

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. 29

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
George Ehem,	2266	2345		

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Defendant in court with counsel; Case resumed.

G E O R G E B E H M,

on the stand for further direct examination:

MR. FREDERICKS. There was a question pending at the adjournment: "Relate that conversation, Mr. Behm, in so far as it refers to the question I have asked you, and in so far as it refers to the changing of the testimony of Ortie McManigal, and what, if anything, you were to do in connection with it."

THE COURT. I suppose it will be understood there was the same objection, the same ruling and the same exception, in the question in this form as to the last question which was practically in the same form?

MR. ROGERS. Yes, sir.

MR. FREDERICKS. Q Do you know what conversation I am referring to now, Mr. Behm, the first one you had with Mr. Darrow at Mr. Darrow's house in Chicago, on Sunday, a year ago today. I am asking you to relate the conversation?

A Well, when he came and sat down in front of the table across from me--

MR. ROGERS. I think, if your Honor please, it is well to say who was present.

MR. FREDERICKS. That has already been gone into.

THE COURT. Yes, that has already been gone into.

A Mr. Darrow asked me if I was a union man. I told him I was.

1 He asked me what order I belonged to. I told him I belong-
2 ed to the Engineers' and Firemens' both, and he wanted to
3 know how it was I could belong to both orders. I told
4 him that I had belonged to the Engineers' before the conven-
5 tion at Milwaukee when they made the rule we couldn't belong
6 to both orders. He said he remembered of that time when they
7 had made the change in the rule in their constitution, then
8 he asked me if I was in sympathy with this labor movement,
9 about the McNamara and McManigal cases. I told him that I
10 was as far as I knowed of anything about the case. He asked
11 me if I would be willing to go out there and see what I
12 could ^{do} with my nephew in regard to changing his testimony,
13 as he says, "You have already read of the trouble that he
14 is in."

15 Q Go ahead. A Well, I told him that I couldn't hardly
16 leave home. I had to put in my crop that I had at home,
17 and he said, "Well," he says, "how long it took you to put
18 in your crop?" I said, "It took me all of the week," and
19 I would have to lay off to do it, off of the road. He
20 said, "All right", he said, "you go home and lay off and
21 put in your crop", and he says, "get your help, a hired
22 man, so to carry on your farm while you are gone," and he
23 asked me about when I would be ready to start. I told him
24 I couldn't leave before the latter part of the week. "Well,"
25 he said, that would be time enough to get out there before
26 the 5th of July and he says to me, he says, "I suppose you

1 have to have a little money to get out there with?" I told
2 him, "Yes, a little money would come good to me; that I
3 didn't feel so I wanted to use all of my own." And he said,
4 "All right," he says, "I will give you some." So he passes
5 off into another room out of this room and pretty soon he
6 came back and he gave me \$100. He says, "That will help you
7 out there", he says, "to pay your railroad fare and your
8 sleeping car and your meals; when you get out there," he says,
9 "I will take care of you." Well, as this led into the
10 latter part of the meeting, the talk we had together there,
11 and he followed me along out, as I was about the last person
12 to pass away of the party that was there, and he kind of
13 hung onto my clothes as if he wanted to tell me something,
14 and I hung back. "Now," he said, "George, do all you can
15 with Ortie out there and get him to come across." "Well,"
16 I said, "I can't do any more than go to him and tell him
17 what you have told me what you will do for him;" and then
18 we passed away out into the hall.

19 Q You say you told him you couldn't tell Ortie any more
20 than what Mr. parrow said he would do for him? A Yes. ✓

21 MR. ROGERS. I suggest that is leading and suggestive.

22 THE COURT. Overruled.

23 MR. FREDERICKS. Now, just relate anything that he may have
24 said in regard to that, in regard to what he, Darrow would
25 do for him if he changed his testimony? A Mr. Darrow told
26 me at this meeting there that if he came across that he

1 would get to be a free man; he could come back here to
2 Chicago and he would see that he had a good job back here;
3 that he wouldn't be climbing around on buildings to make a
4 living.

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1 THE COURT: I didn't hear that answer.

2 (Last answer read.)

3 MR FREDERICKS: Do you remember anything else at this time
4 now, that Darrow said in regard to that same matter?

5 A He said if he would come across he would take off this
6 disgrace off from his family and all of my people that he
7 was connected with back east in Ohio, where he was born
8 at, and all of his wife's folks.

9 MR ROGERS: I understand, your Honor has permitted me an
10 objection to all of this on the original grounds stated?

11 THE COURT: Yes sir.

12 MR FREDERICKS: Go ahead, Mr Behm, and give anything else
13 you remember? A And he told me I would be well-cared for
14 on my trip out there and while I was out there, he would see
15 to my expenses, see that I got my salary paid to me that I
16 was losing off on the road on my trip.

17 Q Give anything further, if you remember anything fur-
18 ther that was said at that time by Mr Darrow or anyone
19 else that was present while he was present? A There was
20 nobody spoke to me but Mr Darrow there, of anything at all.

21 Q Was James McManigal, Ortie McManigal's father there?

22 A Yes, he was present.

23 Q Well, about how long were you there talking with Mr
24 Darrow on this occasion? A Well, from the time we enter-
25 ed into the house, his residence, until we left there we
26 were just about an hour.

1 Q What did you do when you left Mr Darrow's residence
2 that day? A We went back and took the train and went back
3 down to Mrs McManigal's residence.

4 Q Who all was in that party that went back down to Mrs
5 McManigal's? A Mr McManigal and Mrs McManigal and myself,
6 and Mr Harrington walked from his residence over to where
7 we took the car, or took the train.

8 Q Now, how long did you stay at Mrs McManigal's?

9 A Now, I stayed there until along about half past 2.

10 Q And then where did you go? A I went down and took the
11 train and went back to Milwaukee.

12 Q And then where? A Stayed there in Milwaukee until
13 I took the run out the next morning.

14 Q What kind of money was this \$100 Mr Darrow gave you?

15 A It was paper money.

16 Q You went out to your ranch, you said? A I went out
17 on my run the next following morning, on a Monday morning.

18 Q And how long did you stay in the East then? A I
19 made that round trip to Portage, or made my trip to Port-
20 age -- no, hold on, now --

21 Q I just want in a general way, about how many days
22 did you stay in the East? A Oh, before I left for the
23 West?

24 Q Yes. A Well, I left there on the following Sat-
25 urday.

26 Q On the following Saturday? A After this Sunday that

1 I met him.

2 Q Then did you see Mr Darrow again before you left the
3 East? A I did not.

4 Q And when you left on the following Saturday, did anyone
5 go with you? A No sir, I came all alone.

6 Q Do you know whether Mrs McManigal had already come or
7 not? A I called at her residence and her brother told me
8 she had went.

9 MR ROGERS: I think that is hearsay --

10 MR FREDERICKS: Yes, I think that is hearsay.

11 THE COURT: Strike it out.

12 MR FREDERICKS: The witness doesn't understand that.

13 Q Had Mrs McManigal already gone, that you know of --
14 I will withdraw the question and get at it in another way.
15 Did anyone come with you on your trip out? A No sir.

16 Q That you know of. State whether or not you came
17 straight through, and on what road? A I came through
18 on the Chicago & Milwaukee road to Omaha, and I took the
19 road out of Omaha straight through here to Los Angeles.

20 Q And when you got to Los Angeles, do you remember at
21 what time of the day you got here? A I got here along 4:30;
22 I think that train arrives.

23 Q In the evening or morning? A Afternoon.

24 Q Afternoon? A Yes sir.

25 Q State whether or not you saw Mr Darrow that day?

26 A I did.

1 Q Where? A At the Higgins Building, room 922.

2 Q And state how you come to go to the Higgins Building?

3 MR ROGERS: I object to that as calling for a conclusion
4 or opinion of the witness; incompetent; no foundation laid;
5 irrelevant and immaterial.

6 THE COURT: Objection sustained.

7 MR FREDERICKS: Did Mr Darrow tell you anything about
8 where to go when you came to Los Angeles? A yes sir, he
9 gave me a note on this time I was at his residence in
10 Chicago as to what place I should call for him in Mr
11 Harriman's office, he said.

12 Q And when you got to Mr Darrow's office in the Higgins
13 Building on this evening on which you arrived here, state
14 whether or not you saw Mr Darrow? A I did.

15 Q Do you remember of having any talk with him that even-
16 ing? A Nothing in particular, only he says, "You got
17 here all right", and I told him "Yes".

18 Q Where did you go then? A Well, I was around the of-
19 fice for a few minutes, and he asked me if I had anything
20 in my grip, and I told him I had nothing more than my
21 wearing apparel.

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1 Q State whether or not you went out in the city and got
2 lodging somewhere? A Mr. Harrington and I went out on
3 the street--he turned me over to Mr. Harrington.

4 MR. ROGERS. I didn't get that.

5 A He turned me over to Mr. Harrington to look after me while
6 I was here, and Mr. Harrington and I walked down the street
7 and got our supper and he took me up to--I don't know that
8 I can remember it right now--the California Hotel, and we
9 had--

10 Q At any rate, you went somewhere for lodging? A Yes,
11 for lodging.

12 Q When was the next time you saw Mr. Darrow, or rather, the
13 next following morning where? A At his office.

14 Q Did you have a conversation there with him in regard to
15 Ortie McManigal? A Yes we had a few words about it. He
16 asked me if I thought I could do anything with him and I
17 told him the only way I could do was to go over and live
18 under his instructions, tell him what he would do for him and
19 try to get him to come across.

20 Q And who was present during that conversation, if anybody?

21 A There was nobody in the room when we had this talk.

22 Q Then, state whether or not you saw Ortie McManigal that
23 day. A I did not.

24 Q State whether or not you saw Mr. Darrow again that day?

25 A I did. I seen him a number of times that day in the
26 building.

Q Where did you spend your time that day mostly? A Mostly

1 in the hall, the hall out along the office.

2 Q In the Higgins Building? A In the Higgins Building,
3 yes.

4 Q And did you have any further talk with Mr. Darrow that
5 time about McManigal other than you have given? A Nothing
6 particular that day.

7 Q When did you see Ortie McManigal? A I saw Ortie Mc-
8 Manigal on the 30th of June.

9 Q How many days was that after you landed here in Los
10 Angeles? A I arrived here on the 27th.

11 Q The 27th, all right. Now, on the second day that you
12 were here did you have any particular conversation with Mr.
13 Darrow that you remember? A Well, nothing particular
14 on the second day.

15 Q Well, then, I will come to the time when you saw McManigal.
16 Where did you see him? A The first time I saw him I saw
17 him through the window in the jail from the street.

18 Q And did you go into the jail to see him at that time?

19 A I did not.

20 Q State whether or not you held any conversation with
21 him through the window. A Any more than he hollered out to
22 me that he seen me on the street, and he told me to come
23 up.

24 Q Did you go up? A No, I went over to the jail and they
25 wouldn't let me in.

26 Q Then what did you do? A Well, I told Mr. Darrow on the

1 same evening, I was walking around the street and happened
2 to walk by the jail, not knowing where it was, and Ortie
3 hollered out at me to come up and see him. I told him I
4 went over and they wouldn't let me in until I had an order.
5 Then on the following day after this day that I had the
6 opportunity to go to see him, I went up in the office after
7 dinner and Mr. Darrow met me and he said, "Well, George,"
8 he says, "your nephew wants to see you." He says, "he sent
9 an order over to have you come over." I says, "All right,
10 I would be glad to go over to see him." This was along
11 late in the evening like, and he told me I should go on
12 over there and I would be allowed to go in. Just as I
13 started to go over to see him he said, "Now," he said,
14 "George, you want to do all you can to turn him over," he
15 said, "and get him to come across," he said, "to save the
16 McNamaras and save the disgrace," he says, "on your folks
17 and him too, and his wife and children." "Well," I said,
18 "I can go over and talk to him and tell him what you agreed
19 to do, clear him, get him to be a free man, and I went over
20 from his office right directly to the jail, and when I went
21 there I told them who I was and they allowed me to go up
22 stairs to see him.

23 Q And did you see Ortie McManigal at that time? A Yes, sir.

24 Q In the jail? A In the jail.

25 Q With any one or alone? A No, all alone.

26 Q State whether or not you had a conversation with him.

1 A I did, so I told him, "Ortie", I says--

2 MR. ROGERS. Just a moment--I object to the conversation
3 in the jail as incompetent, irrelevant and immaterial and
4 no foundation laid and hearsay.

5 MR. FREDERICKS. Acting as an agent of the defendant, your
6 Honor.

7 MR. ROGERS. Cannot prove agency by declarations made.

8 MR. FORD. Prove it by direct testimony. He said he was
9 sent there.

10 THE COURT. I think counsel has a right to know if there
11 was any one else present.

12 MR. FREDERICKS. He has already stated there was no one else
13 present, your Honor.

14 THE COURT. Is that a fact, Mr. Behm?

15 A Yes, sir.

16 THE COURT. Just you and Ortie McManigal? A Just me and
17 Ortie McManigal in the jail room together

18 THE COURT. Objection overruled.

19 MR. ROGERS. Exception.

20 MR. FREDERICKS. State the conversation you had with Ortie.

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1 A Well, we shook hands and sat down at a table there and
2 we got talking over matters, and asked him how he expected
3 to get out of this trouble, and he told me he didn't ex-
4 pect to get out of it, he was into it and into it right.

5 Q Well, give the conversation you had, the rest of it,
6 with Ortie McManigal this time.

7 MR ROGERS: The same objection.

8 A He told me that he was guilty of the deeds that were
9 charged against him and he was caught right, and he was
10 glad he was caught. He said, "I am better off in here
11 than I am out on the streets," and I asked him how he meant
12 by that? Well, he said, "Somebody was going to blow my head
13 off", and he said, "I thought I better get inside for
14 protection", and I asked him if he would not allow me to
15 talk to him and give him a little advice, that I thought I
16 could give him and sort of straighten him out. He said,
17 "You can talk," he says, but he says, "I don't think it
18 will do you any good to talk to me about changing my testi-
19 mony; that is what you are after." He said, "I am going
20 to tell the truth and nothing but the truth in this case,
21 no matter where I end at." Now, I says, "Ortie, it is
22 going to be an awful disgrace on you and your family and
23 all our people back home for you to stick to this testimony
24 that you have already given, that we have read of." Well,
25 he says, "I can't help it, Uncle George, I got to tell the
26 truth." Now, I says, "Mr Darrow sent me over here" and I

1 says "to see you and see you to get you to come across.
2 He tells me if you allow him to come in here and have a
3 talk with you that he can show you that he will make you
4 a free man from all this trouble that they have got onto
5 you, and he will get you back home and make you a leader
6 of the union men back there and show you that the labor
7 order people is back of you and they will furnish money,"
8 he says, "to clear you all."

