

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.32

I N D E X.

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

George Behm (Before Grand Jury) 2555

Charles F. Hunt, 2609

1 Thursday, June 20, 1912. 10 o'clock A.M.

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

4 THE COURT: Are you ready to proceed, gentlemen?

5 MR FORD: Ready.

6 THE COURT: The jurors are all present. You may proceed.

7 MR FORD: (Reading:)

8 "Thursday, August 3, 1911, 2 o'clock P.M.

9 Met pursuant to adjournment:

10 GEORGE BEHM, recalled,

11 Examined by Mr Ford:

12 Q Mr Behm, I want to call your attention to the fact
13 that when you were first sworn here as a witness you took
14 an oath of secrecy. You have borne that in mind, have you?

15 A What do you mean -- secrecy?

16 Q That is, that anything that occurred in the grand jury
17 room, or anything you have testified to before the grand
18 jury, you have sworn to keep secret. A Certainly.

19 Q Mr Behm, before you visited Mr McManigal you saw him
20 from the jail window, did you not, heard him calling to you?

21 A Yes sir.

22 Q What day was it that you were passing the jail window,
23 with respect to the time you arrived -- was it the same day
24 or the next day? A I can't say exactly what day it was.

25 Q Well, you visited Mr McManigal the second day after
26 your arrival, did you not? A The second or third day,

1 I can't say which.

2 Q And it was the day you visited him, that you had seen
3 him from the jail window, or in the jail window, when he
4 was calling? A I think it was, but I ain't certain,
5 it was the day before.

6 Q That was about June 29th, 1911? A I couldn't say
7 what date that was.

8 Q Well, assuming that it was on June 29th, you called on
9 him on the 30th day of June, did you not, for the first time?

10 A I don't know what day of the month it was I called on
11 him.

12 Q Now, the first time you called on him, you talked with
13 him about what he had done and what he had said, did you
14 not, what he had confessed, or his alleged confession?

15 A Ask that question again. I don't understand it.

16 (Last question read by the reporter.)

17 Q Do you understand the question? A Not exactly, no.

18 Q Did you talk about his confession, or did he talk about
19 his confession? I will drop that question for the moment.

20 What union do you belong to, Mr Behm? A I belong to
21 the engineers.

22 Q Locomotive engineers? A Yes sir.

23 Q They are affiliated with the American Federation of
24 Labor? A Not as I know of.

25 Q Do you remember your second visit to your nephew,
26 Mr McManigal, at the jail? A I remember I went in there,

1 yes sir.

2 Q The second time. At that time did you not say to
3 Ortie McManigal -- first, didn't you clench your fists and
4 hit the table with your fists, and say, "By God, I have come
5 back to fight, and you have got to listen to me. I listened
6 to your bunk last night. You are sticking a knife into the
7 labor organization. You have been bought to testify to this".

8 A No sir; I didn't.

9 Q Did you ever at any time say that to McManigal?

10 A No sir.

11 Q Did you ever at any time say anything like that, in
12 substance or in effect? A No.

13 Q You are sure of that? A Yes sir.

14 Q Didn't you ask McManigal if he had been bought, whether
15 Burns had promised him something, or any other person had
16 promised him something, for testifying? A I refuse to
17 answer that question, because it doesn't concern the case
18 of his changing his testimony at all.

19 Q Just preliminary how to what -- did you not on your
20 second visit say to McManigal, or Ortie E. McManigal, at
21 the county jail, "If you will only listen, you have got lots
22 of friends on your side, and if you will just listen to
23 Darrow, we don't give a damn for the McNamaras, but we
24 want to save you."? A No sir, I didn't say that.

25 Q Did you ever at any time in the county jail say that to
26 McManigal? A No sir.

1 Q Did you ever say anything like that, in substance or
2 in effect? A Never.

3 Q You understand what I mean by "in substance or effect "
4 -- say anything that meant the same thing? A No sir.

5 Q On your third visit to McManigal did you not say,
6 "Well, you look more like McManigal now. I see you are
7 coming to your senses, but you are getting pretty weak,
8 though." And did McManigal reply, "I can open up on you
9 and tell you more than you ever knew," and that then you
10 said, "If you will only let one of our attorneys come up
11 I will let Mr Darrow come here and explain it to you.?"

12 A I don't remember anything about that.

13 Q Did you ever say that on any other occasion to him?

14 A No sir.

15 Q Did you ever say anything like that, in substance or in
16 effect? A No sir.

17 Q Did you not, on another visit, come in and say to
18 McManigal, "We can get you out on bonds, and get a fast
19 automobile in town, and rush you right out of the state;
20 that they" -- meaning the prosecution -- or that you could
21 go back to Chicago, you and McManigal and McManigal could
22 go to work for you on your farm? A No sir.

23 Q Did you ever, at any other occasion, say that to
24 McManigal? A No sir.

25 Q Did you ever say anything like that, in substance or
26 effect? A No sir.

1 Q Did you tell McManigal that money was no object to
2 the people on the part of the defense, and that Mr Darrow
3 had plenty of it coming all the time, and they could draw
4 a check on the bank for any amount? A No sir; I didn't
5 say anything like that.

6 Q Or anything like that, in substance or effect, at any
7 time? A No sir.

8 Q Did you ever mention money to McManigal? A No sir.

9 Q In the county jail? A No sir.

10 Q Did you not ask McManigal who was back of all this,
11 and when McManigal replied, "The state of California",
12 you said it was labor against capital? A I don't
13 remember anything about that.

14 Q You would remember it if such a conversation had
15 occurred, wouldn't you? A Why, yes, I should, sure.

16 Q Then do you say that such a conversation did not occur
17 at any time between you and McManigal in the county jail?

18 A Yes sir; I said I didn't hear him say anything, and I
19 didn't say nothing to him like that.

20 Q Nothing in substance or effect like that? A No sir.

21 Q Did you not tell him that it was the Erectors Associa-
22 tion that was back of this and ask McManiganl where Burns
23 got the money to carry on this case, and then say "We don't
24 care anything about this case; what we want to know is
25 what they" -- meaning the prosecution -- "are going to do
26 about the cases back east", and did you repeatedly ask

1 McManigal about the Erectors Association, and what they
2 were going to do with those cases? A I refuse to answer
3 that, because it has nothing to do concerning the case,
4 changing his testimony.

5 Q Did you ever at any time ask anything like that, in
6 substance or effect, or have a conversation like that in
7 substance or effect? A I refuse to answer that question,
8 on the ground that it don't concern the case, or any change
9 in his testimony.

10 Q Did you not say those words, or words like that in sub-
11 stance and effect, for the purpose of getting McManigal to
12 go back on anything he might have told to the prosecution,
13 or any detectives who had been engaged by the prosecution?

14 A No sir.

15 Q Did you say anything like that for any purpose?

16 A What purpose? I don't understand the question.

17 Q For the purpose of getting McManigal to change his
18 testimony? A No sir; I never asked him that.

19 Q Or for any other purpose? A No other purpose either.

20 Q Then you did not say anything like that? A Not to have
21 him change his testimony, no sir.

22 Q Well, then you did say it, but not for that purpose?

23 A Not for the purpose of having him change his testimony.

24 Q But you did have such a conversation, but the conversa-
25 tion was not for that purpose -- is that what you mean?

26 A I don't understand that at all.

1 Q Did you not, for the purpose of getting McManigal to
2 change his testimony, say to him that his own father,
3 McManigal's father, would minimize the effect of his testi-
4 mony by saying that he, the father, had the dynamite stored
5 back there in his quarry back in Tiffin, and was going to
6 use the dynamite in his quarry, and didn't McManigal say
7 "What are they going to do about finding the dynamite in
8 father's barn?" And didn't you say then "Never mind about
9 that. We will have all that fixed." Did you ever have
10 such a conversation with McManigal, and say the things that
11 I have asked you, for the purpose of inducing McManigal to
12 change his testimony? A No sir.

13 Q Did you have such a conversation, in substance or effect,
14 for that purpose? A I don't understand that question
15 altogether.

16 Q Did you have that conversation at all for any purpose?

17 A That is something I don't know anything about.

18 Q You never had any such conversation, then?

19 A I don't remember it.

20 Q If you had such a conversation, you would remember it,
21 wouldn't you? A I should suppose I ought to.

22 Q You say you never at any time had such a conversation,
23 in substance or in effect? A I don't know what you mean
24 or are trying to get at. I don't understand the meaning of it.

25 Q Did you not, for the purpose of intimidating McManigal,
26 for the purpose him to withhold any information that he might

1 have bearing on this case, say to him that they, the defense,
2 had papers from Congress, and that they were going to take
3 action on the kidnapping case, and that the McNamara case
4 would quashed? A I refuse to answer that question,
5 because it don't have nothing to do with the case of his
6 testimony. I don't understand it.

7 Q I have asked you if you had such a conversation for
8 the purpose of changing McManigal's testimony, or getting
9 him to change his testimony or withhold knowledge of the
10 facts. I think that is the very thing we are investigating,
11 Mr Behm. A Well --

12 Q If you will hear the question again you will notice
13 that is the meaning of it.

14 (Last question read by the reporter.)

15 A Did I say that, do you say?

16 Q Yes. A Why, no, I didn't say anything like that.

17 Q Didn't say anything like that, or anything in substance
18 or effect like that? A No sir.

19 Q At any time to McManigal? A No.

20 Q Did you not, for the purpose of getting McManigal to
21 change his testimony and to withhold true testimony, say
22 "Let Tyrrell come up and talk with you; he can explain to
23 you so nice you couldn't help but see our way about the
24 testimony"? A No sir; I didn't.

25 Q See our way out? A No sir; I didn't say anything
26 like that.

1 Q Didn't say anything in substance or effect like that?

2 A No sir.

3 Q Didn't McManigal ask you what they were going to do
4 with all the witnesses from the east and all over the country
5 -- I will just ask this part of it, and ask you if he asked
6 you such a question. A Did he ask me what?

7 Q Ask you what they were going to do with all the witnesses
8 from the east and all over the country? A Not as I
9 remember of.

