

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. 30

I N D E X.

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

✓ George Behm,

2378

LOS ANGELES COUNTY B. N. Smith,
LAW LIBRARY Official Reporter

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Defendant in court with counsel; Jury called;
all present. Case resumed.

G E O R G E B E H M,

on the stand for further cross-examination.

THE COURT. Are you ready to proceed?

MR. DARROW. Yes.

MR. FREDERICKS. May it please the Court, I would like to state before court convenes, the court probably noticed I left the court room yesterday evening. I had been suffering all day with a stiff cord in my neck and I went out of here and went down to a physician and went home after I got through there, and was not here when an order was made in regard to this witness, and I am afraid that unknowingly and unwittingly I have disobeyed that order, and I would like to state the order was, as I understand it, that this witness should not talk to any one while he was on the stand, and I would like to say to the court just what conversation I had with him so that it will be understood. I don't think that it violated the spirit of the order. The paper I read this morning didn't contain any reference to it, and when I came into the office this morning I saw Mr. Behm there and I spoke to him. I said, "Well, George, how did you get along after I left?" and he made some noncommittal reply. I said, "Now, remember, there is only one rule to follow on cross-examination when you are a witness and that is to try and remember exactly what

1 happened; don't bother whether your testimony hurts one
2 side or the other; and don't bother about what you have
3 said in your direct testimony; don't try to think about
4 that; just try to think about what happened and tell it
5 that way."

6 THE COURT. No objection to such an admonition being given
7 to the witness in open court.

8 MR. DARROW. I don't want to make any point on it.

9 MR. FREDERICKS. Mr. Ford came in a little while afterwards
10 and asked me if I had seen the Examiner, seen that article.
11 I looked at it--

12 MR. DARROW. I don't want to make any point on it.

13 THE COURT. I think perhaps we all exaggerate the incident,
14 perhaps.

15 MR. FREDERICKS. I didn't know anything about it, I was
16 more interested in getting the kinks out of my neck.

17 MR. DARROW. Q Mr. Behm, did you talk to anybody else
18 besides Mr. Fredericks? A No, sir.

19 Q Was you with Mr. Harrington last night? A I was with
20 Mr. Harrington; didn't talk anything about the case?

21 Q Sullivan? A I didn't see anything of Sullivan.

22 Q You know a man named Bittinger? A No, I don't know him

23 Q Well, if you haven't been talking about it you have
24 been thinking about it some, I suppose? A Yes, sir.

25 Q You stated yesterday, I call your attention to page
26 2305, the following question was asked by Mr. Fredericks:

1 "Q--Now, at the time you were served with this citation
2 requiring you to answer certain questions, state whether
3 or not there was handed to you a list of those questions.

4 A--There was." This is the citation, is it? A Yes, sir.

5 Q You made that answer yesterday, didn't you? A I saw
6 it.

p 7 Q Now, the next day after asking you whether you had a
8 conversation with Mr. Davis and myself, this question was
9 asked: "Q--What was the conversation? A--Well, the con-
10 versation was how I was to answer these questions." That
11 is right, isn't it? Do you want to look at it?

12 THE COURT. Do you want to look at the transcript?

13 MR. FREDERICKS. I suppose the witness does not understand,
14 "Is that right?", or, "Isn't that what you testified to."

15 MR. DARROW. I am willing to have anybody assist me and if
16 it is not plain I will make it plain. What I mean is,
17 that is what you answered yesterday, is it?

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1 A Well, I understand this question was asked of me, did I
2 say I told -- refused to --

3 MR DARROW: I will see if I can make it plain to you, and
4 if I don't, why, just tell me. You said yesterday that
5 when you refused to answer a citation was served on you
6 which contained a list of questions and this is the cita-
7 tion, did you not? A That is the citation, yes.

8 Q And that is right, isn't it? A That is what you told
9 me; refuse to answer.

10 Q Just answer the question.

11 THE COURT: Yes, just answer the question and we will get
12 along better.

13 MR DARROW: I do not want to get you nervous about it, but
14 just answer the question. A Yes.

15 Q That is right, isn't it? A That is what you told me,
16 not to answer.

17 Q I have not got to that yet. But, the citation was
18 served on you and this is a copy of the questions con-
19 tained in it; is that right? A Yes sir.

20 Q That is what you swore to yesterday? A Yes sir.

21 Q And then you said that Mr Davis and I met you that
22 evening? A Yes sir.

23 Q And you were asked what was the conversation and you
24 answered, "Well, the conversation was how I was to answer
25 these questions". That is right, too, isn't it? A Yes.

26 Q And that, of course, you mean these questions contained

1 in this citation? A Yes sir.

2 Q And again on page 2308, at the bottom of the page, Mr
3 Fredericks asks: "Q -- All right. Now, if I can help a
4 little, don't use the expression 'They drilled me', but
5 say what they said, if you remember; that is, what they did
6 and who did it, as near as you can. A --" -- this is
7 your answer -- "A -- Mr Davi's would ask me the questions
8 and Mr Darrow would tell me how to answer. Q -- By 'question'
9 you refer to the questions here in the citation? A -- In
10 the citation." That was your answer yesterday, and that
11 is your answer today, isn't it? A (No response.)

12 Q If you don't understand it, let us understand it.

13 A I do not understand it.

14 Q You said I would ask you a question -- Mr Davis would
15 ask you the questions, rather, and I would tell you how
16 to answer, and those were the questions contained in this
17 citation. That is what you said yesterday, isn't it?

18 A That is what you told me that night.

19 Q And those were the questions contained in the citation?

20 A Yes sir.

21 Q Yes; that is what you answered yesterday, and that is
22 true, isn't it, as you understand it now? A That is
23 what you told me.

24 Q How? A That is what you told me, not to answer the
25 questions. I don't understand the question.

26 Q I am talking about the questions in the citation.

1 A On the citation.

2 Q Now, last night, when I was cross-examining you, refer-
3 ring to page 2357, I asked the following question, refer-
4 ring to the conversation with Mr Davis and myself, reading
5 from the top of page 2357: "Q -- Now, I am speaking of the
6 time you went before the grand jury the first time. A --

7 The first time? Q -- Yes, and there it was agreed you
8 should refuse to answer? A -- Yes sir.

9 Q -- Which you did? A -- Yes sir. Q -- And that was
10 the matter we were settling that night, wasn't it? A --

11 Yes sir. Q -- Then, they asked you some questions after
12 that evening, before you went before the grand jury? A --
13 Yes, they asked me questions." That was your testimony
14 yesterday, wasn't it? A Yes sir.

15 Q And that is correct, isn't it? A That is correct.

16 Q These questions were asked you the night before you
17 went before the grand jury the last time? A Yes sir.

18 MR FORD: You said "the last time."

19 MR DARROW: The last time, as I understand it.

20 MR FREDERICKS: I thought you were asking about the first
21 time.

22 MR DARROW: The first time he went before the grand jury
23 he was instructed not to answer, according to his testimony

24 MR FREDERICKS: You say, "Now, I am speaking of the time
25 you went before the grand jury the first time", and I
26 assumed that is what all these questions were about, the

1 time he went the first time.

2 MR DARROW: You may be right about that.

3 Q These instructions where Mr Scott and Mr Ford and Mr
4 Davis and myself were present --

5 MR FORD: I was not present; I beg your pardon.

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3s 1 MR. FREDERICKS. Counsel said Mr. Ford.

2 MR. DARROW. He generally is present either through himself
3 or some friend. These instructions given you as to your
4 answer the first time you went before the grand jury?

5 A yes.

6 Q And you followed them. Now, turning to page 2338, the
7 next page--2358, excuse me. . Now, I am referring to the
8 time when Mr. Davis and I were present with you: "Q--How
9 long were we together? A--I should judge we were together
10 about an hour or such a matter. Q--An hour or so? A--Yes.
11 Q--Would you say longer or shorter? A--It might have been
12 ten minutes longer or five minutes shorter. Q--What was
13 the subject of discussion? A--The subject was that I should
14 refuse to answer the question that was concerned with the
15 case and I having to ask McManigal to change his testimony,
16 that was the subject of the talk." Now, again, "The
17 subject of the talk there was that you should refuse to
18 answer the questions concerning your asking McManigal to
19 change his testimony, is that it? A--Yes, sir. Q--That is,
20 Mr. Davis and I told you to refuse to answer, is that what
21 you mean? A--Yes, that was the meaning." That is what
22 you said yesterday? A Yes, sir.

23 Q That is still true, isn't it? A That is what you
24 advised me to do, told me to do.

25 Q What? (Last answer read by the reporter.)

26 Q Now, again on the same page: "That evening in the pres-

1 ence of Mr. Davis you say you were told to refuse to answer
2 on the subject, referring to the subject whether you asked
3 McManigal to change his testimony? A--Yes, sir." That is
4 right too? A Yes.