9 Q Well, is that generally the substance -- A That
10 was the general talk right straight through, he advising
11 him how he should come across and change his testimony
12 against the McNamaras and allow Mr Darrow to come in and
13 see him and he would have a talk to him and show him where
14 he would clear him.

15 Q How long were you in there at that time, about?

16 A Why, we were in there just about 30 minutes.

17 Q What did you do after you came out? A Well, he was
18 called out to his supper and I got up and left at that
19 time.

20 Q Where did you go? A I went right back to Mr Darrow's
21 office.

22 Q State whether or not you met Mr Darrow? A I did.

23 Q Where? A In his office, 922.

24 Q In the Higgins Building? A In the Higgins Building.

25 Q Anybody else present? A No, not into the room at the
26 time.

1 Q State what conversation you had with Mr Darrow at that
2 time? A Well, I told Mr Darrow I didn't have very good
3 success; I says, "The boy is subborn"; I says, "He ha'n't
4 going to come across." And Mr Darrow, he got up and walk-
5 ed backwards and forwards on the floor as if he was very
6 uneasy, and jumped up, and he says, "God!" he says, "Truth
7 or no truth, you got to get him to come across."

8 Q Go ahead; say anything more? A Well, I says, "I
9 have done all I could. I have talked to him and told him
10 what you will do for him if he would come across with his
11 testimony and change it, that they had nothing on him at
12 all, only his testimony." I told him that he said it
13 didn't make any difference what he had already told that
14 could be changed, he didn't need to swear to that; he
15 could swear it was a falsehood. Well, he then kind of
16 quit talking to me and I quit talking, and I started to walk
17 out into the other room where Mr Harrington had his office,
18 and I merely walked into that room and I left Mr Darrow
19 and he followed me over in there. And then he said,
20 "George, he says, when you go back there next time", he
21 says, "you spring this on him." He says, "You tell him if
22 he ever gets out of here on this case they will indict
23 him back to Chicago on a murder trial." He says, "Spring
24 that on him and see if he will come across then." That
25 was in the presence of Mr Harrington.

1 Q And do you remember any other conversation at that time?

2 A Well, only any more than just--for me to drill into him
3 for him to change his testimony and go back on already what
4 he had told.

5 Q How long were you up there that day about with Mr. Darrow?

6 A Well, I should judge I was not in there more than 20 or
7 25 minutes.

8 Q Now, when--I will start again. Did you go back to see
9 Ortie McManigal again? A yes, I went back on the first
10 of July, the following day.

11 Q And did you have a conversation with him then? A I did.

12 Q Where? A In the jail.

13 Q Anybody else present? A No.

14 Q Relate the conversation.

15 MR. ROGERS. The same objection.

16 THE COURT. Overruled.

17 MR. ROGERS. Exception.

18 A So I was put into a room there and he was fetched out
19 of his cell into the room where I was. We shook hands to-
20 gether and I had got my temper worked up a little about the
21 way he had acted, so I began on him pretty hard. I says,
22 "Ortie," I says, "you might think you are right, but you
23 ain't, you ain't got your brains in the right part of your
24 head yet." I says, "You want to get them in the fore part of
25 your head now and do business for us", and I says, "come
26 across and get onto the side of the people", I said, "that

1 has helped you along to where you were as a laboring man,
2 the wages that you have gained during the time that you have
3 belonged to these unions." I told him, I says, "If you don't
4 you never will be a free man." I tried to show him and
5 picture him out to where he could come across and go back
6 on the words he had already sworn to before the court, that
7 could be wiped off and Mr. parrow would take him and make him
8 a free man. That is mostly my conversation during that
9 visit to him.

10 Q Anything said about the murder charge at that time? A Yes
11 I had brung that up to him, I told him, "Now," I says, "Ortie,
12 if you ever get clear from here as they tell you you are
13 going to be made a clear man, as you say, why," I says,
14 "you will be indicted for all those cases you have already
15 done in through the eastern states," and I says, "Mr. Darrow
16 knows of a murder case back there", I says, "they will pick
17 you up for it and have you brung back to Chicago on this
18 murder trial and as he says, you will swing back there for
19 this murder trial." Ortie says, "No, Uncle George, you
20 tell Darrow to go to it, I am not afraid of him." Well,
21 I says, "You may not be afraid of Darrow, but you may be
22 afraid of the other people back there." "Not a bit of it",
23 he says, "I never killed nobody," he says, "I have done
24 lots of wrong, but", he says, "I never killed anybody."

25 Q Well, about how long were you up there that time, about?

26 A Well, I should judge I wasn't in there more than about an

1 hour at that visit.

2 That was in the forenoon of the second visit.

3 Q yes. ✓ Now, did you see Mr. Darrow again that day? A I
4 did.

5 Q When and where? A Right back to the office as quick
6 as I got out of the jail, at his office.

7 Q And who was present when you saw him at that time?

8 A Nobody present at all at that time.

9 Q Did you have a conversation with him then? A I did.

10 Q What was the conversation? A I told him just exactly
11 what he told me, I told him about the murder case and about
12 trying to get him to come across, and the promise he told
13 me he would do for him and I told him I guessed it was
14 all off, that he didn't act so that he was going to change
15 his testimony at all to me.

16 Q Do you remember anything more of the conversation?

17 A Well, he says--

18 Q Who says? A Mr. Darrow says, "We got to get him."
19 He says, "We have got to get him to save the McNamara boys,
20 to save the disgrace on his family and all you people", he
21 says, "we have got to get him to come across. You got to
22 go back again, George, and see what you can do with him."
23 I says, "I am willing to go back and talk to him and tell
24 him what you can do for him." ✓

25 Q At that time was Mrs. McManigal and Ortie McManigal's
26 children out here? A They were.

Q How many children had he? A Two.

1 Q How old were they, about? A Well, there was one
2 of them, the older, was about 8 and the other was about 6,
3 as near as I can remember their ages.

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1 Q Do you remember anything further about any further con-
2 versation with Mr Darrow at that time? A Well, he told me
3 I should keep going back there and make these visits with
4 him as often as I could for fear he might weaken and then,
5 he says, "You can get him that way."

6 Q Get him what way? A Get him to come across.

7 Q Did you go back to McManigal again? A Yes, I was
8 there, as near as I can remember, on the dates was on
9 the 10th, on the 14th and 15th.

10 Q Now, the next time you went back to Ortie McManigal,
11 when was that; how long was that after this second time,
12 about? A Well, that would be -- well, now, we were on
13 this third visit.

14 Q Third visit? A It was the third visit in there.

15 Q All right. Now, what happened the third visit; you went
16 over the third time to see McManigal, did you? A Yes sir.

17 Q Had a conversation with him? A Had a conversation
18 with him.

19 Q Anybody else present? A No.

20 Q What was the conversation at that time, the third
21 visit? A Well, as he entered the room to me, he shook
22 hands. ✓

23 MR ROGERS: Make the same objection as to the last.

24 THE COURT: Objection overruled.

25 MR ROGERS: Exception.

26 A He met me as he always did and shook hands with me

1 and he says, "Now, Uncle George," he says, "you left here
2 yesterday pretty angry with me."

3 THE COURT: I didn't hear that. A He says, "You left
4 here yesterday pretty angry. Now, he says, "We ain't going
5 to talk about the case at all today; come over and visit
6 with me; that is what I want you to do; come over and visit
7 with me while you are here, and we will talk about other
8 things", and that conversation on the third time did not
9 lead into anything in the case at all.

10 Q Then did you go back to see him? A As I said before,
11 I went back on the 10th.

12 Q That would be the fourth time? A That would be the
13 fourth time.

14 Q Did you see Mr Darrow before you went back on the fourth
15 time? A Yes, I went back and told Mr Darrow I had no
16 success; he wouldn't talk about the case at all. That is
17 the time he told me to keep going. He says, "Keep going
18 and keep him in good humor, and if you see any points
19 where he is weakening towards coming across", he says, "at
20 any time" --

21 Q Well, then, you went back on the 10th? A On the 10th
22 again.

23 Q Did you have any further talk with Mr Darrow that you
24 have not thought of, or have not related before the 10th?

25 A Well, --

26 Q Well, take the 10th, when you went back on the 10th.

1 A Yes.

2 Q That would be the 5th time? A The fourth.

3 Q The fourth. A Fourth visit.

4 Q Yes, the fourth visit. Did you talk to him at that
5 time? A Yes, I kind of started in about the case, and
6 he says, "You will have to cut it out, Uncle George, for
7 I won't talk about it at all; I have got my mind made up
8 to tell the truth, and" he says, "No use for you to come
9 over here thinking you are going to change me in my testi-
10 mony that I have already given", and our conversation was
11 mostly about our family affairs and things that happened
12 years ago, amongst our people. Nothing about the case at
13 all.

14 Q Did you go back to Mr Darrow after that? A I did;
15 I made a report to him and told him he would not talk
16 about the case at all.

17 Q And did you go to see McManigal again? A I did.

18 Q When? A On the 14th of the month, as near as I can
19 remember.

20 Q And what was the conversation at that time?

21 MR ROGERS: The same objection.

22 THE COURT: Overruled.

23 Q Who was present? A Nobody was present, only me and
24 Ortie.

25 Q All right. What was the conversation at that time?

26 A I tried to drill into the case, and asked him how much

1 he was going to get out of it in case they got him clear,
2 on his side, and what he was going to get if he did get
3 out. I says, "The laboring men will turn you down every-
4 where, and you are liable to get popped over amongst the
5 laboring class of people." I says, "They won't like you
6 and they are liable to pop you over." He says, "I cannot
7 help it", he says, "the truth is the truth". And I brought
8 up Burns again to him and what Burns was going to do for
9 him, or his side of the people, and he says, "They are not
10 going to give me anything; they have promised me nothing at
11 all." I says, "Ain't Burns going to share up that
12 money he is getting or going to get for catching you?",
13 and he says, "No, no, nothing at all." ✓

14 Q Did you have a conversation with Mr Darrow in which
15 the children of McManigal were mentioned?

16 MR ROGERS: We object to that as leading and suggestive.

17 MR FREDERICKS: Yes, it is.
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7p 1 MR. ROGERS. I think witnesses of this sort ought not to be
2 led.

3 MR. FREDERICKS. I do not ^{know} what is meant by, "A witness of
4 this sort."

5 THE COURT. Objection overruled.

6 MR. ROGERS. A witness relating conversations ought not to
7 be led.

8 THE COURT. Objection overruled.

9 MR. ROGERS. Exception.

10 MR. FREDERICKS. Read the question.

11 (Question read.)

12 A Well, that leads into a trip that I made with the little
13 boy as I was leaving from the house to go to the post office,
14 for my own mail. I had the little boy with me.

15 Q Whose little boy? A McManigal's little boy.

16 Q Yes. A As I was passing down by the court house from
17 where I got on the street car he hollered out to me,

18 "Hey!"

19 Q Who hollered out to you? A Ortie McManigal.

20 Q From where? A From the jail building, as I was passing
21 down by the court house.

22 Q With his little boy? A Yes, I had him on the right
23 hand side of me away from the jail so that nobody could
24 see him from there, but he saw me.

25 Q Who saw you? A McManigal.

26 Q What did he say? A He hollered at me. He says, "Hey,

1 Uncle George, bring over the boy and let me see him."

2 I didn't make any reply back at all, I went right onto the
3 post office to get my mail and from there I went back to
4 Mr. Darrow's office with the boy.

5 THE COURT. Q Went back to where? A Mr. Darrow's office,
6 with the boy.

7 MR- Fredericks. Q Did you meet Mr. Darrow at that time?

8 A I did.

9 Q Did you have a talk with him then? A I told him my
10 experience I had going to the post office and the cry that
11 was given out to me to bring the boy over.

12 MR. ROGERS. I didn't get that.

13 (Answer read.) A What is that?

14 MR. FREDERICKS' Read that answer again.

15 (Answer read.) A And I told him, he asked me then if I
16 took him over and I says, "No, I didn't take him over, I
17 didn't pay any attention to the hollering." He says,
18 "That is right, God, Damn it," he says, "tease him", he
19 says, "and then he will come across.

20 MR. DARROW. Read that last answer.

21 (Last answer read.)

22 BY MR. FREDERICKS. Q Anything further? A As near as
23 I can remember, that was the ending of that conversation
24 that I had there with him.

25 Q Did you have a conversation with Mr. Darrow in which the
26 matter of getting a divorce for Mrs. McManigal was discussed?

1 A Well, he had told me that she should make out an applica-
2 tion and he would get her a divorce from him because he
3 would never be any account for her any more and he was
4 going to make arrangements so that she could get about
5 \$3,000 and she could buy a place in Chicago or somewhere
6 east out near where her folks lived and get a little home where
7 she could bring up her children.

8 MR. ROGERS. Pardon me, I didn't get who said that, it is
9 difficult to understand, if your Honor please.

10 (Last question and answer read.)

11 BY MR. FREDERICKS. Q Did Mr. Darrow ever tell you anything
12 to tell McManigal about that divorce or about the children?

13 MR. ROGERS. I submit, that is leading and suggestive.

14 MR. FREDERICKS. It is leading, there is no doubt about that.

15 THE COURT. Objection overruled.

16 MR. ROGERS. Excetion.

17 A What is that?

18 MR. FREDERICKS. Read it.

19 (Question read.)

20 A No, he never told me.

21 Q Have you related the conversation that you had the last
22 time you were over with McManigal? A That was on the
23 15th of November.

24 Q You said about the 14th, I think. There was one after
25 that. A The last time I was there was on the 15th.

26 Q Who was present when you had that conversation? A Was

1 all alone in the jail.

2 Q What was that conversation? A Well, that conversation—

3 MR. ROGERS. I make the same objection.

4 THE COURT. Overruled.

5 MR. ROGERS. Exception.

6 A That conversation wasn't any more than just merely talk-
7 ing over our people at home and general visit. Wasn't
8 nothing leading into the case at all, the last visit.

9 Q Now, Mr. Behm, state whether or not along about that time
10 or later you were served with a grand jury subpoena to come
11 before the grand jury of this county. A Well, yes, that
12 was along about the latter part of the month.

13 Q And state whether or not you came before the grand jury
14 in obedience to that subpoena. A I did.

15 Q After you were served with that subpoena state whether
16 or not you had a conversation with Mr. Darrow in regard to
17 what you should do when you appeared before the grand jury?

18 A I did.

19 Q Where was that conversation? A That conversation was
20 started in Mr. Darrow's office in the Higgins Building, and
21 the other attorneys was with him. They couldn't find the
22 books they wanted to find, and they went over to Mr.
23 Davis's office that evening.