10 Q To refresh your recollection, did he not say that "Even
11 if I did not testify, what are they going to do with the
12 witnesses from the east and all over the country"?

13 A I don't remember any conversation of that kind.

14 Q Don't remember anything in substance or effect like that?

15 A No sir.

16 Q Did he ever mention the eastern witnesses who had
17 knowledge of the facts? A He?

18 Q Yes. A Not as I know of.

19 Q Did he not ask such a question, and didn't you reply
20 "Never mind that. We have got all that fixed, and they will
21 never get here"? A Did he ever say that?

22 Q No, didn't McManigal say to you "What are they going
23 to do with the witnesses from the east and all over the
24 country", and didn't you then reply "Never mind that; we
25 have got all that fixed -- they will never get here"?

26 A I never had anything like that.

1 Q Did you ever make any remark like that to McManigal?

2 A No sir.

3 Q In substance or effect, at the county jail, neither
4 on your first, second, or third visits? A Never, as I
5 remember of.

6 Q Or on any other visit while you and McManigal were
7 present together in the county jail, during the month of
8 June or July? A No sir.

9 Q 1911. Did you tell McManigal that you had told Darrow
10 that you wanted to go home, and that Darrow had told you
11 never mind about going home, to stay a couple of weeks
12 longer, and it would be all right? A Did I tell him what?

13 Q And did you not in that conversation with McManigal say
14 "I told Darrow that I wanted to go home, but Darrow told me
15 to never mind about going home; to stay a couple of weeks
16 longer and it will be all right"? A I don't remember
17 any conversation of that kind.

18 Q You don't remember any conversation in substance or
19 effect like that, during the months of June or July, 1911, at
20 the county jail, between yourself and McManigal, while you
21 and he were alone together? A No sir.

22 Q Do you remember anything like that? A That is all news
23 to me. I don't know anything about them cases.

24 Q Did you not tell McManigal or say to McManihal "Well,
25 your own father will be a witness against you. He will come
26 out and say that that dynamite found in his barn at Tiffin,

1 Opio, was dynamite that he used for blasting in his quarry"?

2 A I don't know anything about that.

3 Q Did you ever say anything like that to McManigal?

4 A No sir.

5 Q In substance or effect? A No sir.

6 Q At no time, during the months of June or July, 1911,
7 while you and he were present together in the county jail?

8 A I never heard that remark made at all.

9 Q You never said that. Did you not ask McManigal if any
10 immunity had been offered him, and what was to be done with
11 the cases against him back east? A I refuse to answer
12 that, because that don't concern the case of him changing
13 his testimony.

14 Q Mr Behm, didn't you try to find out first what was going
15 to be done for McManigal, in order that you could offer him
16 greater inducements to change his testimony? A Did I
17 offer him anything, do you say?

18 Q No, didn't you try to find out what would be necessary,
19 to get McManigal to change his testimony? A No sir;
20 I didn't.

21 Q And didn't you, for the purpose of finding that out,
22 try to find out what had been promised him? A I refuse
23 to answer that question, because I don't understand it.

24 Q Well, I will try to simplify it. A It has nothing
25 to do with regard to the case.

26 Q Did you try to find out what promises had been made to

1 McManigal? That is simple. A Did I try to find out?

2 Q Yes. Did you ask McManigal what promises had been made
3 to him? A Not as I remember of.

4 Q At no time during the month of June or July, 1911?

5 A No sir.

6 Q And didn't you ask if the Erectors Association was
7 going to do anything for him? A Did I ask him that?

8 Q Yes. A I can't say whether I did.

9 Q What did you tell him that the unions, or that the
10 defense, or any persons connected with it, would do for him
11 if he did withdraw his confession and refuse to testify?

12 A Now, you are giving me something I don't know anything
13 about. I didn't talk about the case to him at all. We
14 didn't visit on the cases here at all.

15 Q What did you talk about then? A Any more than things
16 that did not concern the case at all. Mostly my business
17 there.

18 Q You mean, your private affairs? A Why, any more
19 than just sociable visits.

20 Q And at no time talked about the case at all? A Not to
21 speak of, because he always said, "We won't talk about the
22 case," and I never asked him. I didn't go there to have
23 any influence over him at all.

24 Q Well, did you ever talk about the alleged confession
25 of McManigal at all, at any of these visits? A I didn't
26 know anything about the confession until after I quit
visiting him.

1 Q Well, you testified this morning that you had seen some-
2 thing in the papers while -- A That was after I had
3 visited him.

4 Q No, but before you came to California, that you had
5 seen something. A Well, I seen something back in the
6 paper. I didn't see anything about anything before.

7 Q Some statements about his having told Burns what he had
8 done? A No, I never seen anything like that. There was
9 nothing in our papers back east there.

10 Q But you were in fact aware that it was rumored that
11 McManigal had made a confession? A Not until after I
12 came here, I seen the paper -- after I quit visiting him,
13 that was the first I seen the confession.

14 Q Be sure you have got the time right now. I don't
15 want to mix you up. I want you to take your time about
16 this matter. A You ask me so many questions that I
17 don't know anything about. I don't know what is the meaning
18 of it all.

19 Q That will be our fault, and not yours. Just take your
20 time. A You ask me something I don't know anything
21 about.

22 Q When you came out to see McManigal, you had heard it
23 rumored that he had told a story wherein he incriminated
24 the McNamaras, and all that, didn't you? A I hadn't
25 heard no story -- that is, from anyone.

26 Q No, but you had seen it in the papers, and it was

1 rumored or statements had been made in the papers, and it
2 was thought, that McManigal had made a confession, and
3 that he had implicated the McNamaras, and especially J. J.
4 McNamara -- you have seen that in the papers, I believe?

5 A Well, I seen that after I had quit visiting him.

6 Q You saw that after you had quit visiting him here in
7 Los Angeles? A That came out in the paper. That is,
8 his testimony that he had given.

9 Q I think you are mistaken, Mr Behm. I think the papers
10 had statements within a day or two after his arrest, that
11 he had confessed to Burns in Chicago, and made a long state-
12 ment incriminating J. J. McNamara. A That was in some of
13 the Chicago papers. We don't get them papers back in
14 Portage. I don't take them papers.

15 Q However, you know at the present time, or you have
16 heard it rumored, about McManigal making an alleged con-
17 fession, incriminating the McNamaras? A Just what I
18 seen in that one paper.

19 Q You came out here with the impression or the belief,
20 believing that if McManigal had made such a statement, it
21 was untrue, did you not? A I don't understand the question.

22 Q I will put it at the present time. You believe now
23 that if he made any such statement, it was untrue?

24 A I believe that it was not so? That he didn't do it?

25 Q No, but if he ever confessed anything like that, that
26 his confession is untrue; is that correct?

1 A Well, I don't know. That is up to him, to say whether
2 it is true or not.

3 Q You haven't any opinion as to whether it is true or not?

4 A No, I am not certain.

5 Q You haven't any reasons to doubt its truth? A No.

6 Q There isn't anything about the case or about McManigal
7 himself which would cause you to believe it was untrue;
8 is that correct? A I don't understand the question.

9 Q Mr Behm, didn't you come out here for the purpose of
10 having McManigal tell the truth about this case?

11 A How do you mean -- to tell the truth? I didn't go to
12 him and tell him to tell the truth.

13 Q You didn't go to him and tell him to tell the truth --
14 did you tell him to tell anything?

15 A I told him if he was guilty, he should be -- say
16 guilty. Whatever he had done, I wasn't going to change his
17 testimony.

18 Q What did you want him to see the lawyers for?

19 A I never asked him to see the lawyers.

20 Q Didn't you ask him to see Darrow? A Not that I
21 remember of.

22 Q You never at any time asked him to see Darrow or
23 Tyrrell? A Not as I remember of.

24 Q Didn't you tell him that Tyrrell was an unprejudiced and
25 unbiased attorney, and that you wanted him to talk to him?

26 A To Tyrrell?

1 Q Tyrrell. A I refuse to answer that question, because
2 I don't understand it. I don't think it has anything to do
3 with the case.

4 Q Well, I think you speak the English language and
5 understand the English language, don't you? You understand
6 the question, don't you, Mr Behm, as to whether you had
7 asked him to see Tyrrell, because he was an unprejudiced
8 attorney, had no interest one way or the other?

9 A I don't think I did.

10 Q Didn't McManigal tell you he would not see Tyrrell,
11 except in the presence of the district attorney?

12 A I think he did. I ain't sure.

13 Q Didn't he tell you that if this attorney was unbiased
14 and unprejudiced, for him to go and talk with the district
15 attorney first? A Unprejudiced what?

16 Q Didn't he tell you that if this attorney, Mr Tyrrell,
17 was an unprejudiced attorney, for Mr Tyrrell to go and talk
18 with the district attorney first? A Did I tell him so?

19 Q No, didn't McManigal tell you that? A Not as I remem-
20 ber of.

21 Q What was there about McManigal's testimony, I mean,
22 McManigal's conversations with you, that makes it vague
23 and indefinite in your mind, that you cannot remember --
24 anything peculiar? A That is something I refuse to
25 answer, because it has nothing to do with the case, to
26 change his testimony.

1 Q Well, do you remember the conversation you had with him?

2 A Nothing concerning the case, that I remember of.

3 Q You can remember everything that don't concern the case?

4 A He always said, "We won't talk about that," and I
5 never asked him to.

6 Q Then he never told you what had occurred, what he had
7 to do with the National Erectors Association?

8 A I didn't know anything about that.

9 Q He never told you anything about that? A No sir.

10 Q He never told you that he had been working for McNamara,
11 J. J. McNamara? A I don't remember whether he did or not.

12 Q Never told you about blowing up any buildings? A No.

13 Q You have not been intimately acquainted with McManigal
14 during the last five years, have you, Mr Behm?

15 A I have not seen him very often, no.

16 Q Seen him only twice at South Sangamon street, I believe
17 you said this morning? A That is about the only two
18 times I have seen him in the last four years.