5 Q "Q--Yes, that whenever that subject came up you would
6 say you refuse to answer? A--You told me I should refuse
7 to answer." That is correct too? A Yes.

8 Q Again on page 2362, yesterday you made the following
9 answers to the following questions, did you not: "Q--I am
10 going to ask you about a question you have been asked about
11 whether you asked Mr. McManigal to change his testimony?
12 Now, that is the question you say we told you to refuse to
13 answer, is it? A--Yes, sir." Now, you are getting
14 it, that is correct, isn't it? That is your answer?

15 A Yes, sir.

16 Q You said that five or six times and that is a fact, of
17 course, as you understand it, isn't it? A That is a fact,
18 you told me not to answer those questions.

19 Q And refuse to answer? A And refuse to answer.

20 Q Now, I asked you last night whether there were any other
21 questions that we told you to refuse to answer? Were
22 there? I asked you several times and you were thinking
23 about it and you had another night to think about it, do
24 you think of any more? A I told you when we was in the
25 room there that Davis, you and I,--and Davis would bring
26 up a question, then you would interfere and both of you was

1 wrangling between each other and you was both talking and
2 if I undertook to say anything you would shut me up and you
3 had me confused all the time.

4 Q Now, you said--now, answer this question--your whole
5 recollection of that evening is confused, is it? A Well, it
6 was fresher in my mind at that time before I would go to
7 the grand jury than it is now.

8 Q It isn't very fresh now as to what we said or what you
9 said, is that right? A It is fresher ^{then} than it is now.

10 Q Can you think of any other question that we told you to
11 refuse to answer? Can you tell any other question now with
12 all the time you have had to think of it, if so, start.

13 A Well, you told me all the way through to refuse to answer
14 any question that he may ask me about McManigal changing
15 his testimony.

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1 Q Now, we have had that over and over again. I don't
2 want to get impatient with you, I don't mean to. Now,
3 let's call that one settled. A You are trying to get me
4 into something --

5 Q You are not refusing to answer those questions? A I
6 ain't refusing if I know the question.

7 That at the dispute between you and the gentlemen --

8 Q If you don't understand it, tell me. A I can't just
9 bring up one subject of your argument and explain it out
10 here to you what you said because you was very high-temper-
11 ed; you lost control of yourself; you was jumping on me
12 all the time about things I didn't know anything about.
13 God, you went at me like a wild man.

14 Q What? A What! Yes.

15 MR DARROW: I ask that the witness be instructed --

16 A Just keep quiet yourself. You abused me awful.

17 THE COURT: Mr Behm, there is no call --

18 MR DARROW: what did I say --

19 THE COURT: Just a moment. Mr Behm, if you will try to
20 confine your mind to the question that is presented to you
21 and remember you have just as much right sitting there in
22 that witness stand as the counsel has at the table or as
23 I have here. You have the right to have all the time you
24 need. Don't allow yourself to be confused, and if any
25 question is asked you, if you cannot remember, answer
26 just as perfectly and simply as possible, without going into

1 any further detail, and you will get along all right.

2 A I can't remember every subject in the room that I can
3 explain to him out here.

4 MR DARROW: Now, Mr Behm, let me ask you a plain, simple
5 question. Do you remember any other matter upon which
6 we told you to refuse to answer?

7 MR FREDERICKS: Is it understood which conversation this
8 was, the first or second one?

9 MR DARROW: At the conversation Mr Davis and I were
10 present.

11 MR FREDERICKS: Is this in regard to the first time he
12 went before, or the second time he went before.

13 MR DARROW: Don't you know to which I refer? A The
14 second time.

15 Q Do you remember any other matter upon which we asked
16 you to refused to testify; if you don't, say you don't,
17 and that will end it. If you do, give it to us.

18 A You told me to refuse to any question may ask that con-
19 cerned with the case of my having McManigal change his
20 testimony, anything that you told me to tell him.

21 Q Now, Mr Behm, you have said that over and over again.
22 Do you remember any other subject upon which we told you to
23 refuse to answer besides the one you have already stated?
24 Now, if you don't, why, say so. A I don't can't bring
25 it to mind now.

26 Q And you had a good long time to think of it, haven't

1 you? A Yes sir.

2 Q Thought of it, even, since you left the witness stand
3 last night, haven't you? A More or less.

4 Q Do you remember any question that anybody instructed
5 you to lie about? If so, what was it? Either Mr Davos or
6 I instructed you to tell an untruth about it?

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1 MR. FREDERICKS. What was that question? "Do you remember
2 any question?"

3 (Question read.)

4 BY MR. DARROW. Q If so, what was the question? A I
5 cannot bring anything out now.

6 Q You cannot? A Only you told me to deny everything.

7 Q Told you to deny everything, what do you mean by that?

8 A Deny everything that you told me about what I said to
9 McManigal.

10 Q What you said at least twenty-five times is we told you
11 to refuse to answer on everything that you said to McManigal,
12 isn't that it?

13 MR. FORD. We object to that on the ground it is arguementa-
14 tive, and it is not true, the witness has answered here
15 time and again what he was told was to refuse to answer
16 what was told between him and Ortie McManigal.

17 MR. ROGERS. We take an exception to the attempt of counsel
18 to put words in the witness's mouth by a man who last night
19 said he would not obey the order of the court not to talk
20 to him.

21 THE COURT. Let me correct you, Mr. Rogers. I didn't under-
22 stand Mr. Ford to say he would not obey the order of the
23 court.

24 MR. APPEL. The defense understands that.

25 MR. ROGERS. The record so shows it.

26 MR. FORD. The point before the court is an objection I

1 am making before the court, that is that this witness has
2 testified over and over again, reiterated this morning,
3 that the questions which counsel had instructed him at
4 that time to refuse to answer were as far as the questions
5 between himself and Ortie McManigal.

6 MR. ROGERS. What is the use of asking questions of the
7 witness when counsel puts words in his mouth?

8 MR. FORD. I am making my objection.

9 MR. ROGERS. It is absolutely unprofessional, and we take
10 an exception to his remarks.

11 MR. FORD. I am not taking professional or ethics from you.

12 THE COURT. Now, gentlemen--

13 MR. ROGERS. I am addressing the court, and I am taking an
14 exception to his remarks.

15 THE COURT. Mr. Ford, have you finished with your objection?

16 MR. FORD. I was interrupted several times, I want to at-
17 tract your Honor's attention to the transcript.

18 THE COURT. Have you stated your objection?

19 MR. FORD. I have not, your Honor.

20 THE COURT. Then, state it.

21 MR. FORD. The witness on this question, on page 2357--

22 MR. APPEL. We object to his arguing anything until he
23 states his objection, he says he has not stated it.

24 MR. FORD. I do object to the question upon the ground it
25 is argumentative and it does not state the facts.

26 THE COURT. Is that your objection?

1 MR. FORD. That is, your Honor.

2 THE COURT. All right, objection overruled.

3 MR. ROGERS. We take an exception and characterize as
4 misconduct the attempt of counsel to put words in the
5 witness's mouth and for the sole purpose and object of
6 the witness being informed as to how he should answer the
7 question. I understand what Mr. Ford said he would do,
8 so far as his instructing the witness is concerned, and
9 we call your Honor's attention to the printed record and
10 after your Honor's order which is as follows--

11 MR. FORD. We object to that argument as to what occurred
12 last night.

13 THE COURT. Mr. Rogers, this matter was disposed of in the
14 absence of the jury last night in a proper way.

15 MR. ROGERS. Yes, sir.

16 THE COURT. And again this morning before you arrived the
17 matter was taken up and I regard it as a closed incident,
18 so far as this matter is concerned.

19 MR. ROGERS. It is in open defiance of the court order by
20 telling him right here what to say if he cannot get it to
21 this witness otherwise.

22 THE COURT. You have a right to designate the act as mis-
23 conduct, which you have done.

24 MR. APPEL. Let me ask your Honor one question, for my
25 information. I assumed that your Honor indicates what
26 transpired here yesterday, and I shall not state it, of
course, with reference to any directions given to the witness

1 is not a matter for the jury here to hear and it is not
2 considered a part of the trial, as I understand it.

3 THE COURT. It is not.

4 MR. APPEL. Then I understand that matter is to be deemed
5 to be excluded from the consideration of the jury?

6 MR. FORD. No, the argument and instruction to the witness
7 we are perfectly willing to go before the jury, as far as
8 the arguments are concerned, we have no objection to that
9 going before the jury, if they are of any material benefit
10 to the jury, but they are not.

