he had
9 an almost perfect case, that he had been criticised a good
10 deal during the last campaign, and was eager to handle
11 this case in a way that would answer all his critics;
12 but that, like everybody else, he took the larger view and
13 compromised in the interest of the community.

14 "The day after the meeting in Mr. Lissner's office,
15 Thanksgiving Day, some eight or ten other leading citizens
16 of the city were sought and four were found: William
17 Mulholland, chief engineer of the Los Angeles Aqueduct;
18 J. B. Lippincott, assistant engineer of the aqueduct;
19 W.B. Mathews, for the aqueduct Department and Charles D.
20 Willard, the man who, more than any other in this city,
21 personifies the many years of fighting that has been done
22 here for good government. All these men agreed that
23 a compromise was just the thing to do.

24 "Thanksgiving day was the crucial day. The terms
25 had been negotiated down to a point where there were only
26 two differences. Harry Chandler went to see the District

1 Attorney to ask him to concede one point and the counsel
2 for the McNamara boys went over to the jail. I went
3 with the latter group, and the story of what happened
4 there I shall tell later. All that need be said now is
5 that Jim, who had consented four or five days before to
6 plead guilty himself, objected to having his brother Joe
7 do the same thing. J. J. was willing. He gave his con-
8 sent after five or ten minutes talk, and I sat with Jim
9 while the lawyers talked to Joe. 'Joe will never do it,'
10 Jim said to me. Within the minute they came back with
11 Joe's consent.

12 "Jim held out all forenoon and late in the afternoon,
13 when I went back to the jail I found that the attorneys
14 also had returned there. They had Jim's consent to a
15 plea of guilty by both of them.

16 "That evening, LeCompte Davis, one of the local
17 attorneys who was assisting in the defense, went to see
18 Mr. Fredericks. Darrow, Joe Scott and I went over to
19 Darrow's house and waited. We didn't have to wait long.
20 In about twenty minutes Mr. Davis came in and he said that
21 he and Fredericks had agreed.

22 "There was one more struggle. Towards the end of
23 last week Darrow had wired to Sam Compers at Atlanta
24 to send out here somebody to represent the American
25 Federation of Labor. Ed N. Nockles, Secretary of the
26 Chicago Federation of Labor, had responded, and he was

1 waiting for us at Darrow's house. He didn't like the ar-
2 rangement at all, at first, but the whole case was gone
3 over for him bit by bit and the whole situation here and
4 everywhere in the labor circles was put before him. It
5 was a wonderful review of actualities in that field, and
6 it convinced Nockles. He said that under all the circum-
7 stances he thought it was for the best.

8 "There remained only the judge to be seen. Mr.
9 Fredericks called on him; nobody knows just what was
10 said, of course, but he had known nothing of the negotia-
11 tions and he would have nothing to do with any understand-
12 ing."

13 A That is what I put in at his suggestion.

14 Q That is what you put in at his suggestion? (Reading)

15 "His view was that he couldn't have. The men might plead
16 guilty and that would stop the cases, of course, but he
17 must be left free to consider them on their merits only
18 and to fix any sentence that he might deem just. The
19 success or failure of the whole arrangement, therefore,
20 depends upon what Judge Bordwell may decide. No one has
21 any inkling of what he will do, but I have had a couple of
22 personal conversations with him and I am not afraid that
23 he will do anything to change the result. He isn't as
24 hard as he seems to be, and I don't find in his mind any
25 of the prejudice which some of his critics here have
26 accused him of. But, as I said above, if he should happen

1 to sentence the prisoners to penalties greater than those
2 agreed on by the attorneys, the whole thing goes off and
3 the trials will go on as before.

4 "This is what Los Angeles needed to know when the
5 news was published. For you understand nobody, except
6 those fully in the secret, had any inkling that negotia-
7 tions were going on at all.

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1 The first sign of anything was in the morning, when, upon
2 the calling of the case, the District Attorney asked for a
3 postponement until 2 o'clock in the afternoon. He did this
4 apparently, to get a chance to see the Judge, and then, to
5 see the defense. The reporters were on the jump at this,
6 and in a very short time the sense of expectancy got into
7 the air in the court-house. Everything that happened
8 for the next four hours was full of significance, and several
9 rumors were hatched which grew big during the afternoon.
10 For when court was called again in the afternoon, every-
11 body was still off on some wrong scent. A crowd had
12 gathered; the court room was filled, and also was the
13 hall outside. Jim McNamara was brought in as usual, but
14 after him came J.J. That would seem to let the cat out of
15 the bag, but even then, no one guessed what was up. The
16 truth didn't come out until the District Attorney arose
17 and told the Judge that he understood that James and J. J.
18 McNamara wished to change their plea from "not guilty"
19 to "guilty". Very quietly, but under intense excite-
20 ment, the usual form was gone through. It lasted only ten
21 minutes at the most, and it was not until the judge arose
22 to go out that a crowd, including the reporters, recovered
23 themselves enough to move. Then, of course, there was a
24 lively scattering for telephones, and a buzzing of in-
25 quiry. Men asked one another what had happened. They
26 couldn't quite get it. They heard, but they couldn't

1 grasp it.