19 Q Previous to that time how often did you see him --
20 before four years ago how often did you see him?

21 A Well, I can't remember. That is away off, something
22 I didn't pay any attention to.

23 Q Well, you did not see him very frequently during the
24 past ten years, did you? A No, not very often; not
25 since he left Milwaukee.

26 Q How long ago was that? A Gee whiz, what are you

1 trying to get at? Why don't you come down to the case, and
2 talk like you ought to, instead of going away off looking for
3 something that has nothing to do with this case?

4 Q You refuse to answer on that ground? A I don't refuse
5 to answer, but a lot of your questions I don't see concern
6 this case at all. I see there is one of the jurors sitting
7 over there asleep. They are going to sleep.

8 Q Perhaps we are not as intelligent as we ought to be,
9 Mr Behm, but we are doing the best we can. How frequently
10 have you seen him during the last ten years? A How fre-
11 quently?

12 Q Yes. A Oh, I couldn't say how many times.

13 Q Well, half a dozen times? A I might have seen him
14 that, yes.

15 Q Have you seen him a dozen times? A Dozen times?

16 Q Yes. A Well, I might have seen him a dozen times.

17 Q Have you see him more than twenty times? A What is
18 the use of asking such a question as that?

19 Q I want to fix the time a little more definitely, and
20 then I will drop the matter. A I don't see what you mean
21 by it.

22 Q Have you seen him as many as one hundred times during
23 the last ten years? A Why, I have seen him, because he
24 lived with me for months.

25 Q That was over ten years ago? A That is about ten years
26 ago.

1 Q Since the time he left you, after living with you
2 eight months, you have seen him but very seldom; is that
3 correct? A Why, I haven't seen him but very seldom in
4 the last four years, since he lived in Chicago.

5 Q You have only seen him twice during the past year?

6 A I didn't see him twice in Chicago.

7 Q Did you see him at other places besides Chicago?

8 A How do you mean -- the last four years?

9 Q Yes. A Why, I seen him once in Chicago last spring;
10 that was in the month of May.

11 Q You have already told us about seeing him twice in
12 Chicago. Do you remember any other place in the last four
13 years besides in Chicago? A I seen him here, yes.

14 Q Besides Los Angeles. I mean, prior to his arrest,
15 before his arrest. A Did I see him anywhere?

16 Q Anywhere else besides Chicago in the last four years
17 before his arrest. A Four years?

18 Q Do you remember meeting him Bloombille, Ohio? A Yes
19 sir. That has nothing to do with this case at all.

20 Q No, I just want to fix the time.

21 A What are you going into that for?

22 Q Do you remember meeting him there? A Why, yes.

23 Q Do you remember his calling somebody on the long dis-
24 tance phone at that time? A No, I don't remember, only
25 my brother at Toledo. We went to talk to him; that is all
26 I know.

1 Q Do you remember him calling up J. J. McNamara at
2 Indianapolis at that time? A No.

3 Q How long have you known J. J. McNamara? A I don't
4 know him.

5 Q Never have met him? A No.

6 Q Don't know him now? A No, I don't.

7 Q Do you know J. B. McNamara? A No. I never knew him.

8 Q You have seen him, however? A Where?

9 Q Here. A No, I have not seen him here.

10 Q You have never met him? A Never met him.

11 Q Mr Behm, if you are so disinterested in this matter,
12 after coming to Los Angeles, how was it that you went to see
13 the attorneys for the defense, and have never come to see
14 the attorneys for the prosecution? A I had no occasion
15 to see them. I had no acquaintance with them.

16 Q You had never met Mr Darrow but once, had you?

17 A That is all. I wouldn't have met him, only coming out
18 with his wife.

19 Q You came out on the same train with Mr Darrow?

20 A No sir.

21 Q You have been out walking with the McManigal children,
22 and passed the county jail, haven't you? A Not walking.
23 I took one of them and went to the post office once;
24 that is all.

25 Q And you passed the county jail to go to the post office?

26 A No sir; I didn't -- I passed by the court house.

1 Q You passed her on Temple street? A When I got off
2 the street car I went directly to the post office. I
3 didn't go by the jail.

4 Q What street car did you come down on?

5 A On the Hill car.

6 Q The car that goes around the loop, called the loop car?

7 A I don't know what car that is. I got on out on Fourth
8 street here and came down here to the post office, and that
9 is as near as I can get on the street car.

10 Q At what place did you get on that car? A Away up
11 on Fourth.

12 Q Fourth and what? A I don't just know exactly the name
13 of the street. There on Fourth street, where the car comes
14 down; I don't remember the street.

15 Q Did you see McManigal while you were passing along
16 with the children? A No sir; I did not.

17 Q Didn't you ask McManigal to meet Mr Darrow or Mr Davis
18 or Mr Scott or Mr Harriman -- A No sir.

19 Q Never asked him to meet any of the attorneys? Didn't
20 you ask him about what stand he would take in this case?

21 A No sir; I didn't.

22 Q What side he would testify on? A No sir.

23 Q Never at any time told him to testify one side or the
24 other? A No.

25 Q Never discussed his testimony at all? A No.

26 He has told me that he thought he was right, and I says
"All right, if you think you are right, that is the way
to do."

- 79 1 Q Didn't you tell him you thought he was wrong? A No, sir.
- 2 Q In substance or in effect? A No, sir.
- 3 Q How did that subject come up, when he told you he thought
- 4 he was right? A I don't remember now how.
- 5 Q Well, he was right about what? A On his case.
- 6 Q You didn't think he was right, did you? A I didn't
- 7 tell him anything wrong, that he should change, or any-
- 8 thing. I told him if he thought he was doing right,
- 9 it was all right.
- 10 Q Didn't you think he was not doing right, or didn't you tell
- 11 him so? A I don't remember telling him that.
- 12 Q Well, you thought he was not doing right, did you not?
- 13 A I didn't say so, did I?
- 14 Q You didn't believe his story to be true, did you? Mr. Behm?
- 15 A Who--McManigal's story? About what?
- 16 Q About what he had done, and the stand he was taking.
- 17 A I refuse to answer that question, because I don't
- 18 understand it, and I don't think it concerns the case of
- 19 having him change his testimony.
- 20 Q I think it does, or I would not ask it, of course.
- 21 I will try and see if we can get at it. Did you ever read
- 22 the confession of McManigal? A I believe I did read part
- 23 of it. I don't know whether I read all of it.
- 24 Q Where did you read it? A Out of the newspaper.
- 25 Q And when McManigal said he thought he was doing right,
- 26 you understood that by that he was going to testify the way

1 he said in his confession, or testify to the facts that
2 were in his confession, didn't you? Didn't you understand
3 him to mean, when he said he thought he was doing right,
4 didn't you understand him to mean that he was going to
5 testify in the same manner that he had confessed? A That
6 he was going to testify?

7 Q You understood he was going to testify for the prose-
8 cution, was going to say the same things he said in his con-
9 fession, didn't you? A I didn't see that confession until
10 after I quit going to see him.

11 Q But you understood he was going to testify for the prose-
12 cution, and that is what he meant when he said he thought
13 he was doing right? A He told me he thought he was right,
14 and I said, "All right, if you think you are right, that is
15 up to you."

16 Q When he said that, you understood he meant he was going
17 to testify for the prosecution, because that was what he
18 thought was doing right? A As near as I can remember.

19 Q You didn't think that was right, and you wanted him to
20 change it, did you not? A I never asked him to change it.

21 Q Well, that is not the question that I asked you, I have
22 asked you what you thought about it, Mr. Behm, just to
23 show your relation to the case. A All I thought, I thought
24 if he was right, it was right for him to go ahead and do as
25 he saw fit.

26 Q You hadn't any opinion on the subject one way or the

1 other at that time? A Not as I know of.

2 Q And haven't not? A No. If he saw fit to go that
3 way, that is up to him; it ain't up to me.

4 Q But you have an opinion as to whether he was right
5 or wrong, haven't you? A My opinion is for him to take
6 care of it for himself. If a man sees fit to do anything
7 like that, that is to him, It has nothing to do with me at
8 all.

9 Q Well, now, will you tell us, Mr. Behm, all the conversa-
10 tions that you had with McManigal in the county jail, which
11 referred to the cases that were pending before the court,
12 and his attitude as a witness, or what you wanted him
13 to do, or did not want him to do? Just tell us all about
14 that, instead of my asking questions. You know what
15 refers to the case. You know what refers to his attitude
16 about the case; just tell us that now, without our asking
17 you any questions, all that you can remember. I suppose,
18 when you entered the jail there, that you shook hands with
19 him, and exchanged some customary greetings, and that you
20 talked possibly about the children and his wife, and so
21 forth. We don't care anything about those details- A I
22 don't think that concerns this case.

23 Q No, that don't concern the case. We want to get right
24 down and have you tell us such things as do concern the
25 case, and what you did talk about. A We didn't talk any-
26 thing, as I know of, concerning the case.

1 Q You have told us considerable that did concern the
2 case, or about the conversations; that is, for instance
3 that McManigal thought he was right. That concerned the
4 case. A I have told you that.

5 Q Now, what else was there? A I don't know as there was
6 anything. He would always say, "I ain't going to talk
7 about the case, and we didn't.

8 Q How many visits did you make there altogether? A I
9 told you, about four.

10 Q On any one of these visits did he say anything other
11 than that? That was only said on one visit, was it?

12 A About what?

13 Q That was only one visit, that he told you he thought
14 he was right? A I don't know what you are trying to get at.

15 Q Have you told us all that refers to the case, and all
16 that occurred at the county jail that refers to the case?
17 I refer to the case he was involved in. A I refuse to
18 answer that question, because it don't concern him making
19 any change in his decision in this case.

20 Q By Mr. Hill--Then you did talk about some other matters
21 that you have not told us about; is that right? A That
22 doesn't concern the case, me asking him to change his
23 testimony.