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1 MR APPEL: We wanted to know so that we could guide ourselves
2 in arguing this morning --

3 THE COURT: I think that would be an entirely proper way
4 to do. The jury was excused, with the consent of both
5 parties, and to now bring up parts of what occurred with-
6 out their seeing it all, I regard it as being improper.

7 MR APPEL: Here is the idea, your Honor, for our guidance,
8 for instance, in case the argument, the matter is in the
9 transcript and it is a matter the jury should not know any-
10 thing about and we do not want to transgress any order of
11 the court about the matter at all; that is the only reason
12 I say it is not to be deemed a part of the trial.

13 THE COURT: Precisely.

14 MR APPEL: All right. Then, we understand it, now.

15 THE COURT: Now, Mr Darrow's question.

16 MR APPEL: We understand now, the position of the court,
17 your Honor. Of course, we reserve any and all exceptions
18 to the ground taken by the court in excluding the matter
19 from the consideration of the jury.

20 THE COURT: Let us have Mr Darrow's question now.

21 MR DARROW: If your Honor please, I will strike it out
22 for the purpose of getting this recorded right.

23 THE COURT: All right.

24 MR DARROW: Referring again to your answer of yesterday,
25 the following question was asked you and the following
26 answers given, were they not? On page 2362:

1 "Q--I am going to ask you about the question I have been
2 talking about, whether you asked Mr. McManigal to change
3 his testimony. Now, that is the question you say we told
4 you to refuse to answer, is it? A Yes, sir. Now you are
5 getting at it. Q Yes. Now, what other questions were
6 you told to answer or not answer in that case that evening?
7 A Well, there was questions that you--that was asked me
8 there that I should refuse to answer before the grand jury,
9 that you told me that anything that I told you to ask Mc-
10 Manigal to ask him to change his testimony I should
11 not answer that, I should say, 'I refuse to answer that
12 question'." You stated that yesterday, didn't you?

13 A Yes, sir.

14 Q That is true, isn't it? A (No response.)

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1 Q You were told to refuse to answer any question concern-
2 ing any action on your part or anybody's, to change Mc
3 Manigal's testimony, weren't you? A Yes sir.

4 Q And that is all you were told about that subject, was
5 it not? A Yes sir.

6 Q Well, now, tell me, was there any question read to you
7 or asked of you upon which you were asked to tell something
8 which was not true; if so, what was it? A You told me to
9 deny the truth.

10 Q On what subject? A On the subject of McManigal --
11 of changing his testimony.

12 Q Haven't you said to this jury, to make it moderate,
13 haven't you said to this jury just now and at least a
14 dozen or 20 times, that we told you to refuse to answer
15 the questions, to refuse to answer? A (No response.)

16 Q Can't you answer that? Haven't you just now stated
17 to this jury, and haven't you stated it at least a dozen
18 times to this jury, what we told you was to refuse to
19 answer these questions? A I certainly did.

20 Q That is what we told you, isn't it? A To refuse
21 to answer these questions that was before the grand jury.

22 Q Yes; and that is all we told you, isn't it? A (No
23 response.)

24 Q Now, who told you to testify we told you to deny it?

25 A Who told me?

26 Q Yes; who told you to say any such thing? A Why, you

1 told me.

2 Q On the stand now? A No.

3 Q You have stated that what we told you to say was to re-
4 fuse to answer it, haven't you? A (No response.)

5 Q Any doubt about that, Mr Behm? A (No response.)

6 Q Mr Behm, can't you understand the difference between
7 being told that you should refuse to answer a question and
8 being told you should lie about it, or do you understand
9 the difference? A You told me to lie about it.

10 Q If you don't understand the difference, tell us so.

11 A You told me to lie about it.

12 Q Mr Behm, you have told this jury at least 12 or 15
13 times what we told you was to refuse to answer the ques-
14 tion, didn't you? A You told me to lie about it.

15 MR FORD: We object to that as argumentative.

16 MR DARROW: That is what you mean by refusing to answer
17 the question, isn't it? A You told me to swear to false--
18 that would be false.

19 Q Mr Behm, do you mean by saying we told you to refuse
20 to answer questions that meant you should lie about it?

21 A You meant I should lie about it, yes.

22 Q By that statement? A Yes sir.

23 Q That is the way you took it, was it? A That is the
24 way I took it -- to understand you.

25 Q And you went in there prepared to lie, did you?

26 A As you told me to.

1 MR DARROW: We ask to have that strieken out, your Honor.

2 THE COURT: Strike it out.

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1 MR. FORD. We think it is an answer.

2 MR. DARROW. We have got all he has told. I now ask that
3 the witness be instructed to answer the questions, your
4 Honor.

5 THE COURT. Read the question.

6 (Question read.)

7 THE COURT. What is the answer?

8 A Under his instructions.

9 MR. DARROW. I ask to have that stricken out and the witness
10 instructed to answer the question.

11 MR. FORD. I think that is an answer.

12 THE COURT. That is not an answer.

13 MR. DARROW. I know it is not, and I cannot go over this
14 over and over.

15 THE COURT. Mr. Darrow, I am attending to this the best I
16 can. That is not an answer to the question, Mr. Behm.
17 Your answer should be yes or no.

18 MR. FREDERICKS. I think the witness should be instructed
19 by the court to answer the question yes or no.

20 THE COURT. I am about to do it if counsel will give me a
21 chance, I am about to instruct the witness his answer to
22 that question should be yes or no, and then he has a
23 chance to make any explanation he desires to make. Now,
24 read the question.

25 (Question read.)

26 A Yes, sir.

BY MR. DARROW. Q Now, did you go in there prepared to

1 lie on any other subject.

2 MR. FREDERICKS. Any other subject than what, may it
3 please the Court?

4 THE COURT. I don't understand the question, Mr. Darrow.

5 MR. APPEL. He is talking about one subject.

6 THE COURT. I want to be sure--

7 MR. FREDERICKS. Why not let Mr. Darrow do his own explain-
8 ing? It seems to me one counsel is sufficient.

9 MR. APPEL. Why, because we think we have a right to show
10 the question is correct, here we are talking about one
11 subject.

12 THE COURT. Mr. Witness, do you understand what subject is
13 referred to?

14 A No, I do not.

15 MR. DARROW. The subject of Mr. McManigal changing his testi-
16 mony.

17 MR. FREDERICKS. It is so simple to explain it without
18 taking an hour to argue it.

19 THE COURT. Mr. Darrow has the floor.

20 MR. DARROW. What I am referring to is the subject of Mr.
21 McManigal changing his testimony. Now, will you read the
22 question I asked, I do not recall it exactly.

23 (Last two questions read.)

24 MR. DARROW-Q Do you understand it? A I do not understand
25 it.

26 Q What? A I do not see through that.

1 Q Well, let's see if I can make you see through it. When
2 you went in there did you intend to lie about anything else
3 excepting Mr. McManigal changing his testimony? You have
4 explained that to us? A What is that question? (Ques-
5 tion read.) No.

6 Q How? A I did not intend to lie about anything only
7 him changing his testimony. .

8 Q You didn't intend to lie about anything else, you had
9 no instructions about anything else not to answer, even, did
10 you? A What is that question again?

11 (Question read.)

12 Q You had no instructions, even, not to answer about any
13 other subject, had you? A Not as I know of.

14 Q And about the rest you were about--we went over these
15 questions and you were told to tell the truth, weren't
16 you, about the other matters, now? A I didn't know of
17 any other matters, any other, only just--

18 Q What? A I cannot bring up anything, Mr. Darrow--all
19 these things.

20 Q What is that answer, please? (Answer read.) Is your
21 memory bad? A Is my what?

22 Q Is your memory poor? A Not very.

23 Q Well, then, why cannot you answer that question: upon all
24 the other subjects excepting this one we have been talking
25 about you intended to tell the truth and were told to
26 tell the truth, weren't you? A No, I was not told to tell

1 the truth.

2 Q You were not? A Not all the way through.

3 Q I say, upon all the other subjects excepting this one we
4 have been talking about? A I don't understand what you
5 mean.

6 Q You don't understand it--well, you intended to tell the
7 truth, didn't you? A Only as I was instructed to tell.

8 Q Now, did you understand my question, Mr. Behm, if you don't
9 I will try to make it simpler if I can. You understand my
10 question? A No, I don't.

11 Q Upon every other subject excepting the one you have
12 been talking of concerning McManigal changing his testimony,
13 you intended to tell the truth when you went into the grand
14 jury room, didn't you? A Yes, sir.

15 Q And nobody told you to tell anything else upon any other
16 subject, did they? A Outside of the subject that McManigal
17 change his testimony.