2 In order to understand this, you must know that ever
3 since the explosion in the Times Building, the class
4 line has been drawn here, and almost everyone has taken
5 a side. Moreover, almost all men have been thinking on
6 their side. If you were for labor, the building was blown
7 up by gas. If you were on the capitalist side, it was blown
8 up by dynamite put there by labor men. Out of this had
9 developed a new political party, the Socialist Party, and
10 with it were all kinds of workingmen and their friends
11 and others, enough to make a number near enough to a ma-
12 jority to frighten everybody on the other side. And those
13 on the other side had also united into a solid mass. The
14 truth, the plain fact, which an outsider could determine
15 in three days of inquiry, the truth that representatives
16 of a group of organized labor, which has been blowing up
17 bridges, had turned aside to "give the Los Angeles Times
18 one" was almost unbelievable by labor, and even the other
19 side couldn't credit the news that the McNamaras had plead-
20 ed guilty. It was evidence, beyond all question that
21 the rank and file of workingmen, even here, did not be-
22 lieve that they were guilty.

23 The rumors that were intended to explain shows the
24 state of the public mind. One of them was that Darrow
25 had surrendered to save himself. It happened that on
26 Monday last, a detective in the employ of the defense,

1 was arrested on the charge of attempting to bribe a man who
2 was expected to be summoned in the next list of jurymen.
3 Since the public did not know how long before that the
4 negotiations had been started, the conclusion was jumped at
5 that Darrow had decided suddenly, after that Monday, to
6 settle. This is absurd, of course, and when the time comes
7 I shall tell of a message Darrow gave to me after that ar-
8 rest to carry to the other side. It is enough for the
9 present to say that it will let Darrow out of any charge of
10 selfishness.

11 What the public here will think about it when all the
12 facts are known; what the effect on the election will be,
13 are interesting questions to be answered in the next two
14 or three days. But the questions that I should like to
15 leave on the national mind are just this: What are we
16 Americans going to do about conditions which are breeding
17 up healthy, good-tempered boys, like these McNamara boys,
18 to really believe, as they most sincerely do, they and a
19 growing group of labor, that the only recourse they have
20 for improving the conditions of the wage-worker, is to use
21 dynamite against property and life?

22 And is it possible for a group of employers, well-meaning
23 as these are whom we have dealt with in Los Angeles, to
24 understand their employe's point of view, not to take it,
25 mind you, but simply to comprehend it.

26 These are real questions, they are pressing here. They

1 are coming to all of us in all our cities. Isn't it
2 time to consider them seriously? Certainly it is worth
3 while to watch what happens here in Los Angeles during
4 the next few months. I propose to follow this inquiry
5 East for a while, and then come back here. We are get-
6 ting an understanding of politics, we are coming, even,
7 to get some sense of the evils of direct action by organ-
8 ized capital. Why shouldn't we go on and find out about
9 labor?"

10 THE COURT: People's exhibit what?

11 THE CLERK: N.

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1 MR ROGERS: In that article, Mr Steffens, you referred to
2 the message the District Attorney gave you. Is that the
3 message that you received this morning? A Yes, that is
4 the message.

5 Q That they inquired of you on cross-examination?

6 A Yes.

7 Q Mr Steffens, this morning, in reply to a question
8 on cross-examination you were asked if you were an anar-
9 chist, and you replied you were a Christian -- or words to
10 that effect. Now, here is the statement: "As I under-
11 stand it you are an avowed anarchist. Is that correct
12 or not? A --No, that is not true. I am a good deal worse
13 than an avowed anarchist. Q -- You are a good deal worse
14 than an avowed anarchist? A --Yes sir, I believe in Chris-
15 tianity." What did you mean by that? A Anarchism,
16 you understands merely believes in justice. Christianity
17 is a doctrine, what they call love, which I interpret to
18 be understanding mercy, and I don't believe that justice
19 is what we want. I believe we have got to have more of a
20 personal feeling; more mercy, and more understanding.
21 It is not merely -- it is what I have got out of my exper-
22 ience with graft and grafters and criminals coming to be-
23 lieve in the good and the good will of men; that is all.
24 Q In other words, that you believe that justice can only
25 be accomplished in its best sense when combined with the
26 Christian doctrine of love and charity, as it is sometimes

1 called? A Yes.