24 Q By Mr. Ford-- But, Mr. Behm, you would not know, and this
25 jury can't tell whether you wanted him to change his testi-
26 mony until they find out what he said to you, and what
your attitude was, and what you said about that. A Well,

1 he would always say, "We wont talk about the case." That
2 is all he would say .

3 Q I think we can get at it in another way. You expect
4 to come here as a witness onthe stand at the trial? A I
5 don't know whether I do or not. I don't think I do.

6 Q Are you not expected to come as a witness to testify
7 to Mr. McManigal's mental condition? A Not as I know of.

8 Q Didn't you come here to California for the purpose of
9 getting McManigal to change his confession, and if you
10 were unsuccessful in that, to attack him on his mental con-
11 dition? A I refuse to answer that question, because it has
12 nothing to do with the case or him changing his decision.

13 Q Wasn't that your purpose in coming to California? A Was
14 that my what?

15 Q Wasn't that your purpose in coming to California? A There
16 are two questions/ⁱⁿthere. I can't answer them all.

17 Q Wasn't that your purpose in coming to California, to
18 discredit McManigal in case you could not change his testi-
19 monY? A I refuse to answer that question. It has noth-
20 ing to do with the case--that is, him changing his testimony
21 in regards to the case.

22 Q You had no expectation of getting him to change his
23 testimony when you came to California? A No, sir.

24 Q You had no expedatation of getting him to testify for the
25 defense? A That has nothing to do with the case, of
26 having him change his testimony .

Q You had no expectation of getting McManigal to testify

1 for the defense, and to desert the prosecution? A Now,
2 there are three or four questions in there. I don't know
3 what you mean.

4 Q You had no expectation of getting McManigal to
5 desert the prosecution? That is one question. A What--
6 to testify against them? *

7 Q I think you understand the question. Read the question.
8 (Last question read by the reporter.)

9 A Why, no.

10 Q And to testify for the defense--you had no expectation
11 of getting McManigal to testify for the defense--for the
12 defendants, put it that way? A Why, no.

13 Q You did not believe that McManigal knew anything that
14 could aid the defendants? A Now, there is a question again
15 that I don't understand. I refuse to answer that question,
16 because I don't understand it. I don't think it has any-
17 thing to do with the case of him changing his testimony.

18 Q Didn't you come out with the intention of getting Mc-
19 Manigal to keep still and not say anything at all? A No,
20 sir; I didn't. I came out here with his wife, to help
21 take care of her. She was sick.

22 Q Did you at any time after you came here go over to the
23 county jail for the purpose of getting McManigal to
24 change or withhold his testimony, or to say nothing at all?

25 A To change his testimony?

26 Q No--to say nothing at all. A Oh, no.

Q Not to testify at all?

1 A No.

2 Q You did not? A Not as I remember of.

3 Q You certainly would remember a thing of that sort.

4 A You go over the same thing. I don't know what you are
5 trying to get at.

6 Q Did you at any time try to get McManigal to keep still
7 and say nothing at all? A No, I did not.

8 Q Get him to refuse to testify at all? A I never asked
9 him to refuse.

10 Q But did you try to get him to refuse, whether you asked
11 him or not? A I did no.

12 Q There are different ways of securing it. You never
13 formed such a purpose or intention? A No, because he
14 done all the talking. I done the listening. When he told
15 me what he had done, I told him it was up to him.

16 Q He did tell you what he had done? A Why, some things.

17 Q What did he tell you he had done? A Why, I don't
18 remember. I refuse to answer that.

19 Q You don't remember what he told you? A Oh, I
20 remember some things--yes--of course.

21 Q Now-- A It has nothing to do with the case, though,
22 with regard to him changing his testimony.

23 Q Did you believe what he told you? A Well, that is
24 hard to answer too.

25 Q Now, nobody can answer it but you, Mr. Behm, I can't.

26 A You hear so many things, you would hate to believe every-

1 thing.

2 Q Then you don't believe everything he told you? A No,
3 I don't believe everything, no.

4 Q What things were there that he told you that you don't
5 believe? That is only preliminary to asking you whether
6 you wanted him to change that. A How is that?

7 Q What things was it that he told you that you did not
8 believe? What parts of his statements didn't you believe?

9 A Well, honestly, I don't know exactly what it was.

10 Q You thought part of his statements were untrue, and
11 you did not believe them; is that correct? A Of course
12 I didn't form no opinion, and I don't know whether it is
13 true or not, what he told me - some things.

14 Q Now, these things which you say you didn't believe,
15 and which you didn't think we true; did McManigal tell you
16 they were true? A Things he had done?

17 Q Yes. A That he said was true?

18 Q Yes. A Oh, there was some things he told me that was
19 true. He said they was true.

20 Q Did he tell you everything he said was true? A I
21 don't remember that he told me everything was true or not.

22 Q But there were some things he said he did, that you
23 did not believe to be true; is that correct? A Now, I
24 refuse to answer that question, because it has nothing to
25 do with the case.

26 Q You have already answered that question. That is preli-

1 minary now to another question. You said you didn't believe
2 those statements to be true. Now, why didn't you believe
3 them to be true? What was there about the statement that
4 made you think it was untrue? A Well, I can't remember any
5 particular thing.

6 Q Well, what was it about? Did you tell him that you
7 did not think that thing was true? A I told him a lot of
8 things I didn't think was true--yes.

9 Q What did he say then about those things? A I don't
10 remember what he did say now.

11 Q What was it you told him you did not think was true?

12 A What was it what?

13 Q What was it you had told him you did not believe was
14 true? A I don't know as anything particular.

15 Q Now, I will tell you some. Didn't you tell him that
16 it was not true that he, McManigal, had stored some dynamite
17 at Tiffin, Ohio, in his father's man? A Did he
18 tell me that?

19 Q He told you he had stored some dynamite that was
20 found in his father's barn at Tiffin, Ohio, and didn't
21 you tell him you did not believe that? A I don't
22 remember him telling me there was any dynamite there,
23 that he stored any there.

24 Q Well, didn't he talk about the dynamite that was found
25 in his father's barn at Tiffin, Ohio? A I don't remember
26 that I did.

1 Q Didn't he make some statements about the dynamite being
2 found in his father's barn at Tiffin, Ohio? A I don't
3 know as he did.

4 Q Now, to refresh your recollection, didn't you say,
5 "Why, your own father will be a witness against you. He
6 will come out here and say that dynamite found in his barn
7 at Tiffin, Ohio, was dynamite that he used for blasting in
8 his quarry;" and then didn't McManigal say to you that if
9 he said that he would be telling a lie, for he didn't know
10 that the dynamite was there. Didn't that conversation occur?

11 A Between me and McManigal? Q

12 Q Yes. A Well, I don't remember him ever saying any-
13 thing like that to me. That is news to me.

14 Q Didn't you tell Mr. McManigal that if he went on and
15 told these things which you did not believe to be true, that
16 they would absolutely discredit him in court; that his
17 own father would be a witness against him? A I don't
18 remember him telling me anything like that.

19 Q Did you ever tell McManigal that his own father would be
20 a witness against him? A Not as I know of.

21 Q Did you tell him his father was to come out here?

22 A That is all talk I don't know anything about.

23 Q You didn't say that at all? A Not as I remember of.
24 That is something new to me. I don't know ^{anything} /about it.

25 Q You didn't mention his father's name to him? A Why,
26 not as I know of.

1 Q Now, you don't know whether that Tiffin story was--

2 A You are getting at something I don't know anything about.

3 Q You don't remember whether that Tiffin story was one of
4 the things he told you that you didn't believe? A I don't
5 think that concerns this case at all, of me having him
6 change his testimony. That is all I am here for.

7 Q You tried to get him to change those things that
8 you did not believe to be true? A Why, no, I didn't.

9 Q You told him that other people would come out here and
10 dispute those things and prove they were untrue, didn't you?

11 A You are getting at something I don't know anything
12 about.

13 Q Well, didn't McManigal tell you there would be witnesses
14 come here from the east to corroborate everything he said?

15 A Not as I remember of. You have gone over that three or
16 four times.

17 Q Didn't he tell you one time there was no use if he
18 went back on his story, that there were plenty of other
19 witnesses in the east who could come on and testify? A I
20 don't remember anything like that.

21 Q Do you remember that you said to him, "Never mind; we
22 have got all that fixed, and they will never come here--
23 these other witnesses." Did you say that? A I don't
24 remember anything about that.

25 Q You never said that? You would remember it if you said
26 it, wouldn't you? A You see, that is all Latin to me.

1 I don't know what you are trying to get at.

2 Q I thought I was talking English, but maybe I am not.

3 A I don't know anything about those cases.

4 Q Never said those words at all, or any words like that?

5 A Not as I remember.

6 Q You would remember it if you had said that, wouldn't

7 you? A I should think so, yes.

8 Q Then your best recollection is that it did not occur

9 at all? A I don't remember of having a conversation like
10 that at all.

11 Q Well, tell us one thing that was told to you by Mc-
12 Manigal that you did not believe was true. A Now, I refuse
13 to answer that question, because I don't think it concerns
14 the case about me having him change his testimony.

15 Q You don't want your nephew to tell anything that is not
16 true, did you? A That is up to him. That is nothing to
17 me.

18 Q But you wouldn't want your nephew to tell something that
19 was not true, would you? A I don't think that concerns
20 the case.

21 Q Didn't you advise him not to tell anything that was not
22 true? A Why, I told him if he thought he was doing
23 right, he should go ahead.

24 Q Well, you didn't think it was right for him to go ahead
25 and tell something that was not true, did you? You will
26 have to answer the question; I can't answer it for you-

1 A Did I tell him what?

2 (Last question read by the reporter.)

3 A I wouldn't think anybody ought to do that.

4 Q Well, you thought it would be better for your nephew to
5 tell the truth right along, didn't you? A Why, if he
6 see fit to do it, why, sure, he ought to tell the truth.

7 Q You thought if he told the truth as you saw it, it would
8 be favorable to the defense, didn't you? A I refuse to
9 answer that question, because I don't think it concerns the
10 case.