24 MR. ROGERS. I didn't get that answer.

25 (Last answer read by the reporter.)

26 MR. ROGERS. What other attorneys? Did he mention them?

1 MR. FREDERICKS. . . No. Well, then, did you go over to Mr.
2 Davis's office that evening also? A Yes, sir.

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1 Q Was there any conversation there at that time with
2 you and Mr Darrow in regard to what you should do when you
3 appeared before the grand jury? A Yes sir.

4 Q What was that conversation; who was present?

5 MR ROGERS: I object to that.

6 A There was Mr Darrow, Mr Davis, Mr Scott, Mr Job Harri-
7 man and Mr Terrill.

8 Q And what was that conversation? A Well, they dis-
9 cussed the matter between themselves during the evening,
10 and they all decided that when I was called before the
11 grand jury I should not answer any of the questions they
12 asked me any more than my name and my residence.

13 Q And then, state whether or not afterwards you appear-
14 ed before the grand jury in obedience to that subpoena?

15 A I did, the following day.

16 Q That was the grand jury here in Los Angeles County?

17 A Yes sir.

18 Q In the court house. And do you remember the date of it;
19 the date you appeared there? A The 31st, I think.

20 Q Of July? A I think the 31st of July.

21 MR ROGERS: You might lead him as to the date.

22 MR FREDERICKS: Well, he has already gotten it.

23 Q Now, was there a shorthand reporter present? A There
24 was.

25 Q State whether or not he took down the testimony and
26 proceedings while you were there? A Yes sir.

1 MR ROGERS: That is objected to as calling for a conclusion
2 or opinion, incompetent and no foundation laid.

3 MR FREDERICKS: Well, a matter going to show the witness --

4 THE COURT: Overruled. Motion to strike out denied.

5 MR ROGERS: Exception.

6 MR FREDERICKS: Now, Mr Behm, state whether or not since
7 in the last few days you have been shown or have seen
8 a typewritten statement of that testimony? A I have.

9 Q I show you what has been introduced heretofore in
10 evidence as People's exhibit No.21, and ask you whether or
11 not that is a correct transcript of the testimony that
12 you gave before the grand jury on the first time that
13 you were called there, on the 31st of July?

14 MR ROGERS: Objected to as incompetent, irrelevant and
15 immaterial; the rule of law has not been complied with;
16 no foundation therefor has been laid.

17 MR FREDERICKS: That is an exhibit already in evidence.

18 MR ROGERS: That doesn't concern the witness, if your Honor
19 please, nor does it concern counsel.

20 THE COURT: Show the document to counsel.

21 MR FREDERICKS: I now show counsel the document that I
22 have referred to.

23 MR ROGERS: The point of the objection, your Honor please,
24 is this, among other points we urge, that the point of
25 the objection we might say is this; the witness has al-
26 ready told that his directions not to answers came from

1 Mr Davis, Mr Harriman, Mr Joseph Scott, Mr Tyrell and Mr
2 Darrow.

3 MR FREDERICKS: Darrow being one of them. We intend to
4 follow this up further.

5 THE COURT: Now, what is the question, Mr Fredericks?

6 MR ROGERS: He certainly has no means of saying that is
7 correct; that is not even the original.

8 MR FREDERICKS: He said he has read it.

9 MR APPEL: Doesn't tend to show he made it himself or made
10 under his direction or that he has any independent re-
11 collection of what transpired there. If he has any inde-
12 pendent recollection of what was said there, what was
13 asked of him, then that is the best evidence; not some
14 paper somebody else has prepared.

15 THE COURT: What is the question before the court?

16 (Last question read by the reporter.)

17 MR ROGERS: As I understand it, your Honor please, where a
18 witness is sought to be refreshed, there is one method of
19 refreshment under the code: a document made by him at the
20 time or shortly thereafter when the events were fresh in
21 his recollection; second, a document made under his di-
22 rection under the same circumstances either at the time
23 or while the incident was fresh in his recollection.

24 If another witness should come on and say that is a cor-
25 rect transcript, that might be admissible evidence,
26 doubtful, but it might. Certainly under these circum-

1 stances it is not admissible.

2 MR FORD: If the court please, can't this witness recol-
3 lect what occurred and testify this is a correct docu-
4 ment?

5 MR ROGERS: He can remember what occurred.

6 MR FORD: Let me address the court, please.

7 MR ROGERS: I beg your pardon.

8 MR FORD: He is testifying this is an authentic trans-
9 cript. He is testifying from his own memory, this document
10 is a genuine report. He has identified the document as
11 being correct. He is not using the document to correct
12 his memory, but testifying from his memory that the docu-
13 ment is correct, and that is the only purpose for which it
14 is offered.

15 MR ROGERS: If he recollects the circumstances, then he
16 must relate them without the aid of the memorandum. If
17 he doesn't remember, he may refresh by the document, under
18 the circumstances indicated.

19 MR FREDERICKS: I am not using this under the provision
20 of refreshing anyone's memory at all.

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1 THE COURT. This is the Weir affidavit?

2 MR. FREDERICKS. This is the Weir affidavit. This witness
3 has said he has read it. I have asked him heretofore--

4 MR. ROGERS. It is a conclusion also that the document is
5 correct. If the witness recollects the facts and circum-
6 stances he must relate them from his memory, but if not he
7 must refresh under certain circumstances.

8 MR. FORD. It is like offering the dictionary, we didn't
9 want to read it all at once.

10 MR. FREDERICKS. I think if the court will have the question
11 read again it will be--

12 THE COURT. Read the question.

13 (Last question read by the reporter.)

14 THE COURT. Objection overruled.

15 MR. ROGERS. We except.

16 MR. FREDERICKS. Q You remember the question now? A No,
17 read the question.

18 (Last question read by the reporter.)

19 A Yes, it was.

20 Q Now, state in general terms whether you obeyed the instruc-
21 tions given you--I withdraw that. The record may show my
22 mind is not clear. I am going to ask the question again.

23 Which one of the attorneys, if you remember, instructed you
24 that you should refuse to answer all the questions?

25 A Mr. parrow.

26 MR. DARROW. I object to that upon the ground that it is

1 leading and he should say what was said.

2 MR. ROGERS. Incompetent and no foundation laid.

3 THE COURT. Objection overruled.

4 MR. ROGERS. Exception.

5 MR. FREDERICKS. Q What was the answer? A Mr. Darrow.

6 Q Now, when you got before the grand jury —

7 MR. ROGERS. Nothing but fair to show in whose presence
8 that was.

9 MR. FREDERICKS. I think that has already been gone into.

10 THE COURT. I am assuming that this question is directed
11 to the incident occurring in Mr. Davis's office, Mr. Davis,
12 Mr. Harriman, Mr. Terrill and Mr. Darrow; if I am mistaken as
13 to that place then the ruling is wrong.

14 MR. FREDERICKS. Q I will ask you who was present at the
15 time Mr. Darrow told you to refuse to answer, if you remember
16 the circumstances? A The last conversation I had with Mr.
17 Darrow was the following morning just before I went to the
18 grand jury.

19 Q Well, who was present at that time? A I don't
20 remember of anybody being present. I left his office.

21 Q And what was that conversation? A Well, he told me
22 when I went over there, whenever they asked me these ques-
23 tions about what I had already said and promised McManigal,
24 that I should deny everything.

25 Q No, I will get to that. I am talking about the time
26 when you had--when you went up and refused to answer

1 before that day.

2 THE COURT. Just a moment, Captain Fredericks. This dis-
3 closes a fact that the objection taken by Mr. Darrow a
4 few moments ago was properly taken.

5 MR. FREDERICKS. I am not clear on that, I think the witness
6 was confusing two times.

7 THE COURT. I think the manner in which the matter has
8 been disclosed since the objection was made requires me to
9 sustain his objection and strike out the answer. There
10 is a way of getting at that, perhaps.

11 MR. FREDERICKS Let us see what is gone out, so we will
12 understand.

13 THE COURT. The answer to the question as to which one of
14 the attorneys gave him the instruction not to answer
15 before the grand jury.

16 MR. FREDERICKS. I understand.

17 THE COURT. That objection made by Mr. Darrow is sustained
18 and the answer stricken out.

19 MR. FREDERICKS. All right. Now, Mr. Behm, I am talking
20 about--I am asking you about the time when you say you
21 went over into--I want to call your attention, rather, to the
22 time when you say you went over into Mr. Davis's office and
23 Mr. Davis and Mr. Scott and Mr. Harriman and Mr. Terrill were
24 there. Now, when was that with reference to the time that
25 you appeared before the grand jury when you refused to answer
26 questions? A Now, if I understand you--

1 Q How long was that before the time you came before the
2 grand jury? A That was the night before.

3 Q The night before? A That was the night I was sub-
4 poenaed.

5 Q That was the night you were subpoenaed. All right. Now,
6 the next day you say you appeared before the grand jury?

7 A Yes, sir.

8 Q And refused to answer questions? A Yes, sir.

9 Q Now, before you appeared before the grand jury and
10 refused to answer questions that morning, had you any talk
11 with any of those attorneys? A Only Mr. Darrow.

12 Q Well, Mr. Darrow, then, you had that morning? A Yes.

13 Q What was that talk--where was it?

14 MR. ROGERS. That is objected to as incompetent, irrelevant
15 and immaterial and no foundation laid.

16 MR. FREDERICKS. I am laying the foundation.

17 THE COURT. He is asking where. You want to object to
18 that question?

19 MR. ROGERS. That is preliminary.

20 MR. FREDERICKS. Q Where was it? A That was in Mr. Darrow's
office.

21 Q Who was present? A Nobody that I know of was present.

22 Q What was said then? A Well, he told me, "Well, George,"
23 he says"--

24 MR. ROGERS. The same objection.

25 THE COURT. Overruled.

26 MR. ROGERS. Exception.

1 A --"you go over to the grand jury and every word they
2 ask you outside of your name and residence, just tell them
3 that don't concern the case." That was my answer for
4 every question that was asked me in the grand jury during
5 that time.

6 Q What was the answer? A "That don't concern the case."

7 Q Well, then, after you had--how long were you in the grand
8 jury that time? A Well, I was in there in the forenoon
9 from 10 up until about 12, I judge, then I went back again.

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1 Q State whether or not you afterwards were served with a
2 citation for contempt of court for refusing to answer
3 those questions? A Well, I went back that afternoon
4 again.

5 Q Went back where? A To the grand jury room and they re-
6 leased me from 4 o'clock until 5; I was to call back at 5
7 o'clock.

8 Q State whether there was a citation served on you for
9 contempt of court for refusing to answer these questions?

10 A Let me answer this question, first.

11 Q Go ahead. A After I was released about 4 o'clock,
12 I went over to Mr Darrow's office, and I told him what I
13 had already done. I says to him, "Now, I expect they are
14 going to serve the papers on me."

15 MR ROGERS: The same objection.

16 THE COURT: Overruled.

17 MR FREDERICKS: You went over to Mr Darrow's and what
18 did you say? A I told Mr Darrow, says, "Now is the time
19 they are going to serve the papers on me". I says, "There
20 ought to be somebody over there to look after me." He
21 says, "All right; you go over and get Mr Davis and he will
22 go along up there with you", so I did.

23 Q Where did you go? A I went over to Mr Davis' office
24 and he went with me up to the grand jury room again and I
25 went in as I was told to come in at 5 o'clock.

26 Q Well, were you afterwards served with papers? A Well,

1 I was in and was dismissed and when I went out, why the
2 sheriff served papers on me and told me I was under ar-
3 rest for contempt of court.

4 Q And then state whether or not you were brought before
5 the grand jury again after that?

6 MR ROGERS: Objected to as hearsay, incompetent, irrele-
7 vant and immaterial, and not the best evidence, and no
8 foundation laid.

9 THE COURT: Overruled.

10 MR ROGERS: Exception.

11 A I was.

12 MR FREDERICKS: What happened after you were served with
13 papers?

14 MR ROGERS: The same objection.

15 THE COURT: Overruled.

16 MR ROGERS: Exception.

17 MR FREDERICKS: Go ahead.

18 A So, the time I was arrested Mr Davis went my security
19 for keeping me out of jail, and during this time up un-
20 til the time I had to go to the grand jury room again
21 they had discussions that was already asked --

22 MR FREDERICKS: I will come to that. When did you go
23 to the grand jury, the next day? A On the third day of
24 the month.

25 Q That was about three days afterwards? A Afterwards.

26 Q August the 3rd, you mean? A Yes.

1 Q Now, then, before August 3rd, state whether or not
2 you had any conversation with Mr Darrow in regard to what
3 testimony you should give this time when you were brought be-
4 fore the grand jury?

5 MR DARROW: I object unless he states the time and place;
6 who was present.

7 THE COURT: Objection sustained.

8 MR FREDERICKS: Now, at the time you were served with this
9 citation requiring you to answer certain questions, state
10 whether or not there was handed to you a list of these
11 questions? A There was.

12 Q The questions that you had refused to answer in court
13 that day? A Yes sir.

14 Q And is that the same list that I have shown you here
15 now? A Yes sir.

16 Q A copy of it?

17 MR ROGERS: That is leading and suggestive.

18 MR FREDERICKS: Oh, well, it is.

19 THE COURT: Slightly, but harmless. Objection overruled.

20 MR ROGERS: Exception.

21 MR FREDERICKS: Now, state whether or not you had any
22 talk about that with Mr Darrow after that in regard to
23 that list of questions that you were required to answer?

24 MR ROGERS: Objected to as no foundation laid, incompetent,
25 no time, place or persons present?

26 MR FREDERICKS: I will lay that later. This is a yes or

1 no answer. A Yes.

2 THE COURT: What was the question? Wait a moment. (Last
3 question read by the reporter.) The objection is over-
4 ruled. The witness has answered yes or no. What was
5 the answer? A Yes.

6 MR FREDERICKS: The answer was yes. When did you have
7 the first talk with him about it? A Well, that was that
8 evening after I was released.

9 Q And where was it? A Well, this was in Mr Darrow's
10 office that evening.

11 Q And who was present -- who all? A Mr Davis.

12 Q Mr Davis, Mr Darrow and yourself. Anybody else?

13 A Not as I remember.

14 Q And what was the conversation? A Well, the conver-
15 sation was, how I was to answer these questions.

16 MR APPEL: Let him state it.

17 MR DARROW: We object to that.

18 THE COURT: Yes. State what was said and done and who
19 said it.

20 MR FREDERICKS: State what was said -- do you remember
21 what Mr Darrow said in regard to it?

22 MR DARROW: I object to that question, your Honor. It
23 is leading and unfair in every way, especially in view of
24 what has happened as to this, it is for this witness to
25 say what was said and done.