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1 Q We have heard of that so much we won't go back to it.
2 Did you tell the truth upon all the other subjects, or
3 don't you know? A As near as I remember I did.

4 Q Did you make any protest about telling a lie to the
5 grand jury?

6 MR FREDERICKS: I suppose counsel should say when.

7 MR DARROW: At any time. Did you object to it at any time?

8 A What was that question?

9 (Last question read by the reporter.)

10 A Only as I was told to lie about it.

11 Q Did you find any fault about your telling a lie
12 about it? A Did I find what?

13 Q Did you make any protest or objection when you say
14 you told a lie about it? A Well, I was instructed to tell
15 these stories.

16 Q Did you object to it at all? A To you?

17 Q No, to anybody, either Mr Davis or me? A Well, I
18 told them I didn't want to be caught here in telling that
19 was wrong. You told me it would be all right to go
20 through; told me what you told me to.

21 Q And that was about McManigal changing his testimony,
22 what we have already talked about? A On that subject.

23 Q And you say upon all the rest you told the truth ex-
24 actly? A There is things you told me to tell the truth,
25 yes.

26 Q What things were those? A Well, like anything that

1 didn't concern the case.

2 Q What things did we tell you to tell the truth about?

3 A Oh, giving them my -- where I lived and the like of
4 that.

5 Q Was there anything said, to come back to it once more,
6 upon which you intended to tell anything else or tell any-
7 thing else excepting the question of Mc Manigal changing
8 his testimony that you have talked about? You have already
9 said there wasn't anything else, haven't you? Now, do you
10 want to change that answer? A Not as I remember.

11 A JUROR: Your Honor, may I ask a question?

12 THE COURT: Yes.

13 THE JUROR: Someone has referred to the probable fact that
14 the witness doesn't understand English very well. I want
15 to ask him a question.

16 THE COURT: You may.

17 THE JUROR: I am not really certain whether he does. What
18 do you understand by the difference between refusing to
19 answer a question, and denying anything? A Well, he told
20 to deny these different questions being asked to me and
21 those questions he is already referring to is not the same
22 questions that was asked before the grand jury when I went
23 there the second time, altogether.

24 THE JUROR: You haven't answered my question. Explain what
25 you mean; what you understand by the difference between
26 refusing to answer a question and denying? A He told me to

1 deny it.

2 THE JUROR: What is the difference between denying and re-
3 fusing to answer? A Well, the question he told me to re-
4 fuse to answer was before the grand jury the first time,
5 and what he told me to deny was the second time.

6 MR DARROW: The juror care to ask anything further?

7 Were you born in this country? A Yes sir.

8 Q Whereabouts? A Bloomville, Ohio.

9 Q And you went to school? A A little while, not much.

10 Q How long? A About two years.

11 Q Read the newspapers, do you? A I do frequently, yes.

12 Q Can you read them readily? A I read them some.

13 Q And write? A I can write.

14 Q Answer up so we can hear. A Yes, I can write.

15 Q Can you read the ordinary stuff in the newspaper?

16 A Yes, right straight through.

17 Q You understand it? A Pretty well.

18 Q How long did you go to school? A About 2 years, I
19 said.

20 Q Well, now, how old were you when you left school?

21 A About 12 years old, or such a matter.

22 Q And what were your people; farmers, were they? A My
23 father was a blacksmith.

24 Q And what did you work at after that, after you went to
25 school? A I worked in the shop of my father for a while.

26 Q Your father read? A He read some, not much; not to me,

1 though.

2 Q There was a family of you children? A Family of us,
3 yes.

4 Q All went to school? A More or less.

5 Q Had papers and books? A Yes.

6 Q And you grew up and became a fireman and then an engi-
7 neer, didn't you? A Yes sir.

8 Q How long have you been a locomotive engineer? A About
9 22 years.

10 Q How long were you a fireman before that? A About 7
11 years.

12 Q Well, you have to know how to read to be a fireman
13 and a locomotive engineer? A Yes sir.

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1 Q Read the rule book and a good deal besides that? A Also.

2 Q Have to know how to read the orders? A Yes, sir.

3 Q Or you might try to use the track the same time another
4 train was coming your way? A Yes, sir.

5 Q You have to understand them? A Yes, sir.

6 Q Takes considerable degree of understanding to be an
7 engineer, doesn't it? A Yes, sir.

8 Q You have been all your life as a man, pretty near, as
9 fireman and engineer? A yes, sir.

10 Q How old are you now? A 52 years old.

11 Q You see any reason why you don't understand these
12 questions that I am asking you? A As I said before, the
13 question the first time I went before the grand jury and
14 the second time are different. You drilled me on the first
15 time.

16 Q You run a passenger or a freight? A Run a passenger at
17 the present time.

18 Q How long you been running a passenger train? A About
19 three years.

20 Q Been promoted? A Yes.

21 Q Had to undergo an examination, didn't you? A Yes, sir.

22 Q You took what is a regular civil service examination and
23 you are promoted? A yes, sir.

24 Q When did you last take a civil service examination?

25 A When I was promoted?

26 Q How long ago, three years? A About 22 years ago.

1 Q What were you examined in? A On the time card.

2 Q Have to write put your answers? A No, questions
3 was asked us .

4 Q You have taken a good many civil service examinations
5 before that? A No, we don't take no civil service.

6 Q Where does your passenger train run from? A Between
7 Milwaukee and La Crosse. .

8 Q Local? A Through passenger.

9 Q Now, do you see any reason why you cannot understand what
10 I asked you, as you said? A Now, Mr. Darrow, those ques-
11 tions--

12 Q That is not it, Mr. Behm. Do you see any reason why
13 you cannot understand the questions I ask you here? A I am
14 trying to understand them but as to what you and Mr. Darrow,
15 --or you and Mr. Davis said there all the time in there I
16 couldn't understand all that talk .

17 Q You can't understand that? A All that talk .

18 Q You can't remember, is that it? A Not all of that, no,
19 only just--

20 Q Do you see any reason why you cannot understand these
21 questions I am asking you now? A You have got two different
22 class of questions there. You told me what I say before
23 the grand jury and refuse--

24 Q Just a moment. That is not the question that I am ask-
25 ing you now. When I want that I will ask you for it. The
26 questions I ask you here are simple, aren't they? A Would

1 be if I understood them.

2 Q Probably that is true, but aren't they simple enough
3 for you to understand? Well, now to come back to the
4 grand jury the second time you went in there, referring to
5 page 84 of the testimony before the grand jury at the
6 bottom of the page. You were asked a question, "You had
7 no expectation of getting him to testify for the defense,"
8 referring to McManigal, and you answered, "That has nothing
9 to do with the case," of having him change his testimony.
10 That question was asked you and that was your answer.

11 MR. FREDERICKS. Your Honor, may it please, I think that
12 the record should show that counsel is interrogating the
13 witness about testimony he gave on August 3rd before the
14 grand jury.

15 MR. FORD. And exhibit 24 marked for identification.

16 MR. DARROW. That is what I am doing. That questions was
17 asked and that answer was given, wasn't it: "Q--You had
18 no expectation of getting him to testify for the defense,"
19 referring to McManigal, and did you answer "That has nothing
20 to do with the case of having him change his testimony."
21 Is that right? A That is one of the answers, yes.

22 Q That as you understood was according to our instruc-
23 tions, was it? A Yes, sir.

24 Q Refuse to answer, that is why you made it? A In that
25 way, yes.

26 Q How long--now, did we ever instruct you to answer it in

1 any other way? A That is the way you instructed me to
2 answer them kind of questions.

3 Q Now, Mr. Behm, referring back a minute in connection
4 with this testimony to your visit to me in Chicago, I
5 am not going into it much, but I just want to make one
6 reference to it. In the room was Mrs. McManigal, Mr. Har-
7 rington and yourself and myself, as you say, is that right,
8 and Mr. McManigal, Senior? A Yes.

9 Q That is right, is it? A Yes.

10 Q We were all sitting together there? A yes.

11 THE COURT. Before you go into that, Mr. Parrow, we will take
12 a recess for five minutes, bearing in mind the admonition,
13 gentlemen of the jury.

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1 (After recess.)

2 THE COURT: You may proceed, gentlemen.

3 (Last three questions and answers read by the reporter.)

4 MR DARROW: Did Mrs. McManigal do any talking? A No sir.

5 Q Mr Harrington say anything? A No sir.

6 Q Did you say anything? A I said a few words, yes, in
7 answer to your questions.

8 Q Did McManigal, Sr., say anything? A No sir.

9 Q So I did all the talking that was done; is that right?

10 A Yes sir.

11 Q Can you remember a word that Mrs Mcanigal said?

12 A Only as an introduction to you.

13 Q That is the only words you remember? A About that,
14 yes.

15 Q What? A She might have said something.

16 Q Do you remember anything? A I don't remember any-
17 thing, no.

18 Q Do you remember a word that Mr Harrington said? A I
19 don't remember anything. He didn't talk to me at all that
20 I know of.