11 Q Well, didn't you tell him that--that if he told the
12 truth it would be a help to the McNamaras? A Would be a help
13 to the McNamaras, if he told the truth?

14 Q Yes; that it would help the McNamaras, if he told the
15 truth. A I don't remember any conversation of that kind.

16 Q Didn't you tell him it would be better for him to help
17 the McNamaras; that they had plents of money, and that
18 they were going to get plenty of money, and didn't you
19 then ask him what he was going to get from the other side,
20 if the National Erectors would do anything for him?

21 A I refuse to answer the question, because I don't know
22 anything about it.

23 Q Well, Mr. Behm, what was there that McManigal told you,
24 that you did not believe to be true? If you don't want to
25 tell us what it was, tell us why it was you did not believe
26 it to be true. A How is that?

1 Q Why was it you believed part of his story, and did
2 not believe the rest of it? A I don't understand that.

3 Q Why was it that you believed a part of what McManigal
4 told you, but that you did not believe the other part?

5 A What other part was that?

6 Q You said there was part of it that you did not believe.

7 A There was lots of things told that I don't believe.

8 Q By McManigal? A Well, I don't know particularly what
9 it was.

10 Q It could not have been of much importance, if it did not
11 leave any impression on your mind? A I didn't pay much
12 attention to it.

13 Q Didn't pay any attention to it? A Well, some, yes.

14 Q Paid enough to form an opinion about it, that it
15 was not true, didn't you? A I refuse to answer that
16 question, because I don't think it concerns the case of
17 him changing his testimony.

18 Q By Mr. Wier-- Mr. Behm, you don't seem to want to answer
19 these questions. You must have had some purpose, some
20 object, when you went there to talk to him about
21 this. If you will tell in your own way what you talked
22 to him about, we would like to know it. A In fact, he
23 done all the talking.

24 Q Well, but Mr. Behm, you testified that he refused to talk
25 about this case; so that is proof conclusive that you must
26 have brought the subject up and started to talk about it.

1 A He always said that, and then he would go into the
2 case, and then say, "We went talk about the case," and I
3 never asked him about it.

4 Q Didn't you ask him any questions about the case? A I
5 only asked him how he felt about it.

6 Q By Mr. Ford-- The first time you went there, McManigal
7 told you what he had done with reference to this case, and
8 you listened to him, didn't you; that is correct, isn't it?

9 A I forget a whole lot of what he did tell me.

10 Q It is a fact that he did tell you his whole story, the
11 first time you went there? A I refuse to talk about
12 it, on account that don't have nothing to do with changing
13 his testimony.

14 Q Well, it is just preliminary.

15 Mr. Wier-- It seems to me you can answer that question
16 yes or no. If he told you the whole story the first
17 time, why can't you say yes, or say no if he didn't tell
18 you.

19 Mr. Webster --It is really up to you, because you know if
20 you don't answer you can be punished for contempt. It is
21 up to you to answer it.

22 Mr. Ford-- You went up and listened to all he said the
23 first time? A Yes, sir.

24 Q Then the second time you went up, and you told him
25 that you had listened to all his bunk, or lingo, and that
26 now it was your turn to talk to him, didn't you? A I don't
remember saying anything like that.

1 Q Never said anything like that? A I don't remember
2 saying anything like that.

3 Q You would remember it if you had said it? A Yes.

4 Q Then you do say that you did not tell him that you had
5 listened to him the first time, you had listened to all
6 his lingo, and that it was up to him to listen to you now?

7 A That ain't got nothing to do--

8 Q Well, it does have a good deal to do with it. Did you
9 use such an expression as that? A Not as I remember.

10 Q Didn't you tell him that he was sticking a knife into
11 labor, into organized labor? A Not as I remember of.

12 Q Didn't use any such expression like that at all? A No,
13 sir.

14 Q You are positive that on no occasion did you say any-
15 thing like that in substance or effect? A Never remember
16 saying anything like that at all.

17 Q You would remember it, if you said it? A Yes.

18 Q You did think he was sticking a knife into organized
19 labor? A No.

20 Q You thought that, didn't you? A I don't remember say-
21 ing like that.

22 Q But you thought he was sticking a knife into organiz-
23 ed labor, didn't you?

24 A You are getting at me in something I don't understand.

25 Q Didn't you tell him he had been bought to testify to
26 what he had been telling you? A That has nothing to do

1 with the case.

2 Q Didn't you tell him he had been bought to testify to
3 what he told you? Didn't you accuse him of having been
4 bought? A Accuse him?

5 Q Yes-- accusing McManigal of having been bought, and that
6 his story was untrue; that he had been bought to tell
7 an untrue story. Didn't you say that to him? A I
8 refuse to answer that question, Because I don't think it
9 has anything to do with the case of him changing his deci-
10 sion.

11 Q Didn't you tell him that the National Erectors Association
12 had paid him to tell this story? A National Record--
13 who is that?

14 Q Didn't you tell him that Burns had bought him? Never
15 mind who they are? A That Burns had bought him?

16 Q Yes-- to tell this story. A I refuse to answer that
17 question, because it has nothing to do with the case of
18 changing his decision.

19 Q Then you did tell him that Burns had bought him?

20 A Did I say I did?

21 Q I judge that you did. A Did I say I did?

22 Q Well, did you? Did you tell him that the National
23 Erectors had paid him anything? A Who is the National
24 Erectors?

25 Q I am asking you. I don't know who they are.

26 A I don't know who they are, either.

1 Q Did you tell him that? Did you tell him the National
2 Erectors Association or the National Erectors, had
3 paid him to tell this story? A I don't know what the
4 National Records is.

5 Q Then you can answer that question. Then ^{you}/did not tell
6 him that -- is that correct? You did not tell him the
7 National Erectors had paid him to tell this story?

8 A Now, I refuse to answer that, because I don't under-
9 stand it. I don't think it has anything to do with his
10 changing his decision.

11 Q Did you tell him the National Erectors had bought him?

12 A Bought him? How?

13 Q I am asking you if you used that expression. I will
14 ask you what you meant. What did you mean by the express-
15 ion? What did you mean when you told him that he had been
16 bought? A I don't know how to get at that.

17 Q I will ask you; didn't McManigal say to you that he
18 had not been bought, and that no man had promised him any-
19 thing? Didn't he say that to you? A I refuse to answer
20 that question, because it has nothing to do with the
21 case of him changing his decision.

22 Q Supposing you had said that, Mr. Behm, don't you think
23 it would be a threat to McManigal? A A Threat to him?

24 Q Yes. A If I said it?

25 Q Yes. Don't you think that if I should tell you now
26 that you had been bought to come in here and refuse to

1 give us testimony, that that would be a threat? Wouldn't
2 you so consider it? A I refuse to answer that question.
3 I don't think it has anything to do with the question.

4 Q It is an argumentative question between you and me
5 now. If I should tell you you had been bought to testify as
6 you have been doing on the stand, you would consider that a
7 threat, wouldn't you? A If I should say so?

8 Q If I should say that to you, wouldn't you consider that
9 a threat and an insult? A I am just trying to show you that
10 such a question would be material. A I can't seem to
11 get in my head what you mean.

12 Q If you had said to McManigal "You have been bought to
13 tell this story," don't you think that would be a threat
14 and an insult to McManigal? Don't you think it would be
15 equivalent to saying that "You are lying, and I want you to
16 tell the truth." I am trying to show you it is relevant
17 and material to this inquiry, is all. Don't you think the
18 question as to whether or not you had told McManigal that
19 he had been bought is material to this case? A Now, I
20 refuse to answer this question, because I don't think it
21 has got anything to do with his changing his decision
22 in this case.

23 Q Didn't McManigal tell you he had not been bought, and
24 that no man had promised him anything? A I refuse to
25 answer the question, because I don't think it has anything
26 to concern the case of him changing his decision.

1 Q Why did McManigal tell you he had not been bought, that
2 no man had promised him anything? How did he come to
3 make such a statement to you? A I refuse to answer the
4 question, because I don't think it concerns the case of
5 him changing his testimony.

6 Q What did you say to him after he said that? Mr. Behm,
7 didn't you ask Mr. McManigal to listen to Mr. Darrow? A Not
8 as I remember of.

9 Q Didn't you tell Mr. McManigal that you were more interest-
10 ed in his, Ortie, than you were in the McNamaras?

11 A Well, I didn't know anything about he had anything
12 to do with the McNamaras.

13 Q Didn't you say then, "If you will only listen, you
14 have got lots of friends on our side; if you will
15 just listen to Darrow, we don't give a damn for the McNama-
16 ras, we want to save you?" A Not as I know of.

17 Q Didn't you tell McManigal that if he would stand
18 pat that you could clear both the McNamaras and himself?

19 A No, sir.

20 Q Nothing in substance or effect like that? A No, sir.

21 Q Why did you go up four different times to see McManigal?

22 A Because he asked me to come back.

23 Q You were going back to listen to something you didn't
24 believe to be true? A He asked me to come to see him,
25 and I went to see him.

26 Q Why hadn't you gone back to see him any more? A I have

1 been with his wife a good deal of the time, and the
2 children.

3 Q You have not been with her the last couple of weeks, have
4 you? A No, sir; she has been at the hospital. I have
5 been there a good deal.

6 Q You have not been to see him during the last couple of
7 weeks, have you? A Why, no.

8 Q You have lost interest in him, have you? A No, I
9 have not lost any interest in him yet--no.

10 Q Well, you are not as friendly towards him as you were
11 a couple of weeks ago? A I don't see why I shouldn't be.
12 Mr. Wier-- You will be excused now, Mr. Behm. "

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14 THE COURT: Gentlemen of the jury, you will bear in mind
15 the former admonition, and we will take a recess for five
16 minutes.

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1 (After recess.)

2 MR. FORD. Will you let me have Exhibit 21, Mr. Smith.

3 Now, I understand that the stipulation is--

4 MR. APPEL. Just a moment, please. You have got through
5 reading this matter?

6 MR. FORD. Not all of it. There is some testimony that
7 was given on his first time--all the testimony of August
8 3rd has been read, yes.