26 THE COURT: That is the question before the court and the

1 court has directed the witness so to answer the question.
2 The last question of the District Attorney is not proper,
3 because his other question had not yet been answered.

4 Go ahead and answer the question.

5 MR FREDERICKS: Let the reporter read that question that
6 is not answered.

7 (Question read by the reporter as follows: "Q -- What
8 was the conversation?")

9 MR FREDERICKS: That is the question that is standing be-
10 fore the court?

11 THE COURT: That is the question that is now before the
12 court.

13 MR FREDERICKS: Now, give the conversation. A Well, the
14 conversation was --

15 MR ROGERS: Do we understand this is a conversation between
16 Mr Darrow and Mr Davis and the witness?

17 THE COURT: precisely.

18 MR FREDERICKS: Yes.

19 THE COURT: And the witness is directed to give the con-
20 versation.

21 MR FREDERICKS: I will ask the witness to state who said,
22 when you say anybody said anything, say who said it, if you
23 remember.

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11p 1 A Well, Mr. Darrow told me, he says, "Well, now," first
 2 start off, Mr. Darrow says, "Now, George, you ain't afraid
 3 to go to jail, are you?" I says, "No, not unless it is
 4 necessary." "Well," he says, "we are not going to let
 5 you go to jail if we can possibly help it, but," he says,
 6 "you may go to jail for this." I says, "I don't want to
 7 go to jail, it looks kind of bad for my folks back home
 8 to go to jail for what I came out here for." He says, "We
 9 will take care of you, we will get you out of here if we
 10 have to carry it up to the higher court." Now, the con-
 11 versation was between the three of us. They undertook

12 to drill me on those questions they should ask me and how
 13 I should answer. Mr

14 MR. APPEL We move to strike out the answer to the ques-
 15 tion, he should state what was said.

16 THE COURT. Strike it out.

17 MR. FREDERICKS. The witness, of course, at this time
 18 can only give the substance.

19 THE COURT- The witness can state what he said and what
 20 Mr. Darrow said and what Mr. Davis said in substance, if he
 21 cannot give the exact words.

22 MR. FREDERICKS. All right. Now, if I can help a little.
 23 Don't use the expression, "they drilled me", but say what
 24 they said, if you remember, that is, what they did and who
 25 did it, as near as you can. A Mr Davis would ask me
 26 the question and Mr. Darrow would tell me how to answer it.

Q By "question" you refer to the questions here in the cita-

1 tion? A in that citation.

2 Q yes. A Well, that is the way the conversation led
3 in. Mr. Davis would ask me this question and how I should
4 answer it to keep myself out of trouble with what I had
5 already promised McManigal, what I would do for him and
6 what Mr. Darrow would do for him.

7 MR. APPEL. We move to strike that out.

8 THE COURT. Strike it out.

9 MR. FREDERICKS. That is the substance of the conversation.

10 THE COURT. It doesn't purport even to be the substance.

11 MR. FREDERICKS. Let us see how much goes out, then. Read
12 that and let the court indicate how much of it goes out.

13 THE COURT. Read that last part of the answer.

14 (Last answer read.)

15 THE COURT. Strike out all of the answer after the word
16 "trouble."

17 MR. FREDERICKS. Read that portion of it.

18 (Portion of the answer down to the word "trouble" read.)

19 BY MR. FREDERICKS. Q All right. And what did Mr. Darrow
20 do when ^{Mr.} Davis would ask the question?

21 MR. DARROW. I object to that question, your Honor, on the
22 ground it is obvious--if the prosecutor went--it is leading
23 and suggestive, unfair, and I ask him to be reprimanded for
24 asking it. The only thing this witness can do is to
25 state the conversation.

26 MR. FORD. We can direct his mind to a portion of it if we

1 want to.

2 MR. DARROW. You cannot direct his mind to a portion of it.

3 THE COURT. The only thing is what was said and done at
4 that time. objection sustained.

5 BY MR. Fredericks. All right. I want you to go into it as
6 near in detail as you can, give the substance of what Mr.

7 Darrow did and said and what Mr. Davis did and said while

8 you were there. A Mr. Davis would ask these questions,-

9 Q Yes, and then what? A Mr. Darrow would tell me how to
10 answer them.

11 Q All right.

12 MR. ROGERS. I move to strike that out as a conclusion or
13 opinion.

14 THE COURT. Strike it out.

15 MR. FREDERICKS. I think it is the substance.

16 MR. ROGERS. Incompetent.

17 MR. FORD. A fact.

18 MR. DARROW. It is not a fact.

19 THE COURT. It does not purport to be what was said, it is
20 a conclusion of the witness.

21 MR. FREDERICKS. All right. There is a long list of
22 questions.

23 THE COURT. Gentlemen of the jury, bear in mind the admoni-
24 tion heretofore given you. We will take a recess for
25 ten minutes at this time.

26 (Here the court took a recess for 10 minutes. After

1 recess. Jury returned to court room.)

2 THE COURT. Mr. Rogers is not here. Do you wish to wait for
3 him?

4 MR. DARROW. No, go ahead, your Honor.

5 BY MR. FREDERICKS. Q Now, Mr. Behm, how long were you and
6 Mr. Davis and Mr. Darrow together there that first evening,
7 engaged as you have described? A Well, we were there about
8 an hour.

9 Q State whether or not you met Mr. Darrow again before you
10 went before the grand jury. A I did.

11 Q Where and when? A At his office.

12 Q Was any one present at that time?-withdraw that. When
13 was that? A That was the following day after the day I
14 was before the grand jury.

15 Q The following day after you were before the grand jury
16 the first time? A Yes.

17 Q All right. And who was present then? A Well, I don't
18 think that this second time--I was all alone.

19 Q And did you have any talk with him at that time?

20 A Yes, sir.

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1 Q What was the talk or what was said and done between
2 you? A Well, the talk was --

3 Q No, I led you into that error in my question. Give
4 the substance of the conversation between the two of you.

5 MR DARROW: Just a minute; if you will excuse me I would
6 like to know if it was before or after the conversation was
7 related when Davis and yourself and I were present?

8 MR FREDERICKS: After.

9 THE COURT: I have not that fixed in mind.

10 MR FREDERICKS: It is very clear in the testimony it is
11 the next day after.

12 THE COURT: I would like to have it cleared up.

13 MR FREDERICKS: Well, when was this first conversation
14 that you and Mr Davis and Mr Darrow had in the evening?

15 MR DARROW: We object to that question on the ground it
16 is leading and suggestive.

17 MR FREDERICKS: It is already in the record.

18 MR DARROW: I do not think it is in the record.

19 MR FREDERICKS: I know it is in the record.

20 THE COURT: Objection overruled.

21 MR ROGERS: Exception.

22 A The first time I had this conversation with Mr Darrow,
23 Mr Davis and myself, was the same day I was up before the
24 grand jury.

25 MR FREDERICKS: Yes; and what time of the day? A It
26 was in the evening.

1 Q Now, then, when was the next conversation you had with
2 Mr Darrow?

3 MR DARROW: I object to that on the ground it is leading
4 and suggestive.

5 MR ROGERS: Incompetent.

6 THE COURT: Objection overruled.

7 A It was the following day in Mr Darrow's office.

8 Q Who was present, if anybody? A Nobody was pre-
9 sent.

10 THE COURT: I cannot hear what you say.

11 A Nobody was present that day.

12 MR FREDERICKS: And who was present and what was said --

13 A He questioned me on these questions and he told me how
14 I should answer them.

15 Q What did he say? A He said I should answer all those
16 questions with the exception of the questions that led
17 into Mc Manigal, as to what I told McManigal that he would
18 do for him, that I should deny those charges.

19 Q And did he say anything in regard to any questions
20 that might be asked about him, or was that subject
21 mentioned?

22 MR DARROW: Just a minute. I object on the ground it is
23 leading and suggestive and that counsel has no right to
24 lead this witness.

25 THE COURT: Objection sustained.

26 MR FREDERICKS: Give anything further that was said, if

1 you recall it? A Do you want me to answer those
2 questions?

3 MR DARROW: I object to that. Let him state what was
4 said.

5 MR FREDERICKS: Just a moment, Mr Darrow; I am examining
6 this witness.

7 MR DARROW: I am objecting to the question.

8 MR FREDERICKS: I asked him the question and there was no
9 objection and the witness started to answer.

10 MR DARROW: There was an objection.

11 THE COURT: Strike out the answer as far as it has gone
12 for the sake of the objection. Now, what is the objec-
13 tion?

14 MR DARROW: There was no objection to the question; the
15 objection was to his answer.

16 MR FREDERICKS: He had not finished his answer.

17 MR DARROW: He had not gotten to it.

18 MR FREDERICKS: Then why do you object to it?

19 MR DARROW: If the court will permit me, the stenographer
20 can read it and the court will see why I objected to it,
21 and possibly counsel can see it.

22 THE COURT: Go ahead and read it?

23 MR DARROW: Read that answer.

24 MR FREDERICKS: But in any event, the rule is the witness
25 answers the question, and if it is objectionable it will
26 be stricken out.

1 THE COURT: Let us get the record, now, and see what it is.

2 (Last three questions and answers read.)

3 THE COURT: Now, read the question again.

4 (Last question read by the reporter.)

5 THE COURT: Now, Mr Behm, just put your mind right on that
6 question. That question is a proper one for you to
7 answer by just stating exactly what was said there and who
8 said it.

9 MR FREDERICKS: If anything further.

10 THE COURT: If there was anything further more than you
11 have already testified to.

12 A Mr Darrow told me that I -- asked me if I could answer
13 those questions that they had already asked me and to keep
14 and him, myself out of trouble. I was before the grand jury --

15 Q Yes. A I told him I didn't know whether I could or
16 not. Well, he says, "I can tell you", he says, "you answer
17 those all with the exception of the questions they asked you
18 concerning what you said to McManigal as what answers you
19 got out of McManigal, and what you told McManigal, so in the
20 fall term of court he could use me for a witness against
21 McManigal's testimony", and then he told me that those ques-
22 tions they would ask me up there would be just the same
23 as they had asked me, and I should fix it up in my own
24 mind in a way I could answer him so as to keep him out of
25 trouble and myself, and deny all questions asked of me
26 about what I told McManigal that he would do for him if he

1 changed his testimony.

2 MR FREDERICKS: Now, did you go then again afterwards,
3 after that conversation, did you go before the grand jury
4 in obedience to the citation? A I did.

5 Q And state whether or not you testified this second
6 time before the grand jury? A Well, I testified --

7 Q I don't ask you to state what you testified; state
8 whether or not you did testify; yes or no, did you tes-
9 tify? A Yes.

10 Q Now, since the last few days, state whether or not you
11 have been shown a transcript --- I will withdraw that.
12 State whether or not there was a shorthand reporter pre-
13 sent at the time that you testified before the grand jury
14 the second time? A There was.

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13s 1 Q And state whether or not he took down the questions
2 and answers? A He did.

3 MR. APPEL. Wait a moment--

4 THE COURT. Strike out the answer.

5 MR. APPEL. We object to the question propounded to the
6 witness as to whether or not any one there present, not
7 as to whether any one was there present acting as a
8 shorthand reporter, but we object to the witness answering
9 whether the person purporting to be acting as a shorthand
10 reporter took down the questions and answers, because no
11 foundation has been laid. The witness has not shown him-
12 self qualified or competent to testify as to whether this
13 alleged reporter was taking down the questions and
14 answers. He hasn't shown to know anything about shorthand,
15 as to whether he examined the shorthand or whether he could
16 tell he did take down what he said or not. He can describe
17 the physical facts as he saw them and can describe what
18 this man did in his presence, but/^{it}is asking for a conclu-
19 sion which it is impossible for him to testify unless some
20 foundation is laid. No more than I can testify right here
21 that Mr. Smith is taking down what I say, and from my exper-
22 ience and from reading this record, I know that some of
23 the things I said were not put down, and some of the objec-
24 tions were not put down, and some of the testimony was
25 not given correctly. I simply illustrate that because I
26 want to show by that fact to illustrate the impossibility
for a witness to answer such a question as that. He cannot

1 give the verity of the acts of the reporter when he him-
2 self has not been shown skillful in that regard, to have
3 examined the record himself or to know anything about short-
4 hand that would enable him to testify.

5 THE COURT. Yes, I think that objection was well taken.

6 MR. FREDERICKS. Was there a shorthand reporter present
7 apparently taking down the testimony? A Yes, sir.

8 Q Now, since you have been here, Mr. Behm, I will ask you
9 if there has been shown you what purported to be a trans-
10 cript of testimony? I will have to identify this some
11 way in order to make my question intelligible. Given by
12 you on August 3rd before the grand jury?

13 MR. APPEL. Now, we object to that question--

14 MR. FREDERICKS. Let me add a little to it. Q And if
15 you have read that transcript through heretofore?

16 MR. APPEL. Now, we object to that question upon the
17 ground it is leading and suggestive; upon the ground that
18 the witness is informed by the question itself that the
19 document which was shown to him purports to be his testi-
20 mony given on the date mentioned in the question. In other
21 respects, your Honor, he is assured of that fact to enable
22 him to testify. The manner of proof, what he testified
23 there, is very easy without asking the witness an incompe-
24 tent question. He can certainly be shown in some other
25 manner there with almost absolute verity. Why should we
26 permit improper questions to be asked of the witness himself?

1 The reading of that testimony there by this witness might
2 in some manner clear his mind, but it would be impossible
3 for this witness in the very nature of things, to testify
4 as to whether or not that is a correct transcription of
5 what this reporter purports to have done there. Your Honor
6 can see that is no way to verify a transcript. He is not
7 a competent person to verify a transcript and, furthermore,
8 that the question, whether or not that purports to be a
9 correct transcript, is immaterial. How can only--the trans-
10 cript itself becomes secondary evidence when you have the
11 witness who purports to have testified there on the witness
12 stand. It must be left to his memory. He himself was
13 present; he knows what he testified to. He himself is
14 the person who can testify whether he said so and so, and
15 so and so. The transcript here is immaterial. It is
16 secondary evidence; it becomes secondary evidence.

17 THE COURT Read the question.

18 (Last question read by thereporter.)

19 MR. APPEL We object to it on those grounds stated.

20 THE COURT. There are two questions there.

21 MR. FREDERICKS. Counsel's objection comes a little bit
22 early.

23 THE COURT. There are two questions there.

24 MR. FREDERICKS. Well, eliminate the part, what was that
25 after the and--if you have read that transcript hereto-
26 fore, leave that out and leave it if that has been shown you.