2 MR FORD: Just a moment, Mr Steffens please. I object to
3 that as assuming something that the witness has not said,
4 and as being leading and suggestive, and the witness has
5 already said he didn't believe in justice; he believed in
6 love and mercy. It is leading and suggestive. The
7 witness is an intelligent man and he can explain his own
8 ideas.

9 MR ROGERS : You said you didn't believe in justice
10 without the rest of the sentence. A I said I didn't be-
11 lieve in justice alone, but what we wanted was not suffi-
12 cient. I think besides doing this technical justice that
13 is done in courts, that we have got to give our prisoners
14 also understanding; must go and listen to them, and under-
15 stand, not whether they did the crime or not, but how
16 they happened to do the crime.

17 MR ROGERS: That is all.

18
19 RE-CROSS-EXAMINATION

20 MR FREDERICKS: In regard to the Christianity, your opin-
21 ion on this, you wrote an article for one of the maga-
22 zines not long ago in which you attempted to point out the
23 mistakes of Jesus Christ, did you not?

24 MR ROGERS: Let's see the article. That is not the best
25 evidence.

26 MR FREDERICKS: I am asking if he did not write such an ar-

1 ticle.

2 THE COURT: It is preliminary only. Objection overruled
3 on that ground.

4 A I wrote no article, either saying that or saying it
5 in any such spirit.

6 MR FREDERICKS: Didn't you write an article pointing out
7 where Jesus Christ had made certain mistakes. A No,
8 that is the way my critics that wanted to use that ar-
9 ticle against me expressed it.

10 Q What is the name of that article? A I don't think it
11 had any title. It was a letter to an editor, wasn't it?

12 Q Yes, but didn't it deal with the mistakes of Jesus
13 Christ?

14 MR ROGERS: I object to that as not the best evidence.

15 A It did not.

16 MR ROGERS: Wait a moment.

17 MR FREDERICKS: I assumed the court was going to rule
18 against me and I dropped it. When did Ed Nockels con-
19 sent to the McNamaras pleading guilty? From your arti-
20 cle there, I take it it was Thanksgiving night? A Thanks-
21 giving night. He didn't consent, he heard about it.

22 Q I beg your pardon. A He heard about it then.

23 Q For the first time? A That is the first time he heard
24 all about it.

25 Q That is the first time he heard all about it?

26 A When he arrived on Tuesday morning, he was told some-

1 thing, but there was an interruption, I think it was this
2 very bribery arrest. He didn't really get the story --
3 Nöckel didn't get the story until Thursday night.

4 Q He is the representative of Mr Gompers that we spoke
5 of? A Yes.

6 Q And on Thursday night, he gave his consent? A Yes.

7 Q Now, speaking of your views in regard to the punishment
8 for crime, you made a distinction on redirect examination
9 that you believed in the punishment for crime, but you made
10 a distinction where the crime was a class crime? You
11 did not mean to -- that is correct? A I tried to make
12 this afternoon the same distinction I made you this morn-
13 ing, between social crimes and the individual's offense.

14 Q You said this morning in reply to a question in regard
15 to your efforts to prevent a possible prosecution of Dar-
16 row and Franklin on the charge of bribery: "Q -- Not-
17 withstanding that either or both of them might have been
18 guilty of the charge, whether they were or not, you wanted
19 them dismissed?" That is the bribery. "A -- Yes." I am
20 reading from 5324. "These felonies do not look so big
21 as they do to you, Mr Fredericks; I have seen more of
22 them." A To me as they do to you.

23 Q "Do not look so big to me as they do to you," that
24 is correct? A Yes.

25 Q And you regard that as a social crime in a social war-
26 fare, if it was a crime? A I see a crime as you do. I

1 see also the cause of the crime back of the crime, which
2 cannot be handled in court.

3 MR FREDERICKS: That is all.

4
5 MR ROGERS: You spoke about Nockel getting here on Tues-
6 day morning? A Yes, Tuesday or Monday morning; I have
7 forgotten which.

8 Q Tuesday or Monday. A I don't remember the date Nockel
9 got here.

10 Q That he had been sent for how long before that? A He
11 was sent for -- I told you the moment we felt sure that
12 a settlement would be arrived at.

13 Q Telegraphed for? A Yes.

14 Q The preceding week? A I think it was Thursday, but
15 I have to calculate that from the time he got here. He
16 was in Chicago, and I remember a telegram was sent out to
17 Atlanta, Georgia, and it was neglected there for a day, or
18 some hours, and then Tveitmoe picked it up and telegraphed
19 to Nockel, who was in Chicago, and Nockel didn't respond
20 immediately; sent an inquiry what it was about, and got an
21 answer from Darrow, not saying what it was about, but to
22 take the next train. He took the next train and got here
23 Monday or Tuesday, so from that I can see -- allowing
24 the time to get here, it must have been Friday or Thursday.
25 Q What did Mr Darrow say to you as to his willingness
26 to take the responsibility of acting with the defendants?