9 MR. APPEL. Now, if your Honor please, we move to strike
10 out the whole of this transcript just read upon the ground
11 that it is incompetent, irrelevant and immaterial for any
12 purpose whatsoever in this case. Upon the further ground
13 that it is collateral to any issues herein; upon the
14 further ground it is hearsay, that it is not the best
15 evidence, it is not binding upon the defendant. It is the
16 acts and declarations of a third party not made in his
17 presence, and that it contains matters and things and
18 declarations of the party alleged to have given this tes-
19 timony, not brought to the notice of the defendant either
20 before or after the taking of this testimony.

21 THE COURT. The objection is overruled.

22 MR. APPEL. We take an exception.

23 MR. FREDERICKS. It was a motion?

24 THE COURT. The motion to strike is denied.

25 MR. APPEL. We take an exception. Now, if your Honor
26 please, we move the court,--we move to strike out the fol-

1 ^{matters}
2 lowing_^ and things read from the transcript, on page 71,
3 commencing at the bottom of page 70, the following words
4 of the witness in answer to the following question, com-
5 mencing at the bottom of page 70 and line 20: "Q--I will
6 put it at the present time. Do you believe now that if
7 he made any statement it was untrue? A--I believe that
8 it was not so, that he didn't do it."

9 MR. FORD. What line is that?

10 MR. APPEL. Line 2 . We move to strike that out upon
11 the grounds stated in our last motion/^{made}and also upon the
12 further ground that that is not evidence of any fact of
13 any kind, not binding upon the defendant in any way, shape
14 or manner .

15 THE COURT. Motion to strike is denied.

16 MR. APPEL. We take an exception. We move to strike out
17 the following language of the witness found on line 9,
18 on this page in answer to that question: "Q--You haven't
19 any opinion whether it is true or not? A--No, I am not
20 certain." The following also to the following question:
21 "Q--You haven't any reason to doubt it is true? A--No."
22 The following also--the following is not an answer at all.
23 We move to strike the answers to the questions just read
24 upon the ground that they are incompetent, irrelevant and
25 immaterial, and not a statement of any fact, not binding
26 upon the defendant, not part of his deposition, not part
 of his testimony .

1 THE COURT. Motion to strike out is denied.

2 MR. APPEL. We take an exception. We move to strike out
p 3 the following, on page 79, line 9, the following, in
4 answer to the following question: "Q--Well, he was right
5 about what? A--On his case." The last three words just
6 read by me we move to strike out on the same grounds stated.

7 THE COURT. Motion to strike out is denied.

8 MR. APPEL. We take an exception. We move to strike out
9 the following matters and things occurring on page 95, com-
10 mencing with line 20: "Mr. Behm, you do not seem to want
11 to answer these questions- " this is by Mr. Wier, "you
12 must have had some purpose, some object when you went
13 there to talk to him about this." The balance is proper,
14 "If you will tell it in your own way about what you talked
15 to him about we would like to know it." And that state-
16 ment we would move to strike out on the ground it is not
17 part of the testimony of the witness.

18 MR. FORD. Page 95?

19 MR. APPEL. Page 95, yes, sir. It is no part of the deposi-
20 tion, it is hearsay, incompetent, irrelevant and immaterial
21 for any purpose whatsoever, tending to introduce the acts
22 and declarations and opinions of the jurors by way of
23 reading the deposition here; it has been read, subject, of
24 course, to our objection. We move to strike it out.

25 THE COURT. The motion is denied.

26 MR. APPEL. Take an exception. We move also to strike out
the statement by Mr. Wier on the same page, 95.

1 MR FORD: This is the record, and the pages seem to be dif-
2 ferent, and you are probably getting the record a little
3 wrong, but we don't care.

4 MR APPEL: I have the record here.

5 THE COURT: The question is whether this is the record. Are
6 you reading from the exhibit?

7 MR APPEL: They furnished us with what they say is a cor-
8 rect copy.

9 MR FORD: It is paged differently.

10 MR APPEL: Well, it is paged differently -- I am reading
11 what I want stricken out in my motions.

12 THE COURT: Yes, that is true.

13 MR APPEL: We move to strike out the following statement
14 of Mr Weir: "Q -- Well, Mr Behm, you testified he refused
15 to talk about this case, so that is proof conclusive you
16 must have brought the subject up and started to talk about
17 it." We move to strike that out as not being any part
18 of the testimony of the deposition of the witness; it is in-
19 competent, irrelevant and immaterial for any purpose,
20 that it is in effect the unsworn statement, opinion and
21 conclusion of a third party not under examination and not
22 binding upon the defendant in any way, shape or manner.

23 THE COURT: I think that ought to go out:

24 MR FREDERICKS: No objection.

25 MR FORD: It is an argumentative question, and we do not
26 care anything about it, It may go out.

1 THE COURT: Strike it out.

2 MR APPEL: We move to strike out the following -- there is
3 no answer to this matter.

4 THE COURT: Mr Reporter read, not the last motion Mr Appel
5 made, but --

6 MR FORD: I will read it to you, your Honor: "Mr Behm,
7 you don't seem to want to answer these questions. You must
8 have had some purpose, some object, when you went there to
9 talk about it. Tell it in your own way -- " That is the
10 one, I think.

11 MR FREDERICKS: That was stricken out.

12 MR FORD: The one that was stricken out was as follows:
13 "Well, Mr Behm, you testified that he refused to talk
14 about these things so that is proof conclusive that you
15 must have brought up the subject and talked about--"
16 Your Honor struck that out.

17 THE COURT: I think for the same reason the other one
18 ought to be stricken out. I will change the order.

19 MR FORD: The one preceding it?

20 MR APPEL: There are other things here, but there are no
21 direct answers to them.

22 THE COURT: All right.

23 MR FORD: Now, referring to People's exhibit 21, that
24 portion of the exhibit which contains or purports to con-
25 tain the testimony of George Behm, called as a witness be-
26 fore the grand jury on the 31st day of July, I understand

1 that counsel is willing to stipulate that that may be
2 considered as the questions and answers insofar as it
3 relates to the testimony of George Behm, may be consider-
4 ed ⁱⁿ evidence, the same as though Mr Williams, the reporter,
5 who took it --

6 MR APPEL: No, no.

7 MR FORD: -- was on the stand and testified to it.

8 MR APPEL: No, no. Now, Mr Ford, there is no use --

9 MR FREDERICKS: Then let counsel make the stipulation.

10 MR APPEL: No, no, Mr Ford. We are willing to make the
11 same stipulation before in reference to the foundation to
12 be laid for this. Now, you ought not to ask any more than
13 that. You wouldn't think we would fall into such a trap
14 as that, do you? Now, we are willing to stipulate, your
15 Honor, that if Mr Williams --

16 MR FORD: It may be considered given under the same cir-
17 cumstances as exhibit 24.

18 MR APPEL: Just a moment. Let us do some talking.

19 MR FORD: Let us make it easy, the same as 24.

20 MR APPEL: I submit, your Honor, if they want any stipu-
21 lation we will make them, and they will accept them, too,
22 I am sure, but we want to make our own stipulations.
23 We are willing to stipulate, if your Honor please, that the
24 questions and answers contained in the document which coun-
25 sel holds in his hand, and which appear in the affidavit of
26 Mr Weir heretofore introduced here as People's exhibit --

1 We will stipulate this, your Honor, leaving the question
2 of the affidavit of Mr Weir on one side, that the ques-
3 tions and answers which appear in the transcript of the
4 evidence purporting to have been given by George Behm,
5 when first called before the grand jury, was properly taken
6 down by the shorthand reporter -- correctly taken down
7 and correctly transcribed into longhand, and that this is
8 a correct transcript of that testimony, notwaiving all
9 other objections which we may make to the introduction
10 of the same. Do not stipulate in reference to exhibit 21.

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1 MR. FORD. I don't want to quarrel over any technicality,
2 your Honor, but I understood the entire stipulation to be
3 for the convenience of both sides to prevent the necessity
4 of calling Mr. Williams; that it might be given with the
5 same force and effect as though Mr. Williams testified
6 that was what transpired before the grand jury as to that
7 testimony.

8 MR. APPEL. We have given you a stipulation that is per-
9 fectly fair to avoid laying the foundation, that is all that
10 covered, all that we will be required to lay the founda-
11 tion, should this evidence be material in other respects.

12 MR. FREDERICKS. Let the reporter read Mr. Appel's stipula-
13 tion.

14 THE COURT. Read it.

15 MR. FORD. And you waive your objection in this case to its
16 being secondary evidence?

17 MR. APPEL. We waive nothing of the kind. We gave you a
18 stipulation, what is the use of waiving them; we have
19 been overruled on that.

20 MR. FREDERICKS. Let's see what the stipulation is.

21 (Stipulation of Mr. Appel read by the reporter.)

22 MR. FREDERICKS. That is 21 we are talking about.

23 MR. ROGERS. I don't stipulate with reference to 21 at all.

24 MR. FREDERICKS. This is what you are stipulating about.

25 MR. APPEL. No, stipulate about this, Mr. Fredericks, here,
26 appearing in the same thing, the questions and answers.

1 MR. FREDERICKS. Well, this, of course, is counsel's own
2 private document.

3 MR. APPEL. Written by Mr. Williams.

4 MR. FREDERICKS. There has been no reference made to any
5 of those portions of the document which refer to the ques-
6 tions and answers on the third day of January, there is no
7 reference in the record anywhere to that as being part of
8 the exhibit, so that only ^{reference} in this case at all in
9 regard to this matter is the reference to where these same
10 questions and answers appear in exhibit 21. Now, that is
11 the document which Mr. Ford had in his hand which counsel
12 was talking about when he made the stipulation.

13 MR. ROGERS. If your Honor please, we do not wish our
14 stipulation to refer to Exhibit 21. We believe the admission
15 of the exhibit 21 is unauthorized by law, however, we do not
16 care to force upon them the necessity of calling Mr. Williams
17 with his shorthand notes. They have been transcribed and
18 we do not care to have them call Mr. Williams to testify
19 that he took those shorthand notes, and therefore correctly
20 transcribed them, but we do not stipulate with reference
21 to exhibit 21 because we believe that Exhibit 21 has no
22 business in the record, and stipulating in reference to it
23 we might, perchance, waive some objection we might have to it.