21 Q He was there in the room? A Sure, I was there.

22 Q What was he doing?

23 MR FREDERICKS: The witness didn't understand the question.

24 MR FORD: He said "I was there".

25 MR DARROW: You mean what part of it?

26 MR FORD: You asked him if Mr Harrington was there. He

1 said, sure, I was there.

2 MR DARROW: Was Mr Harrington there in the room at the same
3 time? A Yes.

4 Q Do you remember whether he said a word or not? A I
5 don't remember of him talking to me at all.

6 Q Can you remember a word that Mr Harrington said?

7 A No, nothing particular.

8 Q What was he doing? A Him and Mrs McManigal sat over to
9 a window talking, more or less, to themselves.

10 Q More or less? A To themselves, yes.

11 Q How far from you and me? A Oh, just a few feet
12 away.

13 Q Did you hear anything that was said? A I don't
14 remember of much of anything of their conversation at all.

15 Q Where was Mr McManigal? A He was setting off to our
16 right.

17 Q Did he say anything? A Not as I remember of.

18 Q Did he stay there all that time without saying a word?

19 A He stayed there, yes.

20 Q And didn't say a word? A Not as I remember of, call
21 my attention to now.

22 Q Now, you can't repeat here anything they said; is that
23 right? A Only with me. My conversation was with you.

24 Q You can't tell a word that any other person spoke in
25 that house; is that correct, except myself? A Not as I
26 remember of.

1 Q Was there anything said about Mrs McManigal coming to
2 Los Angeles? A That was spoken of before we entered
3 that room.

4 Q Was there anything said there at that time about Mrs
5 McManigal coming to Los Angeles; at my house?

6 A She had told me that before we entered that room.

7 Q Excuse me. I don't mean to be impatient. Will you
8 read that answer?

9 (Last answer read by the reporter.)

10 Q You mean before you entered the house? A Before we
11 entered into the second room where we talked.

12 Q Was there anything said at the time about Mrs McMani-
13 gal coming to Los Angeles? A You told me that; she didn't
14 tell me.

15 Q Did she say anything about it there? A I don't
16 remember of.

17 Q Was anything said about her being sick? A I don't
18 remember of her being sick.

19 Q About her wanting anyone to go with her? A Nothing
20 said about my going with her.

21 Q There was not. Did you ever state at any time or
22 place that she wanted you to go with her on account of her
23 being sick? A She asked me that before, if I would go.

24 Q She did ask you before she got there, to go with her,
25 because she was sick? A Yes.

26 Q And she told you Mr Burns wanted her to come and give her

1 some money, didn't she? A She said Burns wanted her to
2 come at one time.

3 Q And either had given her money or would, didn't she?

4 A I don't remember anything about that; the money affair.

5 Q Wanted her to be down with her husband? A Yes sir.

6 Q And she was sick and if she went she wanted you to
7 come with her? A She asked me if I would come with her,
8 yes.

9 Q Did you ever state at any time that you came on that
10 account?

11 MR FREDERICKS: That is objected to as no foundation laid;
12 an impeaching question, the witness should be asked the
13 time, place and the circumstances and the persons pre-
14 sent.

15 MR DARROW: Before I get to the impeaching question I
16 will come to that.

17 MR FREDERICKS: The idea is to call his attention to the
18 particular time and not ask a general question first.

19 MR FORD: The question contains substantially the conver-
20 sation.

21 THE COURT: Read the question.

22 (Question read.)

23 THE COURT: Overruled.

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lp 1 BY MR. DARROW. Q Do you understand it, Mr. Behm?

2 A What was that question, now, again, please?

3 Q Let me give it to you again, I think I can give it to
4 you simpler. Did you ever say at any time that you came
5 to Los Angeles because Mrs. McManigal was sick and wanted
6 you with her?

7 MR. FORD. We object to that on the ground it is an
8 impeaching question, no foundation laid, no time, person
9 or place stated.

10 THE COURT. Objection overruled.

11 MR. DARROW. Can you answer that? A Ask that question
12 again. I didn't understand it, I have not got the drift
13 of it.

14 (Question read.)

15 A She asked me to go with her before I ever met you.

16 Q Now, Mr. Behm, be sure you understand that is not what
17 I asked you. Read that again, will you. Now, pay atten-
18 tion to it and if you don't understand it I will see if I
19 can make it easier.

20 (Question read as follows: "Did you ever say at any time
21 that you came to Los Angeles because Mrs. McManigal was
22 sick and wanted you with her?")

23 MR. FREDERICKS. In view of the witness's first answer to
24 the question that he did have such a conversation with Mrs.
25 McManigal we object to it on the ground it is immaterial,
26 now, whether he ever said that to any one else afterwards

1 or not.

2 MR. DARROW. It is preliminary, your Honor. I will make it
3 material.

4 THE COURT. Objection overruled.

5 MR. DARROW. It is cross-examination, anyway.

6 A I was asked through you to come with her and be with her.

7 Q Now, Mr. Behm, that is not the question. Let me see
8 whether I can make it simpler. I will ask to have that
9 answer stricken out because it refers to another matter.

10 THE COURT. Strike it out.

11 MR. DARROW. Q Mr. Behm, did you ever tell any one else that
12 the reason you came to Los Angeles was because Mrs. McManigal
13 wanted you to come with her on account of her being sick,
14 did you ever tell that to anybody else? A I might have
15 told somebody.

16 Q Well, was it true--

17 MR. ROGERS. What is the answer?

18 (Answer read.)

19 MR. DARROW. Q Well, did you? A Did she ask me?

20 Q Did you tell anybody else that? A I might have told
21 somebody else.

22 Q Do you know who? A No, I don't remember now.

23 Q Don't you know you did tell that to other people?

24 A Well, she asked me if I would come with her.

25 Q Were you asked anything about that question before the
26 grand jury, or don't you remember? A I don't remember

1 whether I was or not.

2 Q You don't remember. Do you remember whether you made
3 any answer before the grand jury on that subject? A I cannot
4 remember whether I did or not.

5 Q You cannot remember, you cannot remember whether you ever
6 talked about that subject to anybody, is that right?

7 A I don't say I didn't and I don't say I did.

8 Q If you ever talked to anybody you cannot remember who
9 it was, is that right? A Not one person, no.

10 Q How? A Not any one person.

11 Q Now, Mr. Behm, I call your attention to the testimony of
12 the grand jury that has been referred to before, given as
13 August 3, 1911, which is found on page 41, referring to Mrs.
14 McManigal, I will read a question back, and ask you whe-
15 ther these questions were asked you and these answers given:
16 "Q--No arrangement was made and nothing was said about your
17 coming to California to see Ortie McManigal? A--I was to
18 come with her, that was all. Q--To come with Mrs. Mc-
19 Manigal? A--Yes. Q--For what purpose? A--Any more than
20 to be with her on account of her illhealth." Did you make
21 those answers? A Yes, that comes to my memory now; I did.

22 Q Well, you swore to it before the grand jury, didn't you?
23 It was under oath? A Yes, sir.

24 Q Were you telling the truth? A I was told to tell that.

25 Q Oh, was this true or was it false? A That was false.

26 Q Uh, huh! And now you remember that you were told to

1 tell that, do you? A Yes, sir, by you.

2 Q When? A By you, when I went before the grand jury.

3 Q Not in the grand jury room? A I was told to tell
4 that in that grand jury room.

5 Q And you were told to tell it at what time? A That I
6 should deny it.

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1 Q When were you told? A Well, that would be the time
2 you were talking to me in the room.

3 Q And you just told this jury that you couldn't remember
4 that you had ever said it to anybody or talked about it
5 anywhere before; is that right? A That comes to my mind
6 now, before the grand jury.

7 Q And you did make that statement before the grand jury,
8 and that statement was a lie; is that correct? A Well,
9 I lied so many times.

10 Q What? A I had to lie a great many times to carry out
11 your instructions.

12 Q You lied a good many times? A To carry out your in-
13 structions.

14 Q You have lied a good many times? A To carry out
15 your instructions.

16 MR APPEL: Let him answer, your Honor.

17 MR DARROW: I ask for an answer.

18 THE COURT: What is your answer? A Yes, I lie d.

19 Q BY MR DARROW: Under oath? A Yes sir.

20 Q Can you now think of any other lies you told under
21 oath, sir? A There were a lot of them.

22 Q What? A There were a lot of them there.

23 Q Can you now think of any more lies you told under oath?

24 A I may if you bring it out; any questions that were
25 asked of me.

26 Q You may if you find any other lies in there, you mean to

1 say Mr Davis and I told you to say that; is that correct?