1 THE COURT. To which question as now framed I suppose
2 there is the same objection?

3 MR. APPEL. The same objection.

4 THE COURT. The objection is overruled.

5 MR. APPEL. Exception.

6 (Last question read by the reporter.)

7 A Yes.

8 MR. FREDERICKS. Q I will ask you if you have read that
9 transcript through? A I have.

10 MR. APPEL. Wait--

11 THE COURT. Strike out the answer. The same objection?

12 MR. APPEL. We object upon the ground that it is imma-
13 terial, that if he did read it it is incompetent for any
14 purpose, whatever he did outside of this court room, anyway
15 it is immaterial. The transcript itself would be incompet-
16 ent as to what was said there at that time.

17 THE COURT. Objection overruled.

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1 MR APPEL: It only serves -- that document would only serve
2 if it were properly certified to, would only serve for the
3 purpose of refreshing the mind of the witness, and then
4 when he has refreshed the mind of the witness, the document
5 itself is not admissible in evidence, no more than if I
6 went into the court room and testified to certain things,
7 and immediately sat down there in the presence of the
8 court and made a memorandum of what I testified, and put it
9 in my pocket. Afterwards when I was brought into court
10 the memorandum would not be admissible in evidence; might
11 tend to refresh my memory, because made at the time; it
12 would serve that purpose, but the document itself would be
13 secondary evidence. California cases hold that in the
14 matter of a transcript, too. The transcript itself is
15 inadmissible. Then the question as to whether he has
16 read it, whether it is correct, according to his own esti--
17 mation according to his own opinion, would therefore be-
18 come immaterial, because the question is one addressed to
19 the identify of the document.

20 THE COURT: Well, of course, this question so far is merely
21 preliminary. The objection will be overruled.

22 MR APPEL: Take an exception.

23 MR FREDERICKS: What is the question?

24 (Last question and answer read by the reporter.)

25 THE COURT: Restore the answer.

26 MR FRED ERICKS: I now hand counsel for their inspection.

1 the document I have been talking about and state to
2 counsel and the court that it is the same document that
3 they got an order from the court to have transcribed.

4 MR DARROW: We have read it.

5 MR FREDERICKS: You have read it. Very well.

6 Now, will you stipulate it and then we can put it in evidenc.

7 MR APPEL: Stipulate what?

8 MR FREDERICKS: Stipulate that it is correct testimony of
9 this witness.

10 MR APPEL: We won't stipulate anything. Go on with your
11 case and try it the best way you can. You have no right
12 to ask us anything of that kind. It is the highest mis-
13 conduct on the part of the District Attorney to turn
14 around and ask the defendant to stipulate to any fact.
15 Don't anyone can see that if we don't stipulate this jury
16 might draw conclusions and draw opinions against us?

17 MR FREDERICKS: The counsel for the defense in the presence
18 of the court and the jury asked to have this written up
19 for them, for their use. Now, this is the same man.

20 THE COURT: I assume what counsel says he cannot stipulate.

21 MR FREDERICKS: All right. Was the transcript -- I will now
22 show you a document, Mr Behm, and wish you to look at it
23 in a general way, and then I want to ask you a question
24 about it.

25 MR ROGERS: The witness, I assume, is not to answer.

26 MR FREDERICKS: No, I haven't asked him a question yet.

1 THE COURT: You are showing the witness the document just
2 presented to counsel, I presume.

3 MR FREDERICKS: yes sir. I will ask you now, Mr Behm,
4 if the document I have just shown you is the same document
5 which you have heretofore testified you read over as be-
6 ing the transcript of your testimony given August 3rd, 1911?

7 MR APPEL: Objected to upon the ground it is incompetent,
8 irrepevant and immaterial, and no foundation laid; the
9 witness not having shown himself qualified to testify in
10 reference thereto. The document not being a document which
11 purports or which has been proven to have been made by
12 him or a memorandum made by him, when the occurrence
13 took place, or immediately after, or that he had sufficient
14 knowledge in reference thereto, to be able to identify
15 the document. Certainly cannot identify a document made
16 by somebody else. The mere fact that they took out a
17 book and showed it to the witness outside of the court
18 room, and they say, "Look at this book; this is the 113th
19 California", and then they bring the witness back in the
20 court room and say, "Is this the same book?" "I showed you
21 out here?" What difference does it make whether it was
22 the book they showed him outside? How does that tend to
23 prove that the ^{words of the} witness which he gave in the examination
24 at some period of time distant from the time when the in-
25 strument is shown -- the mere fact that I take the witness
26 out there and show him this book and say, "Yes, that is

1 the same book you showed me out there", does that tend to
2 show that it is the testimony that the witness gave be-
3 fore the grand jury? Or a true copy thereof; did he see
4 the original? Did he make it himself? Did he compare
5 it? Was it made under his instructions? Under his direc-
6 tions? How can it be possible that this witness can
7 identify that document? The question of whether this docu-
8 ment is the one they showed him outside of the court
9 room doesn't tend to prove the ultimate fact which they
10 are trying to get at, that this is a correct transcription
11 of his testimony, and he being incompetent and disqualified,
12 so far as the proof shows here, to be able to identify
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15s 1 it as containing the matters and things testified to,
2 because he didn't take them down; because he couldn't
3 know, in the nature of things, whether they were taken
4 down correctly or not. Because he didn't make it himself.
5 How will that fact become material as to whether it is
6 the same paper he showed him outside the court room?

7 THE COURT. Objection overruled.

8 MR. APPEL. We except.

9 MR. FREDERICKS. Read the question, Mr. Reporter.

10 (Question read.)

11 A It is.

12 Q I will ask you, Mr. Behm, if this transcript which I
13 will now ask--I can still refer to it--I will ask you
14 if this transcript which is marked August 3, 1911, states
15 the testimony which you gave before the grand jury on
16 August 3, 1911?

17 MR. DARROW. I object to that question, your Honor. It is
18 not anybody that does not know that this witness can possib-
19 ly remember. In the first place, it is incompetent, has
20 no place in the record. This witness has pretended to state
21 certain things that were said to him by me and by Mr. Davis
22 as to his testimony. If it would have any competency or
23 relevancy, in the first place, which we insist it could not
24 have, but if it could, then the only question is, "What
25 did you say to the grand jury, did you say what I told you
26 or what Mr. Davis told you or what you told yourself?" That

1 is all that could be competent here, not any transcript.
2 The counsel knows perfectly well that this witness could
3 not remember any transcript of his testimony. It is in-
4 competent.

5 THE COURT. I do not see upon what you base your theory.
6 It seems to me if you or I dictate a brief we would rem-
7 ember it in six months.

8 MR. DARROW. Well, your Honor, I ask, what is a frequent
9 thing, before this witness is permitted to identify some-
10 thing which he cannot identify, that I have a chance to
11 examine him and see if he can identify it.

12 THE COURT. Now, that is--

13 MR. FREDERICKS. I have not offered this in evidence yet.
14 All these arguments are premature. When I offer this in
15 evidence to bring out one scintilla of what is in it, then
16 is the time for all these arguments, but I have not offered
17 it yet.

18 MR. DARROW. Just a moment, I am making this argument.

19 MR. FREDERICKS. I beg your pardon, I thought you were
20 through.

21 MR. DARROW. And it is not premature. The witness ^{was} shown
22 this document and asked whether that was his testimony
23 before the grand jury, which question he could not answer
24 and an intelligent man could not answer, much less this
25 witness.

26 MR. FREDERICKS. We think that counsel should not be per-

1 mitted to make a remark of that kind.

2 THE COURT. Mr. parrow, I do not think that remark is pro-
3 per that you made there.

4 MR. DARROW. I will make the statement then, this witness
5 could not possibly do it.

6 THE COURT. Do you want to examine him on the voir dire?

7 MR. DARROW. I ask to examine him on the voir dire.

8 MR. FREDERICKS. Let's see what the question is that is
9 pending.

10 (Last question read.)

11 THE COURT. I think before that question is answered--

12 MR. FREDERICKS. Withdraw the question. I now ask that
13 this document, which I have exhibited to the witness, be
14 marked for identification as People's Exhibit something,
15 whatever it is.

16 THE CLERK. 24.

17 MR. FREDERICKS. 24?

18 THE CLERK. Yes, sir.

19 MR. FREDERICKS. For identification. All, right, will you
20 take it, Mr. Smith, please.

21 THE COURT. It will be so marked.

22 (Document last referred to marked People's exhibit 24, for
23 identification.)

24 MR. FREDERICKS. And I would ask that the record show that
25 it bears the legend on it, "Testimony of George Pehm
26 given before the grand jury August 3, 1911."

1 BY MR. FREDERICKS. Q Now, Mr. Behm, when you went before
2 the grand jury on August 3, 1911, what did you tell them,
3 if you remember, in a general way, in regard to whether Mr.
4 Darrow had brought you out to California to influence the
5 testimony of Ortie McManigal?

6 MR. DARROW. We object to that on the ground it is leading
7 and suggestive and I might add, incompetent, irrelevant and
8 immaterial.

9 THE COURT. Objection overruled.

10 MR. DARROW. We except.

11 MR. FREDERICKS. Read the question.

12 (Question read.)

13 MR. FREDERICKS. Q Answer the question. A I denied the
14 charge.

15 MR. APPEL. One moment--we will ask to have that stricken
16 out, it is not responsive to the question.

17 THE COURT. I never heard the answer.

18 MR. FREDERICKS. The reporter will read it.

19 (Answer read.)

20 MR. FREDERICKS. I think it is plain he is giving the sub-
21 stance, I think that is plain.

22 MR. APPEL. That does not mean whether it was --

23 THE COURT. Read the question and answer, and let us see
24 what it is.

25 (Question and answer read.)

26 THE COURT. I think that the answer is a fair answer to the
question, and the motion is denied.

1 Q And what did you tell them, in a general way, as to
2 whether or not you had tried to get Artie McManigal to
3 change his testimony?

4 MR DARROW: Your Honor, I want to object to this; I want to
5 be heard for a moment.

6 THE COURT: Yes sir.

7 MR DARROW: It seems to me so palpably unfair that counsel
8 may tell this witness question after question what answer
9 to make.

10 THE COURT: Your objection is on the ground it is lead-
11 ing?

12 MR DARROW: This witness should tell what he said before
13 the grand jury, and there is nothing --

14 MR FREDERICKS: That is what I am asking.

15 THE COURT: Your objection is on the ground it is lead-
16 ing and suggestive?

17 MR DARROW: I object to his stating the substance of any-
18 thing.

19 MR FREDERICKS: Now, your Honor, let us look at that, if
20 you will permit me. That is not a leading question. I
21 have got to direct his attention to some subject; I am not
22 indicating what his answer shall be in any way, shape or
23 form; I am simply directing his attention to a part of his
24 testimony and asking him what he said in regard to that
25 matter. Now, he may have said one thing and he may
26 have said another; I don't suggest what the answer shall

1 be in any way, shape or form. Of course, I can put it in
2 another way.

3 MR ROGERS: There is just one way to put these questions.

4 THE COURT: Objection sustained.

5 MR FREDERICKS: The ruling is against me, and I will put
6 it in another way.

7 THE COURT: Objection sustained.

8 MR FREDERICKS: What did you state to the grand jury, if
9 anything, in a general way, I am asking you, in regard to
10 whether you had tried to get McManigal to change his tes-
11 timony?

12 MR DARROW: I object to that on the same ground; it is
13 exactly as improper.

14 THE COURT: Objection sustained.

15 MR FREDERICKS: Did you testify anything in regard to your
16 conversation with McManigal?

17 MR DARROW: I object to that; anything in regard to --
18 Will you read that, Mr Reporter?

19 (Question read.)

20 I object to that on the same ground. The question is
21 "What did you say to the grand jury"?

22 MR FORD: I would like to be heard on that objection, your
23 Honor.

24 THE COURT: I cannot see why you cannot let this witness go
25 right on and tell what he said there.

26 MR FREDERICKS: All right. I will ask that. Let me with-

1 draw that. What did you say, if anything, in regard to
2 McManigal?

3 MR DARROW: I object to that, if the court please, on ex-
4 actly the same grounds. This witness has stated before
5 that he has gone over and over this statement, which may
6 have been his testimony or may not; he was thoroughly
7 posted, so far as this witness can be, upon that subject.
8 He is brought here for the purpose of saying that certain
9 instructions were given to him by me or by Mr Davis or by
10 both of us, then he went in and followed it. Now, it is
11 for this witness to say what he said before the grand jury
12 without being prompted by anyone or without having his at-
13 tention called to anything what to say.

14 MR FRED ERICKS: In regard to what? I have to specify
15 what.

16 MR DARROW: What did he say to the grand jury.

17 MR FREDERICKS: I don't want him to go into everything
18 he said before the grand jury at this time; I am asking
19 about one thing.

20 MR FORD: If the court please, frequently people have con-
21 versations; they testify concerning a large number of things
22 and it has been in immemorial usage in courts to direct
23 the attention of the witness --

24 THE COURT: Where necessary.

25 MR FORD: -- to the particular part they are interested
26 in.

1 THE COURT: Where necessary.

2 MR FORD: To the particular part they are interested in,
3 it is for the prosecutor or the person asking the questions
4 to decide just what he wants brought out, and then on the
5 cross-examination counsel is always entitled to the whole
6 of the conversation, if they desire it. The code itself
7 specifies that a part of a conversation may be introduced
8 and giving the opposite side the right to examine into
9 the whole of the conversation if they see fit, so to do.
10 Now, if counsel desires to direct the attention of the wit-
11 ness to a particular portion of the testimony or a particu-
12 lar portion of the conversation, he has a right to do it
13 as long as he does not lead the witness or suggest to
14 the witness what his answer shall be, and when this wit-
15 ness is asked whether he testified concerning his rela-
16 tions with McManigal before the grand jury, it is because
17 counsel is interested in that particular thing and he asks
18 him to give that testimony. We may want to follow that
19 particular thing up with questions concerning, or, perhaps
20 after that is done, we may direct his attention to some-
21 other subject concerning which he may have given testimony,
22 and after we are through, if counsel want the whole of
23 his testimony, they are entitled to it under the law, and the
24 law provides they shall have it.

17p 1 But, we have a right to direct the attention of the witness
2 to the particular thing we are interested in, the particular
3 thing concerning which we are trying to introduce evidence,
4 as long as we do not lead or suggest to him what his answer
5 shall be.