24 MR. FREDERICKS. It is stipulated that that portion of it
25 that purports to be the testimony of--

26 MR. ROGERS. No, I do not stipulate with reference to any

1 portion of it. We will stipulate, if you have a transcript
2 of the shorthand notes of shorthand reporter Williams
3 before the grand jury of January 31st, as I understand it--
4 we do not require you to produce Mr. Williams and his short-
5 hand notes.

6 MR. FREDERICKS. That is contained in Exhibit 21.

7 MR. ROGERS. That is something we will not consider.

8 MR. FORD. Let it be offered as a separate exhibit for the
9 purpose--if it be offered as a separate exhibit, to satisfy
10 your mind on that.

11 MR. ROGERS. Have not I made myself clear, we do not want
12 to stipulate to Exhibit 21 at all?

13 THE COURT I think I see your point.

14 MR. FREDERICKS. Yes.

15 MR. ROGERS. We have here what purports to be a transcript
16 of the proceedings of January 31.

17 MR. FORD. If you can remove it we will offer that, if you
18 like.

19 MR. ROGERS. And we do not care to force upon you the
20 necessity of bringing in the shorthand notes of Mr. Williams
21 and we do not wish to make any stipulation with reference
22 to Exhibit 21 at all.

23 MR. FREDERICKS. I see. Then you will stipulate that Mr.
24 Williams was present and took down correctly the testimony
25 and proceedings which occurred on July 31st when George
26 Behm was before the grand jury and that he correctly trans-

1 cribed his notes and if he were on the stand he would tes-
2 tify that the following were his notes?

3 MR. ROGERS. yes, sir .

4 MR. APPEL Yes, sir .

5 MR. FREDERICKS. And then we will read this.

6 MR. ROGERS. Yes, you read them, subject, of course, to
7 the objections which we make.

8 MR. FREDERICKS. I understand.

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1 MR APPEL: We do not stipulate you may read them at all.

2 MR FREDERICKS: I understand.

3 MR APPEL:" We simply stipulate those facts to enable you
4 to offer it.

5 MR FREDERICKS: Very well.

6 MR FORD: It is stipulated that it may be offered?

7 MR APPEL: No, we do not stipulate they may be offered at
8 all. We stipulate as to certain facts.

9 MR FREDERICKS: Stipulated they are correct?

10 MR APPEL: Yes, that is what it means, but we do not
11 stipulate they may be offered.

12 MR FORD: I see the point. It is stipulated with the same
13 force and effect --

14 MR APPEL: I do not want to say a word more, Mr Fredericks,
15 and we and the court understand it, and we will not say a
16 word at all, quit talking for once. I mean, for the pre-
17 sent, your Honor, only.

18 MR FREDERICKS: And will you stipulate with (conferring
19 with Mr Rogers) --

20 MR ROGERS: It is further stipulated, saving all rights
21 and exceptions, that when Mr Fredericks said that the
22 transcription is as follows, that the words and figures
23 which he means, by "as follows" are the same words and
24 figures as have been included in exhibit 21, which has
25 been admitted over our objection, we reserving all ob-
26 jections thereto.

1 MR FORD: Now, if the court please, that still leaves us
2 with this evidence, of course, secondary evidence, it does
3 not make it competent proof that Mr Behm did actually
4 so testify before the grand jury on that date, unless coun-
5 sel will stipulate with reference to this testimony as he
6 did yesterday on page 2510, where Mr Rogers says, "We
7 stipulate Mr Williams will so testify".

8 MR ROGERS: That Mr Williams will so testify that Mr Behm
9 was there and made the statements and responded to the
10 questions as follows, as we have now stipulated.

11 MR FORD: Yes.

12 MR ROGERS: yes, that is all right.

13 MR FORD: It is so stipulated, and that is what we want.

14 MR APPEL: That takes it out of being secondary, does it?

15 MR FREDERICKS: Oh, well, we will thresh that out at some
16 other time.

17 THE COURT: What is the next?
18

19 CHARLES F. HUNT, a witness called on behalf
20 of the People being first duly sworn, testified as fol-
21 lows:

22 DIRECT EXAMINATION

23 MR FORD: What is your name? A Charles F. Hunt.

24 Q How old are you, Mr Hunt? A 52.

25 Q Where do you reside? A San Francisco.

26 Q San Francisco, Cal.? A yes sir.

1 Q What street and number, please? A 3516 Clay.

2 Q And your occupation? A Banking.

3 Q With what banking institution are you connected?

4 A Anglo & London-Paris National.

5 Q Where is their place of business? A Corner of
6 Sansome and Sutter streets.

7 Q San Francisco? A San Francisco.

8 Q That is a banking corporation organized under the laws
9 of the United States? A yes sir.

10 Q What official position, if any, do you occupy with
11 that institution? A Vice-President.

12 Q How long have you been vice-president of that institu-
13 tion? A Since January, 1910.

14 Q You occupied that position on September 2nd, 1911?

15 A yes sir.

16 Q Do you know O. A. Tveitmoe? A I do.

17 Q Has he an account with your bank?

18 MR APPEL: Wait a moment -- well, withdraw it.

19 A Yes sir.

20 Q Under what name?

21 MR ROGERS: That is not the best evidence, and it is ob-
22 jected to on the ground it is incompetent, irrelevant
23 and immaterial -- hearsay.

24 THE COURT: Overruled.

25 MR ROGERS: Exception.

26 A Under what name?

1 MR FORD: Yes. A I don,t know under what name it is now.

2 Q At that time do you know what name it was under, at
3 that time, September 2nd, 1911?

4 MR APPEL: That is immaterial, incompetent and irrelevant
5 for any purpose; not the best evidence.

6 MR FORD: I want to lay the foundation. I withdraw the
7 question.

8 Q Mr Hunt, I attract your attention to check No.30,
9 in People's exhibit No.10, which has heretofore been
10 shown counsel for the defense.

11 MR ROGERS: Pardon me; will you call my attention to it
12 again, that I may have it clear? (Examines document.)

13 MR FORD: Which I will ask you if you have ever seen that
14 check before (handing witness document)? A Yes.

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1 MR. ROGERS. What is the answer, please?

2 A Yes, sir .

3 MR. FORD. Q To have the matter clear, I-- A Can you
4 see the date of payment on that check?

5 MR. ROGERS. What is the answer? We have to hear all
6 that you say, Mr. Hunt.

7 A I want to see the date of payment on this check before
8 I identify it.

9 MR. FORD. It has come loose now from the record .

10 MR. ROGERS. All right.

11 MR. FORD. September 7th, that is the Washington Bank pay-
12 ment mark. Q Now, in answer to the question as to whe-
13 ther you had seen that before or not, what is your answer?

14 A Yes.

15 Q When and where did you see it and under what circumstan-
16 ces? A Well, the date I cannot--

17 MR. APPEL. Wait a moment--we object to that on the
18 ground it is incompetent, irrelevant and immaterial, hear-
19 say, no foundation laid.

20 MR. FORD. Withdraw the question for a moment. Will you
21 give me that remittance letter, I think it is exhibit about
22 9, 10 or 11.

23 THE COURT. I see the check has come loose from the stub
24 and I will ask the clerk to fasten it in.

25 MR. ROGERS. I think it will be handier, if your Honor
26 please, to leave it loose.

1 THE COURT. Perhaps it would.

2 MR. ROGERS. And whatever counsel is going to interrogate
3 Mr. Hunt about it, it might be well left loose.

4 MR. FORD. I suppose it might be marked--the original is
5 exhibit 10,--mark it Exhibit 10A.

6 MR. ROGERS. Very well.

7 MR. FORD. 10A refers to check 30 out of original exhibit
8 No. 10.

9 MR. APPEL. Which originally was fastened apparently to the
10 stub thereof.

11 MR. FORD. Yes.

12 MR. APPEL. And being the check contained in the same book of
13 the same stubs which the jury examined before.

14 MR. FORD. We do not stipulate that the jury examined it.

15 MR. APPEL. That is only the fact. It was exhibited to them,
16 being the same check they examined, I mean.

17 MR. FORD. It is check No. 30 out of Exhibit No. 10. That
18 is very definite and clear, I don't think there will be any
19 misunderstanding.

20 MR. APPEL. I think we had better put it back in the condi-
21 tion it was, we had an understanding here, your Honor, we
22 might use whatever was in there and the condition in which
23 it was for the purpose of making a record here, and tempo-
24 rarily it can be used in that way, of course.

25 MR. FREDERICKS. Let it be stipulated it shall be pinned
26 back in there when we are through.

1 MR. APPEL. Whenever the time comes.

2 MR. FREDERICKS. In the meantime it will be referred to
3 as Exhibit 10A.

4 THE COURT. In the meantime it will be referred to as
5 Exhibit 10A and handled as such and when disposed of it
6 will be pinned back in its place.

7 MR. ROGERS. Yes.

8 MR. FORD. Q I attract your attention to People's Exhibit
9 No. 11, which heretofore has been shown to counsel and
10 introduced in evidence in this case, and which purports to
11 be a remittance letter drawn by the Anglo London-Paris
12 National Bank--

13 MR APPEL. Now, now--

14 MR. FORD. It has been introduced in evidence and I do that
15 for the sake of calling the attention of the jury--

16 MR. APPEL. We object to your testifying.

17 MR. FORD. I am not testifying.

18 MR. APPEL. He can look at it and if he can read he can
19 tell what it is, and if it is any memoranda--

20 MR. FORD. To save argument I will withdraw the question.

21 Q Attracting your attention to Exhibit No. 11, and I will
22 let the jury look at it afterwards-- did you ever see that
23 before? A No, sir.