2 A Yes sir.

3 Q Can you think of anything now that either one of us
4 told you, after all these days, that was a lie, besides
5 what we have talked about, sir? Can you? A Unless you
6 bring something up there .

7 Q Was there anything in the first list of questions
8 given you about whether Mrs McManigal was ill or not?

9 A I think there were some question asked me, I am not
10 certain, though.

11 Q Now, let us get this summed up a minute. Mrs McManigal
12 was ill before she came, wasn't she? A Well, she was not
13 very well, no.

14 Q And she told you so and she asked you to come; is that
15 right? A Yes.

16 Q On that account? A On that account, yes, to be with
17 her here.

18 Q Yes. She asked you that in Chicago? A Yes.

19 Q And you swore to that before the grand jury, didn't
20 you? Is that right? A (No response.)

21 Q Don't you know whether you swore to it before the
22 grand jury or not? A I swore to so many lies there, I
23 don't know --

24 Q You swore to that before the grand jury, didn't you;
25 she asked you to come on account of her ill health? A Yes
26 she asked me that.

1 Q You swore to it before the grand jury? A Yes.

2 Q And that was a lie, wasn't it? A There were a good
3 many lies --

4 Q Wait a minute, Mr Behm.

5 MR FORD: The witness is entitled to finish his answer.

6 MR DARROW: He was not answering the question.

7 THE COURT: Have you finished your answer?

8 MR DARROW: Well, I will ask the reporter to read the
9 answer.

10 THE COURT: Have you finished the answer? A What was
11 that answer - or question. He began to interrupt me --

12 THE COURT: All right, ask it again.

13 MR FORD: We would like to have it read as far as it goes.

14 MR DARROW: I am willing to have it read.

15 THE COURT: Let us have it read.

16 (Last three questions and answers read.)

17 MR FORD: He didn't finish his answer.

18 MR DARROW: I want an answer directly to that question.

19 Q When you swore before the grand jury that she was sick
20 and you came on account of her ill health, was that a lie?

21 A Yes, that was.

22 Q Yes, although she had asked you to come on that ac-
23 count, as a matter of fact. A Yes, and they asked me to
24 come on out to see her husband.

25 Q Now, Mr Behm, were you told anything about Ortie
26 McManigal's confession when you were here in Los Angeles?

1 A Only as I read it in the paper.

2 Q Did the grand jury ask you anything about Ortie Mc
3 Manigal's confession, and whether you had seen it or not?

4 A Yes, they asked me that.

5 Q Did you discuss that question with Mr Davis and me?

6 A I don't know as we did.

7 Q You don't know as you did? You have no remembrance
8 about discussing that question at all? A No. Hold on,
9 now. I think it was brought up, yes, between us.

10 Q What was brought up? A What his testimony --

11 Q I am not talking about his testimony; I am talking
12 about his confession. A Well, his confession, then.

13 Q What was said about it?

14 MR FREDERICKS: That is objected to unless something
15 closely approximating the time and the persons present --

16 MR DARROW: I mean on the evening you had a conversation
17 with Mr Davis and me with reference to those questions.

18 MR FREDERICKS: There were two evenings.

19 MR FORD: One the first time before the grand jury, and
20 the second.

21 MR DARROW: The time you were told to answer the ques-
22 tion.

23 MR FREDERICKS: I think still it is indefinite, your Honor;
24 it ought to be made more definite, he was told to answer,
25 according to his testimony, he was told to answer a cer-
26 tain way both times. Just so it is understood, I am frank
to say I don't understand it myself.

- 3p 1 THE COURT. Do you understand the question?
- 2 MR. DARROW. That is reasonable, if counsel does not under-
- 3 stand it, and if there is any doubt about the witness under-
- 4 standing it, I want it understood.
- 5 THE COURT. Do you understand the time Mr. Darrow refers to
- 6 in his question? A That would be the second time I
- 7 met before the grand jury, as I understand it now.
- 8 MR. DARROW. Q Yes, the evening when Mr. Davis and I were
- 9 with you the second time before you went before the grand
- 10 jury the second time, that is what I am referring to, sir.
- 11 A Read the question. (Question read.) Well, I ain't
- 12 certain whether you brung that subject up or not.
- 13 Q You are not certain? A No.
- 14 Q You have no remembrance about it at all? A Oh, it
- 15 might come to me.
- 16 Q Do you remember it now, seeing it called to your atten-
- 17 tion. A Let me understand you. You say that that was
- 18 brung up between you two?
- 19 Q yes, that is it. A Well, I think it was brung up, as
- 20 near as I can remember.
- 21 Q yes. Do you remember what was said, sir? A No, I don't
- 22 remember what was said?
- 23 Q What subject do you mean, in what way was it brought
- 24 up? A I don't understand what way it was brung up.
- 25 Q You don't understand how it was brought up? A No.
- 26 Q Can't think anything about it? A There were so many

1 things brung up there to me--

2 Q Can you think anything about how it was brought up or
3 what was said about it? A Unless you can read something
4 out of there that will bring me into it.

5 Q Oh, I see. But you cannot remember anything about it
6 now? A Not exactly.

7 Q I am talking, of course, about what Davis or what I said
8 or what you said about it? A I don't remember of it.

9 Q You don't remember of anything? A Of the conversation.

10 Q Do you remember any request or any statement about any
11 such question that was coming before the grand jury? A I
12 cannot at the present time, my mind ain't--

13 Q Was any such question asked you before the grand jury the
14 first time? A The first time?

15 Q The first time. A Now, you are into the first time?

16 Q The first time, so that there will not be any discussion
17 about it? A There was, I think.

18 Q What? A There was, I think.

19 Q Will you glance over that quickly and see. (Referring
20 to document.)

21 MR. FREDERICKS. That was not before him the first time.

22 MR. DARROW. Well, our conversation was based on it. Look
23 over this and see, it wont take you but a minute.

24 MR. FREDERICKS. That is objected to, there being no founda-
25 tion laid for the question as to the first conversation
26 before he went before the grand jury, the first time, and, 61

1 course there was no such papers at that time.

2 MR. DARROW. No, at any rate, I think the reason is obvious.

3 THE COURT. Read the question.

4 (Last four questions and answers read.)

5 MR. FREDERICKS. I understand. I withdraw the objection, it
6 refers to what happened before the grand jury, I didn't
7 so understand it.

8 THE COURT. Yes.

9 A If I remember right they did ask me if I had seen the
10 confession.

11 (Here Mr. Darrow hands the document to Mr. Ford, who examines
12 the same.)

13 MR. DARROW. Let me have that letter, will you please?
14 While we are looking this other matter up.

15 MR. FORD. Go ahead, I am through with looking at it.

16 MR. DARROW. Is there anything there?

17 THE COURT. The witness has answered the question.

18 MR. DARROW. Will you read it.

19 (Question read.)

20 MR - DARROW. Q Do you know what answer you made?

21 A That is my answer, yes.

22 Q What? A What is that, now?

23 Q Do you know what answer you made before the grand
24 jury on that subject? A That was the first question.
25 I refused to answer them questions.

26 Q Well, it isn't in here, there is no such question in

1 here, is that right?

2 MR. FORD. The only question upon that subject--

3 MR. DARROW. That is the question he said--he says they
4 asked if he had--

5 Mr. FORD. The question was see Ortie McManigal--
6 that interview was for the purpose of getting Ortie
7 McManigal to change any testimony that he might have given
8 before the grand jury.

9 MR. ROGERS. Here is another question, did you hear any
10 mention of a confession. Of course, the catch phrase,
11 change his testimony, appears every second or two, but that
12 is not the question here.

13 MR. FORD. Mr. parrow just asked me if there was anything
14 in there and I don't see the word confession, and the only
15 subject relating to that is along that line.

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1 MR DARROW: Will you read Mr Behm's statement?

2 MR FORD: That statement I don't believe was used by me.

3 I say that for the purpose of saving time, and Mr Rogers
4 is objecting to my answering your question.

5 MR DARROW: Will you read that statement of Mr Behm's?

6 MR FREDERICKS: We will stipulate he thought he was asked
7 some such question.

8 MR DARROW: I don't care anything about that except there
9 was no such question asked you. You understand that now,
10 don't you? The first grand jury never asked you anything
11 about a confession or that you never heard of it, the sound
12 of it. Now, Mr Davis and I conversed with you, you said
13 Mr Davis read these questions and I told you how to answer
14 them; is that right? A Yes sir.