6 MR. DARROW. Your Honor, every question is leading and
7 suggestive and suggests the answer.

8 MR. FREDERICKS. I want to get a little testimony in here
9 and not so much argument and I will withdraw the question.

10 Q State, if you remember, what you told the grand jury
11 when you went before them on the 3rd day of August, 1911?

12 A I told the grand jury just as Mr. Darrow told me--

13 MR. ROGERS. That calls for a yes or no answer.

14 MR. FREDERICKS. No, it does not.

15 MR. DARROW. I ask to have that answer stricken out.

16 THE COURT. Strike out the answer.

17 MR. ROGERS. State whether you remember or not?

18 MR. FREDERICKS. No, I didn't ask that question.

19 THE COURT. Read the question. There seems to be a con-
20 troversy about it.

21 (Last question read.)

22 MR. ROGERS. State, if you remember, that is subject to a
23 double meaning, not "state what you remember".

24 MR. FREDERICKS. I have a question and there is no objec-
25 tion to it and I would like to have it answered.

26 MR. DARROW. The answer is stricken out, your Honor?

1 THE COURT Yes ..

2 MR. DARROW If there is any question as to what the
3 question means--

4 THE COURT I assume it means, "State what you remember?"

5 MR. FREDERICKS Certainly.

6 THE COURT Go ahead and state what you remember.

7 A Well, I remember being asked the questions of me inter-
8 fering with McManigal as to having him change his testimony,
9 if I had done that, and I denied the charge of interfering
10 with a state witness.

11 BY MR. FREDERICKS Now, Mr. Behm, how long were you before
12 the grand jury at that time? A Well, I was in the forenoon
13 from 10 to 12.

14 Q And in the afternoon any? A In the forenoon and--

15 Q How long did you stay in California after that-- and
16 in the afternoon also? A In the afternoon from 2 to
17 about 4, as I remember it.

18 Q All right. How long did you remain in California after
19 that testimony before the grand jury, at that time? A After
20 I was released from the grand jury, you mean?

21 Q Yes. A That was on the 3rd and I left for home on the
22 9th.

23 Q Now, did you have a conversation with Mr. Darrow before
24 you went east in regard to seeing Ortie McManigal's folks,
25 his father? A I did.

26 Q Where did you have that conversation with him? A In

1 his office. .

2 Q Who was present? A Nobody present but me and him.

3 Q And what was the conversation?

4 MR. APPEL. Wait a moment--we object to that on the ground
5 it is incompetent, irrelevant and immaterial for any pur-
6 poses whatever; no foundation laid, it is immaterial to
7 any issue in this case, not contemporaneous with the
8 matters and things alleged in the indictment, not tending to
9 show any element or fact connected with the charge in the
10 indictment.

11 THE COURT. Objection overruled.

12 MR. APPEL. Exception.

13 MR. FREDERICKS. Read the question.

14 (Question read.)

15 A He wanted me to go east and see my brother.

16 MR. APPEL. Now--

17 MR. FREDERICKS. Go ahead. A And his daughter, also to
18 see Ortie McManigal's father, and he told me to tell Mc-
19 Manigal's father that he should beware of all the people
20 that may come to him for information and to keep away
21 out of sight everywhere that he could be seen around out-
22 side of his daily labor, and keep his mouth shut about
23 anything that may concern with this case.

24 BY MR. FREDERICKS. Q And did you have a conversation with
25 Mr. Darrow in regard to the National Erectors's Association
26 and whether McManigal had any connection with it? A He

1 didn't say anything about his father to me about it, but
2 that was my brother.

3 MR. APPEL. The answer to the question is yes or no.

4 THE COURT. Yes, answer the question, did you have such a
5 conversation? A Not with McManigal.

6 MR. FREDERICKS. Q No. A With him, yes.

7 Q With Mr. Darrow? A With Mr. Darrow.

8 Q Where was that conversation? A That was in his office
9 before I left.

10 Q Anybody else present? A Nobody.

11 Q And what was that conversation?

12 MR. APPEL. We object to that on the ground it is incom-
13 petent, irrelevant and immaterial, hearsay, collateral to
14 any issue in this case, not tending to show any matter con-
15 nected with the charge embraced in the indictment and not
16 tending to prove any element or fact connected with or
17 relevant to the charge embraced in the indictment.

18 THE COURT. Objection overruled.

19 MR. APPEL. We take an exception.
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1 MR FREDERICKS: Read the question. (Question read.)

2 Conversation with Mr Darrow in regard to your brother?

3 A I should go down there and see my brother.

4 MR DARROW: Hasn't he told that? I object to that --

5 MR FREDERICKS: Yes. Who said that you were to go down and
6 see your brother? A Mr Darrow.

7 Q All right; go ahead and give the conversation.

8 MR DARROW: I object to that, if it is the same conversa-
9 tion already given.

10 THE COURT: I do not understand it is the same.

11 MR FREDERICKS: If it is the same, I would like to know
12 what the grounds of the objection are.

13 MR DARROW: That is the same.

14 MR FREDERICKS: No. That other was in regard to going down
15 to see Old Man McManigal, and this is in regard to going
16 down and seeing Mr Behm's brother.

17 MR APPEL: About the Erectors' Association?

18 MR FREDERICKS: Yes. You may state what the conversa-
19 tion was.

20 MR APPEL: I have my objection to that?

21 THE COURT: Yes; I think the objection has been reserved
22 there, and an exception.

23 MR APPEL: The objection running to these answers?

24 THE COURT: Yes sir.

25 MR APPEL: And the same ruling?

26 THE COURT: " The same ruling, and exception. Answer the

1 question.

2 A He told me to go down there and have my brother to de-
3 cide that he was sure that he had already made out a
4 statement about what Ortie had told him who he was working
5 for.

6 Q Well, just give that entire conversation. A Well,
7 he told me to tell him when he was called out here, he
8 should swear Ortie had told him he was working for the
9 Erectors' Association.

10 Q If your brother was called out here? A When he was
11 called out here.

12 Q What is your brother's name? A William Behm.

13 Q William Behm? A Yes sir.

14 Q Did you ever have any correspondence with Mr Darrow
15 after you went back East? A yes, I received one letter
16 from him, or two letters -- two different letters.

17 Q Have you got those letters? A I got one of them with
18 me.

19 Q Where is the other one? A Well, the other one is to
20 home.

21 Q You have one with you? A I have, yes sir.

22 Q Have you it now on the stand? A Yes sir.

23 Q Let us see it, please. Is this it that you have just
24 handed me? A Yes sir.

25 Q Are you acquainted with Mr Darrow's signature?

26 A I am.

1 Q State whether or not this is his signature at the bot-
2 tom.

3 MR ROGERS: Wait a moment. Let's see how he got acquainted
4 with it. Did you ever see him write?

5 MR APPEL: We shall make the objection to the question
6 on the ground it is incompetent to prove such question --
7 the signature of the person; no foundation laid for the
8 answer of the witness. The witness must either have
9 seen the person write or else know the signature by com-
10 parison. He is not qualified as an expert on the one hand,
11 nor is he qualified to identify the signature upon the
12 other hand.

13 MR FREDERICKS: The counsel has not heard my question.

14 MR APPEL: You asked him whether or not that was his sig-
15 nature. That is no way to ask him.

16 MR FREDERICKS: I asked him if he knew his signature;
17 that is the question..

18 MR APPEL: Yes, I know, but that is not the way to ask it.

19 THE COURT: I assume that is preliminary.

20 MR APPEL: He must ask him whether or not he has seen him
21 write,-- He has seen him sign his signature.

22 THE COURT: Probably he will ask that next. He cannot
23 ask but one question at a time.

24 MR APPEL: Because he asked three competent questions, is
25 that a reason why one incompetent question should be proper.
26 Asking if he knows; that is a matter for the court to de-

1 termine before the witness is allowed to testify as to
2 his signature.

3 THE COURT: The court will determine it from all the tes-
4 timony.

5 MR APPEL: But you allowed him to tell him, your Honor, he
6 knows it. The only way a man knows a signature is by see-
7 ing the man write.

8 THE COURT: Objection overruled.

9 MR APPEL: And when a man says that without complying with
10 the law, doesn't state what the law allows him to state.
11 Another man can say he is guilty of murder, but that doesn't
12 necessarily prove it.

13 MR FREDERICKS: That is the way to prove signature.

14 MR APPEL: That is the way you prove it.

15 MR FREDERICKS: I am willing to sit at the feet of counsel
16 and learn wisdom.

17 MR APPEL: I wouldn't want you to sit at my feet. I wouldn't
18 have you near me.

19 THE COURT: Answer the question.

20 MR APPEL: Exception.

21 MR FREDERICKS: Do you know the signature of Mr Darrow?

22 MR APPEL: Wait a moment. We object upon the ground it is
23 incompetent, irrelevant and immaterial, and calling for a
24 conclusion or opinion of the witness; calling for a matter
25 that is for the court to determine before the witness is
26 allowed to testify in reference to the signature.

1 THE COURT: Overruled.

2 MR DARROW: There isn't any question --

3 MR FREDERICKS: Answer the question. Do you know the
4 signature of Mr Darrow? A I do.

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19s1 Q State whether or not this is the signature of Mr. Darrow
2 appended to this letter?

3 MR. ROGERS. Objected to as no foundation laid, incompetent.

4 THE COURT. Objection sustained.

5 MR. FORD. Just a moment. I think the defendant himself--
6 read back in the record--made a statement concerning it--
7 just read it in the record. He said there is no question
8 about it, and that is in the record, the defendant's own
9 words.

10 (Statement read as indicated.)

11 MR. ROGERS. I am not unduly disposed about this letter.
12 I don't care two cents about it anyhow except for the pur-
13 pose of illustrating that this witness is willing to
14 swear to a man's signature whom he never saw write.

15 MR. FREDERICKS' Let's see if he didn't see him write.

16 THE COURT. Mr. Rogers, your objection that no foundation has
17 been laid has been sustained.

18 MR. FREDERICKS. Did you ever get any checks from Mr.
19 Darrow? A yes.

20 Q With his name signed to them? A Yes, sir.

21 Q And cashed them? A Went and got it cashed.

22 Q Did he ever sit down in your presence and write a check
23 to you? A He did.

24 Q And sign his name to it? A Yes.

25 Q Is this the signature of Clarence Darrow appended to
26 this letter?

1 MR. APPEL. Wait a moment--we object upon the ground the
2 question is incompetent, irrelevant and immaterial, it isn't
3 a question permitted by the Code to be asked even under the
4 circumstances. Let him read the code.

5 MR. FREDERICKS. I have read it many times.

6 MR. APPEL. I venture to say you don't find that is per-
7 missible in the Code.

8 THE COURT. Read the question.

9 (Last question read by the reporter.)

10 THE COURT. Overruled.

11 MR. APPEL. Exception.

12 A It is.

13 MR. FREDERICKS. Now, may it please the Court, we offer
14 this letter in evidence as People's exhibit No. 25.

15 MR. APPEL. And no objection except we reserve our objection
16 to the witness saying he knows the signature and to the
17 identification, no objection to the letter.

18 MR. FREDERICKS. All right, it may be--

19 MR. ROGERS. Except as illustrating the fact that the
20 witness doesn't know the signature but nevertheless is
21 willing to swear to it. We don't waive that objection.

22 MR. Fredericks. Why all this argument?

23 MR. ROGERS. Because I desire to make an interposition
24 into the record as I see fit.

25 MR. FREDERICKS. Yes, well, let's get a little evidence in.
26 (Reading) "Clarence Darrow, Higgins Building, Los Angeles,

1 October 19, 1911. Mr. George Behm, Portage, Wisconsin,

2 My dear Mr. Behm: Mr. Harrington has handed me your letter
3 and I do not understand how you come at your results. You
4 are right in saying that we figured up \$451.00. This covered
5 your time, expenses and the help that you hired while you
6 were away. I paid you \$100 some weeks before you left;
7 gave you \$251 when you left and sent you \$100, the amount
8 agreed upon a week or two ago. This is in addition to the
9 \$100 I gave you in Chicago. I do not understand how it is
10 that you paid Mrs. McManigal's and others' expenses back
11 to Chicago. I think if you will look it over you will find
12 some mistake. On the day you left I gave you \$251, and also
13 drew a check to Mr. Davis for \$300 which he had cashed and
14 gave to you for Mrs. McManigal and her expenses. I sup-
15 posed that all her expenses including the nurse were paid
16 out of this money; is this not the fact? If not, what is
17 the fact? Of course, you know that I have full confidence
18 in you and that under no circumstances would I let you lose
19 anything that was your due. You also know how hard up we
20 are and how difficult it is to get the necessary money to
21 carry on our expenses, and I am sure you want to help us all
22 you can in the matter, and only want your time and expenses
23 made good. Please let me know more fully about
24 this matter. With best wishes, I am, Very truly
25 yours, Clarence Darrow." State whether or not that letter
26 came in this envelope which you handed me, Mr. Behm? A Yes,

1 sir.

2 MR. FREDERICKS. We offer the envelope as part of the exhibit.

3 THE COURT. People's Exhibit No. 25.

4 MR. FREDERICKS. This is post marked "Los Angeles, Cal.,
5 October 19, 7:30 P.M. 1911. Mr. George Behm, Portage, Wiscon-
6 sin, R.F.D. No. 4, Box 29." State whether or not you did
7 receive the money referred to in that letter from Clarence
8 Darrow? A I did.

9 MR. FREDERICKS. Cross-examine.

10

11 CROSS-EXAMINATION.

12 BY MR. DARROW. Q Where do you live now, Mr. Behm? A Port-
13 age, Wisconsin.

14 Q I mean while you are here? A While I am here?

15 Q Yes. A I am living out to Ocean Park.

16 Q Who is with you? A I am all alone.

17 Q Who else in the same building where you are? A I can't
18 call the peoples names that live there.

19 Q You know any of them? A Not only as I got acquainted
20 with the people since I came here.

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1 Q Who did you come out with? A Came out alone.

2 Q Meet any other people down there to the beach?

3 A I met Mr Harrington, yes.

4 Q Where does he live? A He lives on Ocean Park some-
5 where.

6 Q Do you know where he lives? A I know where he lives,
7 yes.

8 Q Well, tell me. A He lives at 211.

9 Q Where do you live? A I live about a block from
10 there.

11 Q Who else lives down there that you know? A I don't
12 know of anybody outside --

13 Q Larry Sullivan? A I don't know where Larry Sullivan
14 lives.

15 Q You met him there frequently? A I have seen him on
16 the walk back and forth.

17 Q And up here? A Up here?

18 Q Yes. A I met him in the hallway today, as I went
19 out.

20 Q See Mr Harrington down there frequently? A I meet
21 him, yes.

22 Q That is what I asked you. Has he been to your house; to
23 your room? A No, he hasn't been to my room.

24 Q Have you been to his? A I have been to his.

25 Q Mr Cooney and Mr Fitzpatrick, were they down there?
26

1 A Yes, they lived in the same building where Harrington
2 did.

3 Q And anybody else? A Well, there is lots of people
4 there, I don,t know what their names is.

5 Q Any Burns people? A I don,t know anything about
6 Burns people.

7 Q You don't know anything about any of them? A No.

8 Q Any detectives? A No.

9 Q Any agents of the state? A I don't know any of them.

10 Q You say you don't know anything about any of them?

11 A Any of the Burns people down there.

12 Q Any of the Burns people? A I don,t know. You might
13 say all these people are Burns people.

14 Q Over there. Don't know anything about detectives or
15 agents of the Burns people, and had nothing to do with you
16 in this matter, any conversation or otherwise? A No
17 sir, they haven't had no conversation, no Burns people.