1 MR FREDERICKS: Objected to upon the ground that it is not
2 redirect; already been covered.

3 MR ROGERS: That is, without consulting outside people.

4 THE COURT: Overruled. A Darrow took the position all
5 through that though organized labor was interested in this,
6 that his first duty, his paramount duty, was to his clients,
7 and his whole passion seemed to be to save J. B. from being
8 hanged.

9 Q What did Judge McNutt, now dead, say about that?

10 MR FREDERICKS: Objected to upon the ground that it is im-
11 material and hearsay.

12 MR ROGERS: In the presence of Mr Darrow; do you remember?

13 MR FREDERICKS: Well, it is still hearsay, I think, your
14 Honor.

15 THE COURT: Objection overruled.

16 A What is the question. (Last question read by the re-
17 porter.) I don't know what you are referring to, Mr
18 Rogers.

19 MR ROGERS: As to the duty of counsel to take responsibil-
20 ity? A Oh, that was in their discussion; Judge McNutt
21 wanted to consider all of their clients, and Darrow took
22 the position there, as he did with the others, as far as
23 I remember, all through, that he, himself, Darrow, would
24 take the whole responsibility for this and he would answer
25 all that organized labor might do, and that his duty was
26 to his clients.

1 MR ROGERS: That is all.

2
3 A JUROR: In regard to the article in the Express, there
4 was a statement there in regard to direct action by capi-
5 tal. I didn't just understand the meaning of that point.
6 A Direct action, Mr Jurymen, means, in a technical sense,
7 the distinction between political action and industrial
8 action; for instance, a strike, in the language of labor,
9 a strike is direct action, direct from employe to employer,
10 as a distinction from political action, which is going to
11 the polls to get officers or officials who will give you
12 justice, but it has come to mean in use, not only proper
13 direct action, but direct action, has come to convey the
14 meaning, also slang and an improper one, but it means also
15 force or violence. For instance, I used it there, and I
16 used the word there figuratively, of capital to cover the
17 same thing; for instance, when a capitalist uses a bribe
18 to corrupt legislators, it is direct action; when he uses
19 his government to fight a mob on the street, in a way, it
20 is direct action; any force that is used by anybody direct-
21 ly upon the man, he is opposed to, is, in a technical
22 sense, direct action.

23
24 ANOTHER JUROR: Do you believe in direct action? A This
25 experience in Los Angeles went very far to convince me that
26 the golden rule and the force of good will might not be

1 sufficient, and that after all the thing would have to be
2 fought out, but I have not finally come to that conclusion.
3 I want to try it out a little longer, on the good will
4 theory.

5
6 ANOTHER JUROR: How long have you known Mr Darrow and under
7 what conditions? A I met Mr Darrow first, and the only
8 time before I met him here in Los Angeles, in along about
9 1901, when I was writing an article on Chicago. I went to
10 see him to get help, and I remember that he laughed at me,
11 in other words, we were not very friendly then. The next
12 time I met Darrow was when I came here on this case.

13
14 A JUROR: You had several conferences with him that week
15 up to the 28th of November, and a fter you read that
16 Express article announcing the arrest of Franklin and
17 went to see Darrow. I would like to have a little more in-
18 formation how did he appear there? Whether he appeared
19 like a guilty man, frustrated in bribing a juror, or an
20 innocent man. Just how he appeared and what he said. A
21 little more about that. A Well, Darrow, when I went
22 in to speak to Darrow about this, that is the moment you
23 mean?

24 THE JUROR: Yes. A He was apparently taking an impersonal
25 view, that is, the view of an innocent man, and it was my
26 suggestion to him that others would incidentally think

1 that the arrest of Franklin would implicate him. He was
2 walking up and down, as he usually does -- he turned,
3 astonished to me, and said, "Oh", as if that was the first
4 time it occurred to him, "if they think that, you go and
5 tell them to leave this case out of the settlement."

6 And I plead with him not to do that; it was foolish, it
7 was Quixotic. He insisted I go tell them, as I told you
8 this morning, I did convey his message on my own hook --
9 as a busy-body, as the District Attorney called me; to
10 help the case out and get at the whole controversy.

11 You may interpret his conduct as you, yourselves think,
12 but I interpreted it as I wrote in my article, as meaning
13 that he was innocent, is the way I said, I thought that
14 charge was absurd.

15 MR ROGERS: That is all. Our next witnesses will be very
16 important witnesses, and will take some little time, and
17 we will make more good time I think, next week. I think
18 we have done it this week.

19 THE COURT: I think the time made this week justifies the
20 adjournment over Saturday. I realize that it gives counsel
21 on both sides a chance to get their cases prepared and
22 present them in more orderly fashion.

23 (Jury admonished. Recess until Monday, July 21,
24 1912, at 10 A.M.)

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26