15 Q There was no question of confession in it, was there?

16 A Well, there might have been. I don't say there was
17 not. I can't remember all those questions that was asked
18 to me and how I was tangled up.

19 Q Mr Behm, both sides have read this over and the word
20 "confession" is not mentioned in it. There is no ques-
21 tion about it,-- in this first matter before the grand jury
22 Now, did we say anything to you about a confession, as-
23 suming it isn't in here?

24 MR FORD: If the court please, we said that the word
25 confession is not used, but we don't state that the subject
26 matter is not touched upon.

1 MR APPEL: Mr Darrow used the word confession.

2 THE COURT: I think the question is proper. He asked
3 the witness to assume the word confession does not appear.

4 MR DARROW: Now, did we talk to you about any confession
5 of Ortie McManigal? A I can't bring it to my mind now
6 whether you did or not.

7 Q You don 't recall any such thing, do you? A I can't
8 recall th ese things that was asked to me --

9 Q And never being in here, any reference to it, you
10 don't see why it would be talked about, do you?

11 MR FORD: I object to that as argumentative.

12 MR DARROW: I think that is a good objection.

13 THE COURT: Objection sustained.

14 MR DARROW: I will follow that out a little later when I
15 get the exact words, because I don't want to take the
16 time to look it up before the jury.

17 Q So to return to take it up, another subject, to save
18 time, which is this letter of mine relating to what money
19 you had received, People's exhibit 25, which was \$451
20 altogether, and you told us what it was, expenses, and
21 your time that was paid in checks on Los Angeles banks,
22 excepting the \$100 you got in check, wasn't it? A I
23 couldn't say it was all at the First National Bank. If I
24 remember right the Firs t National Bank is on the corner
25 of Second right near the Higgins Building, but it was
26 given to me in checks, with the exception --

1 Q That is the question. It was given you in checks?

2 A It was given to me in checks.

3 Q And the money was to pay your railroad fare and ex-
4 penses, the time of a man to take your place on your farm,
5 and your wages, wasn't it? A That money was given to me,
6 that is mentioned in the letter, that didn't -- that sim-
7 ply paid my expenses here, back and forward, railroad fare.

8 Q I mean, that was the purpose of the money? A That
9 was the purpose of the money, was given to me, yes, for
10 expenses, to pay expenses. Now, --

11 Q Well, that meant your railroad fare? A Yes.

12 Q Your living expenses and a man on your farm? A Hold
13 on; don't get that in.

14 Q Wasn't that to be included? A That was included in
15 this money paid to me.

16 Q This was only your railroad fare and living expenses
17 and the man? A Hold on; don't get that man in there.

18 Q All right, I will leave that man out. A Leave my
19 salary out of there.

20 Q Well, what was this? A That money was used only for
21 expense money from the time I left home until I arrived
22 back to Chicago.

23 Q So you were not given a cent except expense money?

24 A There was just \$100 in there onto that, the last \$156
25 sent to me, went in on my expenses.

26 Q I think we got a subject that you can remember.

1 Let's ask about it. You got no money except expense
2 money? A Except \$100.

3 Q And \$100. And you lost your time for a month or
4 more as an engineer? A Two months.

5 Q And you hired a man on your farm? A Yes sir.

6 Q And you thought I didn't give you enough? A I didn't
7 get what I was to get.

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1 Q And you wrote me a letter asking for more? A I wrote
2 and gave you a statement in answer to that letter.

3 Q In which you said you had paid this money for Mrs
4 McManigal to come back? A Yes, not Mrs McManigal's ticket.
5 I paid my own ticket.

6 Q I don't care about the details, but anyway you wrote
7 me for more money? A I wrote you and gave you a state-
8 ment.

9 Q And I wrote you I thought this covered it, didn't I?

10 A You thought it did, but I made a statement in answer
11 to that letter.

12 Q And you thought you didn't get enough to cover your
13 expenses? A I didn't.

14 Q But it was enough -- and you were sore about it?

15 A No, I am not a bit sore.

16 Q You are not? A No sir, only learned me a lesson.

17 Q You never even got your expenses out of this transac-
18 tion? A I got expenses, but I didn't get my salary.

19 Q You were out your salary? A Part of it.

20 Q You were out a man on the farm? A How is that?

21 Q You were out the salary of a man on the farm? A Yes
22 sir.

23 Q You say you are not sore, but it learned you a les-
24 son? A Yes, learned me a lesson.

25 Q What do you mean by that? A I was sorry I came out.

26 Q On hat account, sir? A Not exactly on that account.

1 Q Nobody ever offered to pay you any money for the
2 purpose of swearing falsely, did they, or can't you
3 answer that question?

4 MR FREDERICKS: That is objected to on the ground it is
5 not cross-examination. I don't think --

6 MR DARROW: It is cross-examination of a statement
7 made before this jury that was utterly false. Mr Ford
8 stated it to this jury.

9 THE COURT: Mr Darrow, let me get the objection.

10 MR DARROW: If there is no such claim, I am willing to with-
11 draw it, but it was an infamous statement to make before
12 this jury.

13 MR FREDERICKS: I withdraw the objection.

14 THE COURT: Answer the question.

15 A Now, what is that question?

16 (Last question read by the reporter.)

17 MR DARROW: I will withdraw it and ask it in another way.

18 Q Now, you found after you got through with this that
19 you didn't get pay for the time you had lost as engineer,
20 and you didn't get pay for a man on the farm; that is right,
21 isn't it? A I didn't get paid all.

22 Q And that was taught you a lesson -- but you are not
23 sore -- what was the answer to that? Did it teach you a
24 lesson?

25 THE COURT: What is your answer Mr Behm? A He has got it.

26 MR DEHM: And he nodded his head.

1 THE COURT: Did you mean yes when you nodded your head?

2 MR FREDERICKS: We will stipulate it is yes.

3 MR DARROW: And that taught you a lesson? A Yes sir.

4 Q You complained about that, didn't you? A I will tell
5 you the whole substance --

6 Q I am asking you if you complained about it.

7 MR FREDERICKS: We object to it unless it is made a
8 little more definite.

9 THE COURT: You can answer the question yes or no, and
10 make your explanation if it is necessary.

11 MR FREDERICKS: We object upon the ground it is indefi-
12 nite, you complained about it.

13 MR DARROW: Well, did you think you hadn't got what was
14 coming from me in that matter under our arrangement in
15 Chicago? A Yes.

16 Q And you have thought so ever since, and think so now?

17 A Sure.

18 Q And you wrote Mrs McManigal to that effect, didn't
19 you?

20 MR FORD: Just a moment. Objected to as calling for hear-
21 say.

22 THE COURT: Overruled.

23 MR DARROW: Did you? A I don't know as I ever wrote a
24 letter to her about it.

25 Q And did you -- now, this arrangement, this money ar-
26 rangement, whatever it was, was made the first time

1 you came to my house, wasn't it? A It was understood
2 that I should have my expenses paid.

3 Q Whatever arrangement was, was made at that time?

4 A Yes sir.

5 Q And that understanding was, -- made it yourself.
6 Go on and state it. You started it and I cut you off.

7 A The arrangement was that I was -- you was to pay my
8 expenses out here and back, while I was here, allow me
9 for my time while I was off of the road; pay the hired man
10 while I was away.

11 Q Allow you for your time, that is, your wages as an
12 engineer? A Yes.

13 Q And that is all the arrangement there was? A Yes.

14 Q I made no secret of that, did I?

15 MR FREDERICKS: Objected to as calling for a conclusion
16 of the witness. A man may have a conversation in his
17 house, whether that may be a secret --

18 MR DARROW: Did I tell you not to say it to anybody?

19 A I don't remember as you did.

20 Q Did I ever tell you any such thing? A I don't know
21 as you did.

22 Q Well, you know I didn't, don't you? A You told me if
23 I was ever asked that I should say that referred to
24 my expenses and salary.

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1 Q I told you if you was ever asked a question anywhere?

2 A Yes.

3 Q That you should say I paid you that which was expenses
4 and the time you lost, didn't I? A Yes, sir.

5 Q Whether you was asked by any lawyer or any friend or
6 the grand jury or anybody else? A Oh, well, you were
7 going into--

8 Q If you was ever asked to say I told you that? A You
9 told me that once, yes.

10 Q When did I tell you that? A You told me the ones I
11 should answer and then again you told me I should not.

12 Q One time I told you what you have stated that you should
13 say that the money was given to you for your expenses and
14 for your time and your hired man, when did I tell you that,
15 sir? A You told me once I should deny it.

16 Q When did I tell you to tell the truth about it. You
17 have already told the jury that you were told to tell it,
18 haven't you? A Well, I was told once to tell it and
19 again I was told not to tell it.