18 Q And who did you see in Portage before you came here or
19 anywhere in Wisconsin about coming here? Don't you know?

20 A All I know I got a subpoena to come.
or write to you

21 Q Did anybody talk with you before you got a subpoena?

22 A Well, there was one gentleman seen me.

23 Q Who was the gentleman? A Mr Keetch.

24 Q You know who he is, don't you? A I didn't know who
25 he was then.

26 Q When was that? A Well, that was along about the 1st

1 of June, as near as I remember.

2 Q Did anybody talk with you or write to you or see you
3 with reference to coming here before that time? A He was
4 the only person-~~no~~ writing.

5 Q Ever talk with anybody about coming here before that
6 time? A About coming here?

7 Q About coming here or giving any information or tes-
8 timony in this case? A No sir.

9 Q That is the first you heard of it, was it?

10 A Only Mr Keetch spoke to me.

11 Q Yes. A Yes.

12 Q That is the first, where were you? A I was at home.

13 Q Portage? A On the farm.

14 Q Did he ask you then to come here? A He didn't just
15 ask me to come.

16 Q What did he do? A Hey?

17 Q What did he do then? A Why, he just merely came out
18 there and said to me, well, he says, "Are you going out
19 to Los Angeles", he says, "on that case out there in case
20 you are subpoenaed?" Well, I said, "I guess I will have
21 to go there to clear myself up, make myself good out there.

22 Q What was it you said, "clear yourself up" or "make your-
23 self good?" A Well, them is the words I used.

24 Q Had you ever talked with anybody before about clear-
25 ing yourself up? A No.

26 Q Or anybody written to you? A Nobody.

1 Q Or talked about it to anybody? A No sir.

2 Q Anybody in the world about clearing yourself up?

3 A No.

4 Q What did you mean? A Clear myself up for what I had
5 sworn out here that was false.

6 Q That was when --

7 MR FREDERICKS: What was when, may it please the court?

8 MR DARROW: Talking with Mr Keetch? A The talk about
9 Mr Keetch?

10 Q Yes; when was that, now? A I didn't talk any to Mr
11 Keetch about coming out here to clear myself up.

12 Q Whowas you talking to about coming out here to
13 clear yourself up? A Nobody.

14 Q What did you say to Mr Keetch then? A He asked me
15 if I would come out there.

16 Q Then what did you say? A I told him yes, I had to
17 come out here to clear myself up.

18 Q When was that? A That was about the 1st of --

19 Q Of June?

20 MR FREDERICKS: Oh, no.

21 A Don't be so fast.

22 MR DARROW: Take your own time. A About the 1st of
23 May.

24 Q The ^{first} of May. And you had testified in August pre-
25 ceding? A How is that? Just a moment. What did you say
26 now?

1 Q Well, do you still say the 1st of May?

2 THE COURT: Read the question.

3 (Last question read by the reporter.)

4 MR FORD: Sure.

5 MR DARROW: What do you know about it? He says, wait
6 a minute.

7 MR APPEL: He says sure.
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1 (Last question read by the reporter.)

2 MR. FORD. We object upon the ground it is indefinite.

3 MR. DARROW. Q You had testified before the Los Angeles
4 grand jury in the August preceding, had you not? A Yes,
5 sir.

6 Q Nine months before? A Yes.

7 Q And in all that time you had never said anything to any
8 being human, or any human being to you about clearing yourself up,
9 is that right? A Yes, sir.

10 Q And the first words you said when Mr. Keetch came out there
11 was you guessed you would come back and clear yourself up,
12 is that right? A He asked me if I would come out there
13 if I was subpoenaed as a witness.

14 Q And your first answer was what? A Hold on; wait until
15 I get done with this. I said, "Yes, I will have to go
16 out there, I guess, to clear myself up and make myself good."

17 Q That is the first intimation you made to him and the
18 first words you-- A No, he asked me about farming.

19 Q That is the first--

20 MR. FORD. Just a moment.

21 THE COURT. He said no and started to explain what was the
22 first.

23 MR. DARROW. Was that the first word, your first answer to
24 him? A As near as I recollect, that was the first
25 answer.

26 Q And as near as you recollect you still say it positively

1 that no one had talked to you or you to any one else about
2 clearing yourself up? A No.

3 Q Or about any charged against you up to that time? A Not
4 that I remember of.

5 Q Would you be apt to forget such a thing? A I don't
6 think I would.

7 Q Had you any intimation up to this time you were going
8 to be called to Los Angeles? A No, I had not.

9 Q Anybody talk to you about it? A Not coming out here.

10 Q Or written to you about it? A Nobody wrote to me.

11 Q Well, now, first, -I will come back to that later. This
12 letter states that you were to have your expenses and the
13 amount of money you was earning as an engineer and the
14 help you had to hire in your place while you were gone, is
15 that right? A Yes, sir.

16 Q And that was the agreement, wasn't it? A That was the
17 agreement when I left you in Chicago.

18 Q And nothing else beyond that? A Well, you told me
19 that you would see to my expenses.

20 Q I read this, your expenses, the pay you were getting
21 on the railroad? A Yes, sir.

22 Q And anybody you had to hire in your place? A Yes, sir.

23 Q That was the agreement? A Yes, sir.

24 Q Now to come back again to another matter. This last
25 bunch of testimony here you say was given at 10 o'clock
26 in the morning, is that right?

1 MR. FREDERICKS.. Objected to as being indefinite, not
2 clear as to just what he refers to.

3 MR. DARROW. We will make it definite and clear, then.

4 Q The testimony you gave to the grand jury which is repre-
5 sented in the matter of which I show you a copy. You know
6 what it is, don't you? A The one I looked at a while
7 ago, is that the same one?

8 Q Yes, has it ever been identified any way?

9 MR. FREDERICKS. This copy is identified.

10 MR. DARROW. August 3rd, 1911, you went before the grand jury
11 at 10 o'clock in the morning? A August 3rd, yes, sir.

12 Q I don't want to mislead you or have you mislead yourself.
13 That was the time that you testified before the grand jury,
14 wasn't it, not the time you refused to answer? A That
15 is the time I testified.

16 Q That is the time I am referring to. Now, you say the
17 night before that Mr. Davis and I had a conversation in
18 which we talked to you about what your testimony should be,
19 is that right?

20 MR. FREDERICKS. Don't answer that--that is not the testi-
21 mony of the witness. We object upon the ground that it
22 assumes a fact not in evidence.

23 MR. DARROW You say that the night before Mr. Davis and your-
24 self and I were together in the office and went over the
25 subject of how you were to testify to the questions asked
26 you?

1 MR. FREDERICKS'. That is not the testimony of the witness.

2 The testimony of the witness is--

3 MR. DARROW. I object to the statement of counsel.

4 MR. FREDERICKS'. The night after he was summoned and
5 cited for contempt of court was the night--

6 MR. DARROW. You are right about that, but is ^{not} that the
7 same time. I think we are both right about it.

8 MR. FREDERICKS'. That is another matter.

9 MR. DARROW'. We are both right about it. Q The night
10 after you were summoned for contempt of court you say
11 Mr. pavis and yourself and I met in the office and went
12 over your testimony as to how you should answer these
13 questions, is that right? A Yes, sir.

14 Q Now, was it the next day that you went before the grand
15 jury, you say, after that evening meeting? A What do
16 you mean, that was on the 3rd?

17 Q Did you go before the grand jury the next day after the
18 evening meeting you spoke of? A I don,t understand your
19 question.

20 Q Well, don't answer it until you do. This meeting
21 between you, and this conversation was in the evening?

22 A Yes, sir.

23 Q At Mr. pavis's office, did you say? A Qver in your
24 office.

25 Q In my office or was it in Mr. warrinan's office down
26 the hall? A Room 932, I supposed that was your office,

1 you were always.inthere.

2 Q Was that the night before you went over to testify?

3 A That was the night after I came from the grand jury,
4 the time I didn't answer the questions.

5 Q Was the next day the day you testified? A It was on
6 the third day that I testified, of the month.

7 Q Who represented you or who was your attorney in answer-
8 ing before the grand jury what we call a citation? A You
9 was.

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1 Q Mr Scott did that, didn't he? A How is that?

2 Q Joe Scott prepared the answers, didn't he, before the
3 grand jury? A I don't remember Mr Scott having anything
4 to do with it.

5 Q You remember meeting Mr Scott there, don't you? A Now,
6 you are getting them things tangled. I never met Scott
7 any time with you people, only the first night before I
8 went to the grand jury.

9 Q You had seen Mr Scott many times before that? A I had
10 seen him, yes, on the street.

11 Q You had seen him? A I don't know what he means.

12 Q Many times since that time? A He is trying to get
13 that wrong.

14 THE COURT: All you have to do is to answer the question.
15 Counsel is not testifying; you are doing that. The ques-
16 tion is, have you seen Mr Joseph Scott since that time?

17 A Never had any conversation with Mr Scott after the
18 first -- that I was subpoenaed to go before the grand
19 jury.

20 MR DARROW: I asked you if you had seen him. A I had
21 seen him, yes.

22 Q On that night you and Mr Davis and Mr Scott and Mr
23 Harriman and myself, ^{and} Mr Terrill, spent the evening looking
24 up authorities and talking with you over in Mr Davis' office,
25 didn't we? A What evening do you mean? Give me the
26 date you are talking about.

1 A Now, I am speaking of the time that you went before
2 the grand jury the first time. A The first time, yes.

3 Q And there it was agreed that you should refuse to
4 answer? A Yes sir.

5 Q Which you did? A yes sir.

6 Q And that was the matter that we were settling that
7 night, wasn't it? A Yes sir.

8 Q Then they asked you some questions after that evening
9 before you went before the grand jury.

10 MR FREDERICKS: Who asked you?

11 MR DARROW: Before the grand jury -- the grand jury, or Mr
12 Ford asked you some questions, the grand jury, didn't they?

13 A Yes, they asked me questions.

14 Q And you refused to answer? A yes sir.

15 Q Just as we had told you? A just as you told me.

16 Q And then, of course, you were cited, or served with a
17 paper to appear? A Yes sir.

18 Q When you were arrested, I believe, Mr Davis and Mr
19 Harriman went over and got you out, or Mr Davis gave his
20 check, I don't remember which. A Mr Davis went over to
21 the office with me and gave a check.

22 Q And you were there in the office with the officer when
23 I came in? A yes sir.

24 Q Who else was there? A I can't remember anyone out-
25 side of Mr Davis, you and the officer.

26 Q Mr Harriman was there? A I don't think he was in the

1 office with me. .

2 Q Did you live in the same building with Harrington
3 while you were in town? A Not all the time.

4 Q Not all the time, but much of the time? A About
5 15 or 16 days.

6 Q How long were you here altogether? A Six weeks.

7 Q 6 weeks? A Yes.

8 Q The first part or the last part you lived? A The
9 last part.

10 Q Then, after these questions were asked you and you re-
11 fused to answer, you had that meeting with Mr Davis and
12 with me? A Yes sir, the first meeting; that was the first
13 meeting.

14 Q In the evening? A Yes.

15 Q How long were we together? A I should judge we were
16 together about an hour or so, such a matter.

17 Q An hour or so? A Yes.

18 Q Would you say longer or shorter? A Might have been
19 10 minutes longer, or 5 minutes shorter.

20 Q What was the subject of discussion? A The subject
21 was that I should refuse to answer the questions that was
22 concerned with the case and me having to ask McManigal
23 to change his testimony; that was the subject of the talk.

24 Q Now, you mean the subject of the talk there was that
25 you should refuse to answer the questions concerning your
26 asking McManigal to change his testimony; is that it?

1 A Yes sir.

2 Q That is, Mr Davis and I told you to refuse to answer;
3 is that what you mean? A That was the meaning.

4 Q That we told you not to answer that question?

5 A Wherever it concerned with the case when I asked Mc
6 Manigal to change his testimony I should deny that before
7 the grand jury.

8 Q What you mean, you say you should refuse to answer it --
9 MR FREDERICKS: He said he should deny it.

10 MR DARROW: Well, now, I object --

11 Q You first said you were told to refuse to answer, didn't
12 you? A Yes, by you.

13 Q That evening? A (No response.)

14 Q That evening? A That first evening, yes.

15 Q That evening, in the presence of Mr Davis, you say
16 you were told to refuse to answer on that subject? A Yes
17 sir.

18 Q Yes. That whenever that subject came up you would say
19 you refused to answer. A You told me I should refuse to
20 answer.

21 Q That is what I said, and that is what Mr Davis acquies-
22 ced in, did he? A He would ask me the question and you
23 would tell me how to answer.

24 Q And there you would refuse to answer? A Well, hold
25 on, now.

26 Q Do you remember it? A I remember these things, but

1 what are you doing, trying to get me tangled up on the
2 first one or thesecond one?
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23p 1 THE COURT. Take your time in answering.

2 BY MR. DARROW. Q I am trying to get you straightened out,
3 if I can.

4 MR. FORD. The witness is entitled to know which one he
5 is referring to.

6 MR. DARROW. I am telling him which one I am referring to
7 and if he doesn't understand I will make it plain.

8 THE COURT. Let us have the question.

9 BY MR. DARROW. Q I said, the evening Mr. Davis and I were
10 with you when, as you state, he read the questions and I
11 told you how to answer them? A Yes, sir.

12 Q Now, you know what I am talking about, don't you?

13 A Yes.

14 Q And that time you were to refuse to answer that question,
15 were you? A Some of those questions.

16 Q Well, I am talking about that question.

17 MR. FREDERICKS Let the witness answer.

18 MR. DARROW. I object--

19 THE COURT. Have you finished your answer?

20 MR. FORD. I think the witness should be allowed to
21 finish his answer.

22 THE COURT. Have you finished the answer?

23 A You ask the question again.

24 THE COURT. Read it again.

25 MR. DARROW. I do not want the court or the jury to think
26 I am interfering with him. He started to answer a specific

1 question and if he doesn't understand a specific question
2 I want to make it perfectly clear to him, but I want an
3 answer to my question.

4 THE COURT. That is what I am getting at. The court is
5 in some doubt whether he answered the question. Let us
6 have the question and answer.

7 MR. DARROW. If you cannot find the question, Mr. Reporter,
8 I will repeat it.

9 THE COURT. Perhaps that is better.

10 MR. FORD. We would prefer to have the question and answer,
11 as far as it goes.

12 MR. DARROW. He said some of them.

13 THE COURT. Had you finished answering the question?

14 A There was questions brung up there that they wanted me
15 to answer and there was questions brung up they didn't want
16 me to answer.

17 MR. DARROW. First, I am going to ask you about the ques-
18 tion you have been talking about, whether you asked Mr.
19 McManigal to change his testimony. Now, that is the ques-
20 tion you say we told you to refuse to answer, is it?

21 A Yes, sir. Now, you are getting at it.

22 Q Yes. Now, what other questions were you told to answer
23 or not answer in that case that evening? A Well, there
24 was questions that you--that was asked me there that I
25 should refuse to answer before the grand jury, that you
26 told me that anything that I told you to ask McManigal to

1 ask him to change his testimony I should not answer that, I
2 should say, "I refuse to answer that question. That don't
3 concern the case." Those were the answers you told me
4 to give to the court.

5 Q Yes. Now, will you read that answer.

6 (Answer read.)

7 Q Now, was there anything else upon which Mr. Davis or I
8 told you to make any answer? If that is not plain, I
9 will make it plain.

10 MR. FORD. I didn't hear it.

11 MR. DABROW. Read it, Mr. Ford wants it read.

12 THE COURT. Q Can you answer the question? A Well, I--
13 that was about the same as this other question, that any-
14 thing that came up where I interfered with a state witness
15 that I was told to tell, to answer that does not concern
16 the case, Mr. McManigal to change his testimony.

17 Q Now, you have told us that. I don't want you to get
18 excited or nervous about it. A I am not.

19 Q You are perfectly cool? A Yes, sir.

20 Q Just as cool as if you were running an engine 100 miles
21 an hour? A Yes, sir.

22 Q All we told you in other answers that night, that is
23 all I am getting at now, take your time. A Well, there
24 was questions I should deny that was asked me, I should
25 deny of you making that threat.

26 Q To what? A Threat.

1 Q Let us get that right. You should deny that I had made
2 a threat, is that right? A Yes, sir.

3 Q That who? I said, that you should deny that I had
4 made a threat against Ortie McManigal? A Yes.

5 Q Just tell us what was said on that subject, if you can
6 remember it. If not, say you don't remember it. A The
7 threat was made by you, the time you were telling me about
8 his being arrested for that murder trial, you told me to
9 deny that.

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1 Q What I am getting at, Mr Behm, is to tell me what we
2 said that night to you on that subject. Tell us what we
3 said to you; that is all I want to know; what was said
4 about it. A Well, it was said I should deny the charges
5 that the court or grand jury would bring up to me about
6 anything I had told McManigal about changing his testimony.

7 Q Now, you have told us that, Mr Behm. Now, I have ask-
8 ed: was there anything else that either one of us told you
9 that night to say, or have you forgotten it? A No.

10 There were lots of things said to me, but I cannot bring
11 anything to a point now to answer that question.

12 Q You cannot tell anything now that was said? A I can
13 tell lots of things that were said.

14 Q Can you tell anything else that was said as to what
15 your testimony was to be, that is what I am getting at.

16 A That was said, I should not say anything up there,
17 that when I came out here in the fall that they could not
18 throw out my testimony.

19 Q Well, let us get at that. It was said -- I think I
20 can explain that and see whether I am right: "That we
21 might need you later to testify, and for you to remember
22 that when you are before the grand jury". Wasn't that
23 right? A Yes.

24 Q So that they would not be able to contradict your
25 testimony you thought you were going to give in the fall,
26 is that it? A That was the meaning of it.

1 Q Well, that is easy. Now, was there anything else
2 told you that you should say or should not say? If so, what
3 was it that you remember? A Well, I don't know as I can
4 remember exactly all.

5 Q Can you remember anything else we told you to say or
6 not to say? A Yes, I know you jumped onto me every time
7 I said everything that didn't just suit you; I said that --

8 Q Do you remember what I jumped onto you about? A yes.
9 When I didn't get the answer to questions right.

10 Q Mr Davis jumped on you, too? A No, you did.

11 Q Have you been told to say I did all the talking? A He
12 asked me the questions and you told me how to answer them.

13 Q Did he say anything at all? A Not very much; you
14 done the talking.

15 Q Did he ask questions from a paper or from himself?

16 A From himself.

17 Q Did he ask them from a paper at all? A No sir; not
18 as I can remember of.

19 Q Did he read to you the paper that contained the ques-
20 tions that were asked you before and your answers?

21 A Not as I remember of.

22 Q What question is there that anybody jumped onto you
23 about? Just what was it, or what answer? A Well, there
24 were a great many of them.

25 Q What one do you remember of? A Well, when I went to --
26 one question I went to ask -- I was asked how I should

1 answer it, now, if they should ask you, if you asked Mc
2 Manigal to change his testimony, what would you say?

3 I said, "Well, I don,t know exactly what to say", I said
4 that.

5 Q yes. A Well, you would say, "You want to say that
6 you never said any such a thing."

7 Q Hadn't you told this jury at least half a dozen times
8 that what we told you at that time was to refuse to answer?

9 A You told me to refuse to answer any question that was
10 concerned with McManigal, what he told me or what you told
11 me to tell him.

12 Q And you said that to this jury a half a dozen times,
13 haven't you, already? A That was the whole part of that
14 conversation.

15 Q You would refuse to answer any such questions, is that
16 right? A Before the grand jury, yes.

17 Q Yes. Now, was there any other question you think of
18 you were to re fuse to answer or to answer wrong? A I
19 don't know of any particular one.

20 Q What? A I don't know of any particular answer and
21 question.

22 Q How long have you been thinking about this? A (No
23 response.)

24 Q How long have you been thinking about this matter?

25 A What matter do you mean?

26 Q Your testimony here? A Well, I have been thinking

1 about it a good'while.

2 Q How many people have you talked with about it? A I
3 don't know as I talked with anybody about it.

4 Q Talked to nobody? A To nobody.

5 Q Talk to either counsel here? A I talked to counsel
6 here when I first come.

7 Q Talked to Mr Harrington? A No, not in particular.

8 Q Mr Sullivan? A Nothing particular.

9 Q Have you talked to them about this testimony? A No
10 sir, not before the grand jury testimony.

11 Q Mr Keetch? A No sir.
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25p 1 Q But you have talked to Mr. Fredericks and Mr. Ford and
2 you have read this testimony, haven't you? A Just a
3 little, I talked to them, they asked if that was right and
4 I told them it was.

5 Q They told you it was right? A I told them it was
6 right.

7 Q You have read this testimony? A Yes, sir.

8 Q How many times? A Only once.

9 Q How long have you thought about it, how many days?

10 A Since last Friday, I think.

11 Q And that is the only question you can think of that
12 we told you to refuse to answer, is it, either one of us?

13 A No, there were several others.

14 Q Well, what else? A (No response.)

15 Q If you cannot think of any others, say so and that will
16 end that. Do you think of any other questions we told
17 you to refuse to answer? A There were some important
18 questions. I would like to bring to my mind if I can.

19 Q Do you think of any?

20 MR. FORD. The witness is trying to.

21 A There is no question now in particular I can just
22 call to my mind.

23 Q No. You went, after that, before the grand jury, didn't
24 you? A What is that?

25 Q After that time you went before the grand jury?

26 A Yes, sir.

1 THE COURT. I didn't understand that question.

2 MR. DARROW. I mean, after that, you went before the
3 grand jury?

4 A Yes, sir.

5 THE COURT. All right.

6 Q You dropped in a few minutes as you said, at my office,
7 in the morning? A Yes, sir.

8 Q And the instructions were the same there? A Just the
9 same.

10 Q And when you went before the grand jury they asked
11 you a lot of questions that had not been asked before,
12 didn't they? A Something similar to them, yes.

13 Q What? A About the same.

14 Q Didn't they ask you a great many questions that had
15 not been asked before? A Well, they did after we talked
16 around.

17 Q And had not been thought of before or discussed before,
18 didn't they? A Some of them.

19 Q Now, this exhibit 21 which has been shown you consists
20 of 12 pages which contains the questions and answers you
21 made when you refused to answer, aren't they, 12 pages?
22 Those were the questions and answers where you refused to
23 answer? A Yes, sir.

24 Q Before we had that meeting? A Yes, sir.

25 Q The document introduced, of August 3rd, after that meet-
26 ing, which I hold in my hand, contains 103 pages.

1 THE COURT: Not introduced. Marked for identification.

2 MR. Darrow. Yes, that is right, marked for identification.

3 Q I said of August 3rd, 1911. That contains 103 pages,
4 doesn't it?

5 MR. FORD. We object to that; the document itself is the
6 best evidence.

7 MR. APPEL: He said he read it.

8 MR. FORD. Let me make my objection--I object, the document
9 itself is the best evidence as to the number of pages it
10 contains.

11 BY MR. DARROW. Q You have read it, haven't you? A I
12 have read it over, yes.

13 Q Do you know about how many pages there are? A No, I
14 didn't look at the pages.

15 MR. FORD. We would like to have a ruling on this objection.

16 THE COURT. I assumed the question was withdrawn.

17 MR. DARROW. I didn't intend to run against the ruling.

18 THE COURT. You used another question and I assumed you
19 withdrew that question, is that right?

20 BY MR. Darrow. Q This is the document, isn't it?
21 May I show it to the witness?

22 MR. Ford. No.

23 MR. DARROW. Let us have the document.

24 THE CLERK. Mr. Fredericks took it away.

25 MR. DARROW: This is a copy of it, this book I hold
26 in my hand is a copy of the document which was shown to

1 you, which you said you have read a number of times.

2 A Not a number of times, I read it over once.

3 Q Once only. Now, you said you read it over once?

4 A Only once.

5 Q How many pages do you think that contains? A I don't
6 know.

7 Q Will you look at it and see?

8 MR. FORD. We object to that as irrelevant and immaterial,
9 it is a mere matter of observation, of which the record
10 itself is the best evidence.

11 THE COURT. Objection overruled.

12 MR. DARROW. Q Look at it and see, if you please, 103--

13 MR. FORD. Just a moment, we object to that on the ground
14 the document itself is the best evidence as to how many
15 pages it contains.

16 THE COURT. Objection overruled.

17 MR. DARROW. Q How many? The court says you may answer.

18 A Yes, that is the same one.

19 Q I say, how many pages, are there? A Well, I didn't look
20 at the last page.

21 THE COURT. Well, look and see.

22 MR. DARROW. Look again.

23 MR. FORD. We object to it on the ground it is calling for
24 a conclusion of the witness. It is correctly numbered and
25 the document speaks for itself.

26 MR. APPEL. The document is not in evidence.

1 MR. FORD. That makes no difference whether it is in or
2 out of evidence.

3 THE COURT. Objection overruled.

4 MR. Ford. You can offer it in evidence if you want to.

5 MR. APPEL. You must think we are babies.
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1 A 103.

2 THE COURT: What is the answer?

3 MR DARROW: 103.

4 A 103.

5 MR FORD: I move that the answer be stricken out on the
6 ground it is not the best evidence. The document itself
7 is the best evidence, and if they want to offer it, it
8 will appear in evidence.

9 THE COURT: The motion to strike out is denied.

10 MR DARROW: So the document that contained the questions
11 which we had before us the night you and Mr Davis and I
12 met had 12 pages, and when you went before the grand
13 jury the questions and answers covered 103 pages; that is
14 right, isn't it?

15 MR FORD: We make objection to that on the ground the
16 question is argumentative, and of course, the answers are
17 inserted and the document would be a great deal longer,
18 but, at any rate, the question is purely argumentative,
19 and speculative.

20 THE COURT: Yes, I think it is. It is adjourning time
21 now, Mr Darrow. Objection sustained.

22 MR APPEL: The objection is sustained?

23 THE COURT: Objection sustained.

24 MR APPEL: We take an exception.

25 THE COURT: Gentlemen of the jury, we are about to
26 adjourn. (Jury admonished.) The court will adjourn
until 10 o'clock tomorrow morning.

1 MR DARROW: I would like to have the witness instructed
2 not to talk to anybody or to read any documents.

3 MR FORD: I don't think he should do anything of the kind.

4 THE COURT: Mr Ford, the question is before the court.

5 MR FORD: We ask that the jury be excused before that mat-
6 ter is ruled upon.

7 THE COURT: The jury may retire.

8 MR FORD: Now, your Honor, if the counsel desires to have
9 the witness instructed he should not talk with any per-
10 sons other than the District Attorney or his assistants,
11 we have no objection.

12 MR ROGERS: Oh, no.

13 MR FORD: But we certainly have a right to talk to him at
14 any time we please, for our own information and guidance.

15 MR APPEL: He is a witness before the court. We are in
16 the midst of this cross-examination and what they would
17 not be permitted to do if the witness were on the stand
18 they should not be permitted to do while the witness is
19 undercross-examination. That should be fair.

20 (Discussion.)

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1 THE COURT: I will have to dispose of this matter, gentle-
2 ment, and I want to say in doing so, I just said I feel
3 reluctant to make any order, but I doubt the right of the
4 court to make a limited order, and I do think that the de-
5 fendant here has a right to proceed, particularly in the
6 eminently fair manner that he has proceeded with the cross-
7 examination of this witness, he has a right to proceed
8 with that cross-examination to completion without the wit-
9 ness discussing his testimony or what it may be, or what it
10 has been, with any other person, and this without any
11 modificiation. The statement heretofore made that before re-
12 direct examination comes in, if it is desirable that he
13 should be interviewed by the District Attorney, all very
14 well, but I am going to admonish the witness at this time
15 and direct him not to talk to any person whatever, whom-
16 soever, in regard to what his testimony has been here this
17 afternoon or what it will be tomorrow on further cross-
18 examination until such reasonable time as the cross-examina-
19 tion may close.

20 MR FORD: I would like to say in the presence of the
21 court, to be fair with the court, I would like to instruct
22 Mr Behm to be at our office at 9 o'clock so I can inter-
23 view him if I desire. I want to say in the presence of
24 the court --

25 THE COURT: Mr Ford , --

26 MR FORD: If there is any occasion arises tomorrow morning

1 at 9 o'clock which I desire to talk with Mr Behm about any
2 matter of this case, I still am of the opinion that I have
3 that right to do so.

4 THE COURT: You will bear in mind the admonition. The
5 court will now adjourn until tomorrow morning at 10
6 o'clock.

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