20 Q When were you told to tell it? A You told me to deny
21 it when I went before the grand jury.

22 Q I asked to have that stricken out and ask to have this
23 witness told to answer that question.

24 THE COURT. Strike out the answer.

25 MR. DARROW. Q Mr. Behm, is there any reason why you cannot
26 answer that question?

(Last question read by the reporter.)

1 THE COURT. That is the question, when were you told to
2 tell it, that is the question?

3 A Before I went to the jury.

4 MR. DARROW. Q The second time? A Well, that was the
5 time we were discussing the matter between you and
6 Davis.

7 Q I told you to tell it and tell exactly that it was for
8 expenses and your time and your hired man, didn't I, in Mr
9 Davis's presence? A That statement all came out after
10 that.

11 Q Answer that question, will you answer that question.
12 Read it. (Last question read by the reporter.) Well, that
13 is right, isn't it? A That you told me to tell what?
14 I will tell you, Mr. Darrow, you had me in so many different
15 ways of lying and telling the truth--

16 Q Now, cut it out--I object and ask to have that stricken
17 out. A I will tell you, gentlemen--

18 MR. DARROW. Just a moment.

19 THE COURT. Strike out the voluntary statement and the
20 admonition of the attorney. Now, if you have a question
21 let's have it.

22 MR. DARROW. I don't care about being admonished about any-
23 thing he says. I want him instructed to answer the ques-
24 tion. Just a moment.

25 THE COURT. What is your question?

26 MR. DARROW. I want this witness instructed to answer the

1 questions, your Honor, and nothing else.

2 MR. FREDERICKS. I think--

3 THE COURT. I think, Mr. Darrow, the witness understands the
4 court. The court has instructed him and will again in-
5 struct him that the way to get along in this matter is to
6 concentrate your mind exactly on the matter that counsel
7 asks you and then answer it, if you remember. If you do
8 not remember, say so. Make your answers clear and concrete
9 as possible, and we will get along with the examination.

10 A Judge, if I was told to tell the truth all the way
11 through and not tell lies then I could bring out--

12 MR. DARROW. Just a moment--

13 A I told lies in so many different places to keep him out
14 of trouble, honestly, I can't make these stories stick
15 together. My God! he has put me in an awful hole.

16 MR. DARROW. Q What lies have you ever told to keep me
17 out of trouble. Now, Mr. Behm you made that statement, give
18 one. A You told me I should deny because that I had stood
19 up--

20 Q What? A About asking McManigal to change his testi-
21 mony.

22 Q We have been all over that, what else? A That was the
23 whole substance of the whole line..

24 Q I am not going to ask you any more about that. A You
25 filled me up with so much stuff, if I was to tell the truth--

26 Q What else did I tell you to lie about, to use your own

1 language? A Very near every word you told me was to be
2 a lie.

3 MR. DARROW. Your Honor, I ask to have it stricken out and
4 I want the witness--

5 MR. FORD. It is responsive to the question.

6 MR. DARROW. It is not responsive.

7 MR. FORD. We ask that the question and answer be read and
8 your Honor will see that it is responsive.

9 THE COURT. Read the question and answer.

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

11 THE COURT. Strike it out as a conclusion of the witness
12 and any statement it--

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1 MR DARROW: That answer is stricken out.

2 THE COURT: Strike it out as a conclusion of the wit-
3 ness.

4 MR DARROW: I had not finished admonishing the witness
5 at this time. You understand, irrespective of every-
6 thing else, you are to tell the exact truth here, that is
7 what you are endeavoring to do? A I am trying to do the
8 best I can.

9 THE COURT: Just put your mind right on these questions.
10 Bear in mind, as I told you before, you have as much right
11 as I have or the lawyers or the jury, and you can have all
12 the time you want to answer the questions and answer them
13 truthfully, as best you can remember at this time, and if
14 you cannot remember, say so.

15 MR DARROW: Now, Mr Behm, I once more -- at the meeting of
16 Mr Davis and I were present and we went over the questions
17 that you were asked the first time by the grand jury, I
18 told you, did I not, as you have already stated, to tell just
19 what money I gave you and just what it was for?

20 MR FREDERICKS: That is objected to upon the ground that
21 it assumes a fact not in evidence.

22 MR DARROW: Strike that out.

23 MR FREDERICKS: Now, what is out?

24 MR DARROW: As you have already said --

25 THE COURT: What is the question now?

26 MR FREDERICKS: I think counsel better reframe it.

1 MR DARROW: I will reframe it. Now, watch it, Mr Behm,
2 and see whether you can answer it. At that meeting with
3 Davis and me, when we were discussing the questions that
4 had been asked you the first time, I told you, did I not,
5 if you were asked about money, to tell just what you had
6 received, and that it was for expenses and the time you
7 lost? A That was only that \$100 you gave me to come out
8 on that you told me to answer, just that \$100.

9 THE COURT: Read the question again. (Last question
10 read by the reporter.)
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Alp 1 THE COURT. Now, did Mr. Darrow tell you that? A He
2 just told me to answer that \$100.00. Now, that other
3 money come up after that.

4 BY MR. DARROW. Q What did I say about the \$100? A You
5 told me to tell them you gaveme \$100.

6 Q For what? A To come out here on, my expenses, just
7 that \$100.

8 Q Now, are you sure of that? A Yes, I am sure of that at
9 that time.

10 Q That was when Mr. Davis and I were present? A Yes, but
11 this other money come up afterwards.

12 Q Now, wait a minute, Mr. Behm, I will give you another
13 question in a minute. I will read you a little of this
14 and then I will perhaps give you some more afterwards.

15 Mr. Behm, you testified before the grand jury right after
16 that, as you have already said. Were these questions read
17 and did you make these answers?

18 MR. FREDERICKS' That is on August 3rd, before the grand
19 jury?

20 MR. DARROW. That is on August 3rd, before the grand jury,
21 and reading from page 41: "Q--For what purpose did you go--"

22 I am adding a little to that, but it is perfectly plain--

23 "A--Any more than to be with her on account of her illhealth.

24 Q--Arrangements made at that time by Mr. Darrow, were there,
25 for the payment of your expenses? A--No, sir. Q- Did
26 you expect to pay your own expenses if you came on that
trip? "

1 MR. FORD. You skipped a line, "Was there anything said
2 about your expenses?"

3 MR. DARROW. I did. "Q--Was there anything said about
4 your expenses? A--No, sir. Q--Did you expect to pay your
5 own expenses if you came on that trip? A--I had to. Q--You
6 expected to pay your own expenses? A--Yes. Q--As a mat-
7 ter of fact, however, subsequently other arrangements were
8 made by which your expenses were paid; isn't that the
9 fact? A--Paid by who? Q--Well, I don't know. A--Why, no,
10 I paid my own. Q--You paid your own expenses? A--Yes, sir.
11 Q--Anybody reimburse you for your expenses? A--No, sir."
12 Are those the questions and answers that were given before
13 the grand jury? A Yes, but you told me to--

14 Q Wait a minute--did you answer in that way to those ques-
15 tions before the grand jury? A Yes, and I was told
16 before I went there--

17 Q Wait a moment--and answered under oath? A Yes and I
18 was told to answer that way.

19 Q And what about the \$100 I told you to tell you paid
20 your way out here, sir? A Well, that led into that, you
21 told me to deny it.

22 Q Do you tell this jury I said to deny getting \$100?
23 What! do you tell this jury I said to deny getting the
24 \$100, did I? A Well, that was a dispute between you and
25 Davis.

26 Q How many minutes has it been since you told the jury I

1 told you to admit getting the \$100 and say it was to pay
2 your own expenses? A You told so many things, Mr. Darrow,
3 I don't remember.

4 Q How long has it been since you told this jury I told
5 you to tell the grand jury, to tell them I gave you the
6 \$100 to pay your expenses? A If it was on the way coming
7 down--

8 Q Do you swear I didn't tell you to tell the grand jury I
9 gave you that \$100 to pay your expenses? Now, answer it.

10 A I don't remember it.

11 Q You don't remember? A No.

12 MR. DARROW. Now, we are willing to adjourn.

13 THE COURT. Have you finished cross-examination?

14 MR. DARROW. No, your Honor, there are some other questions
15 I want to ask. I don't think it will take long, your
16 Honor.

17 MR. FREDERICKS. About half an hour or 15 minutes.

18 THE COURT. Gentlemen of the jury, time for adjournment.

19 (Jury admonished.) The witness is again admonished
20 not to talk to any person relative to his testimony until
21 court convenes this afternoon. Court will now adjourn
22 until 2 o'clock this afternoon.

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