24 Q Do you know what it is?

25 MR. APPEL. We object to that, now, he cannot refresh his
26 memory from a paper in this case that is not made by him or

1 under his direction and we object to his looking at it now.
2 MR. FORD. Q When you receive checks or drafts drawn on
3 other banks for deposit in your bank, what do you do with
4 them?

5 MR. APPEL. We object to any custom of the bank; in a cri-
6 minal case customs of that kind are not admissible in
7 evidence, the evidence must go directly to the fact in
8 dispute, you cannot bind the defendant by reason of custom
9 of a bank.

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1 THE COURT: Read that question again. (Last question read
2 by the reporter.) Objection overruled.

3 MR APPEL: We take an exception.

4 MR FORD: Referring again to check No.30-- When a
5 check is received from a bank -- some other bank in another
6 city for instance, Washington, District of Columbia, and
7 deposited by some depositor in your bank, what is your
8 custom in regard to the check?

9 MR APPEL: Wait a moment. We object upon the ground it
10 is incompetent and immaterial, and no foundation laid;
11 it is hearsay; it is calling for a custom, not for a fact
12 in dispute in this case, a custom is not binding upon the
13 defendant or upon anyone else in a criminal action.

14 THE COURT: Objection overruled.

15 MR APPEL: We take an exception. A We forward them to
16 the bank on which they are drawn, or to one of our cor-
17 respondents for collection or for credit, as the case may
18 be.

19 MR FORD: Do you have any form of remittance letter which
20 you use? A Yes.

21 MR APPEL: The same objection.

22 THE COURT: Objection overruled.

23 MR FORD: Did you on September 2nd, 1911, have that same
24 custom of forwarding remittance letters with the checks
25 to your correspondents? A Yes.

26 Q I will ask you to look at exhibit 11 and state whether

1 or not that was the form in use at that time?

2 MR APPEL: Wait a moment. We object to that as incompetent
3 and immaterial, no foundation laid for the witness to
4 identify the document in question, not having been made
5 under his direction, at his instance and request, he can-
6 not testify in reference to it.

7 MR FORD: Only as to form.

8 THE COURT: Overruled.

9 MR APPEL: We take an exception.

10 A That is the form we use.

11 MR FORD: Now, assuming Mr Hunt that exhibit 11, being
12 the remittance letter, had been enclosed with this check
13 No.30, out of exhibit 10, and received by the Riggs Na-
14 tional Bank in Washington on September 7th, 1911, the let-
15 ter being dated September 2nd, 1911, from your bank, would
16 that fix -- assuming those facts to be true, would you say
17 that this check was received in your bank on September
18 2nd, 1911?

19 MR APPEL: Wait a moment. We object to the question pro-
20 pounded to the witness, being a hypothetical question,
21 not being the subject of expert testimony, simply calling for
22 guess-work on the part of the witness, calling for his
23 opinion, unheard of, incompetent, irrelevant and imma-
24 terial and hearsay, and unheard of in the criminal prac-
25 tice.

26 MR FORD: I withdraw that question, although it is per-

1 fectly proper. I am assuming something that is in
2 evidence.

3 THE COURT: Well, if it is withdrawn --

4 MR APPEL: Why did you withdraw it?

5 MR FORD: Because I will get at it in a simple way and
6 to satisfy you.

7 MR APPEL: You couldn't satisfy me.

8 MR FORD: I will ask you to look through -- look around
9 these checks beginning August 21st, the check I have in
10 my hand --

11 MR ROGERS: Now, if your Honor please, the counsel is
12 showing the witness a book and a set of stubs and memor-
13 andum --

14 MR FORD: I haven't finished.

15 MR ROGERS: Whether you have finished or not, I am address-
16 ing the court, and I propose now --

17 MR FORD: I withdraw the question.

18 MR ROGERS: He cannot withdraw what he has done.

19 THE COURT: Proceed, Mr Rogers.

20 MR ROGERS: There is only one way sanctioned by law
21 whereby a witness' recollection may be refreshed. He
22 may refresh his recollection from memorandum made by him
23 at the time or made under his direction at the time or so
24 close to the time that the facts were fresh then in his
25 recollection, thereupon the memorandum must be shown to
26 opposing counsel, and so forth. That is the recognized

1 rule, and one by which we all govern ourselves. Now, for
2 counsel to step up to the witness and show him a set of
3 checks and books kept by other persons which Mr Hunt
4 himself, I venture to say, never saw before in his life,
5 knows nothing about, not the checks of his bank, and then
6 ask him to toss the papers back and forth and cast his
7 eye over them and then ask him a question is not fair, and
8 it is misconduct and I take an exception to it. I don't
9 think it ought to be done. Mr Hunt can refresh his
10 recollection by any memorandum made by him or under his
11 direction at the time, then Mr Hunt may refresh his
12 recollection therefrom, if his recollection is not good,
13 and I take an exception to what counsel has done.
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7s 1 MR. FORD. The court please, I have a right to show a
2 witness anything I please as long as I don't put it
3 before the jury. I will state, however, it was my inten-
4 tion to show him certain checks beginning with No. 30,
5 being the check already offered here, and calling his atten-
6 tion to a number of checks throughout the book, and only
7 those checks, which have been testified to by Mr. Flather,
8 as having been received by his bank. That was all that I
9 intended to do, however-

10 MR. ROGERS. You said by his bank?

11 MR. FORD. The Riggs National Bank.

12 MR. ROGERS. May I inquire what Mr. Hunt has to do with the
13 Riggs National Bank?

14 MR. FORD. I intend to ask him that but I will withdraw it
15 and show you an exhibit which I am going to show to the
16 witness. I hand you a document which I have already
17 exhibited to counsel for the defense. Did you ever see
18 it before? A Yes, sir.

19 Q In whose handwriting is it? A That is in my handwriting.

20 Q When did you make it? A On the 2nd of September, 1911.

21 Q At that time--do you know A. Tveitmoe? A I do.

22 Q Did you see Mr. Tveitmoe that day? A I must have seen
23 him at that time.

24 MR. ROGERS. I move to strike out the answer as not respon-
25 sive.

26 A I did.

1 THE COURT. Strike the original answer out and substitute
2 the latter one.

3 MR. FORD. Q Just state what was said and done between
4 you and Mr. Tveitmoe at that time.

5 MR. APPEL. Wait a moment--we object upon the ground it is
6 incompetent, irrelevant and immaterial, no foundation laid,
7 it is hearsay, not binding upon the defendant, it is
8 collateral to any issue in this case, not tending to prove
9 any element of the offense embraced in the indictment herein

10 MR. FORD. We expect to show, your Honor, that the transac-
11 tions are in reference to check No. 30 on the back of
12 which appears the signature of Clarence Darrow, and on the
13 face of it appears the fact that it was a check for \$10,000
14 payable to Clarence Darrow.

15 THE COURT. Objection overruled.

16 MR. APPEL We take an exception.

17 A I don,t think that Mr. Tveitmoe and I had any conversation
18 about it at all.

19 MR. FORD. Just state what were the circumstances of your
20 making that memorandum.

21 MR. APPEL. The same objection as last upon each and all of
22 the grounds stated.

23 THE COURT. Overruled.

24 MR. APPEL. Exception.

25 A This is a check--you want this--

26 MR. FORD. Q What is that document? A This is a deposit

1 tag in the Anglo & London-Paris National Bank to the credit
2 of O. A. Tveitmoe, Treasurer, Defense Fund, State Building
3 Trades Council, September 2, 1911, being drawn on Washington
4 for \$10,000.

5 Q was the deposit made in your bank on that day for that
6 amount?

7 MR. ROGERS. That is leading and suggestive, your Honor
8 please, incompetent, as well as the objection we have just
9 made which we reiterate at this time.

10 THE COURT. It is leading but I think harmless. Objection
11 overruled.

12 MR. ROGERS. Exception.

13 A Yes.

14 MR. FORD. Q And to the credit of whose account? A O. A.
15 Tveitmoe, Treasurer Defense Fund, State Building Trades
16 Council.

17 Q What was the character of that deposit? Was it gold
18 currency or what? A A check on Washington, D.C. for
19 \$10,000.

20 Q Do you know on what bank that was drawn? A Well, noth-
21 ing here shows on what bank it was on. I just identified
22 a check I said I think--

23 Q Who is your Washington correspondent? A The Riggs
24 National Bank.

25 Q Did you forward that check the same day for collection?

26 A I presume it was forwarded the same day.

1 MR. ROGERS. I move to strike out the answer as not respon-
2 sive.

3 THE COURT. Strike it out.

4 MR. FORD. According to the custom of your bank would it
5 be forwarded within a day or two afterwards? A Be for-
6 warded the same day.

7 Q How long is it usually--I withdraw that. Assuming
8 then, that Exhibit No. 11, being the remittance letter
9 containing an item of \$10,000 drawn on you and on a form of
10 the Anglo & London-Paris National Bank, was received on
11 September 7th, 1911, together with this check--

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1 MR ROGERS: Just a moment, if your Honor please. We
2 don't want to appear technical about this; it is just as
3 easy to put this in correctly as it is to do it in this
4 fashion by assuming and showing him documents which he
5 didn't make, and all that sort of thing, and we object
6 to this method of putting it in. Now, I don't want to
7 run a law school here, but he simply can ask Mr Hunt,
8 did you ever see that document before? Yes. What is
9 it? What did you do with it? And Mr Hunt can tell what
10 he did with it. Then Mr Hunt can look at any memorandum
11 in his control, or made under his direction. I know Mr
12 Hunt has control of certain matters in that bank, but
13 I do object to this assuming one thing and then another,
14 and depriving us of our legitimate objections, and not get-
15 ting it before the jury as it should be.

16 MR FORD: I withdraw the question for the time being.

17 MR ROGERS: I don't want to be technical about it; it is
18 very easy to do it. I wish to say now, your Honor please;
19 we will only take a formal objection if he will put it
20 in the easiest way.

21 MR FORD: You did receive the check -- a deposit on the
22 date indicated by that deposit tag and that deposit
23 consisted of a check of \$10,000 drawn on some Washington
24 bank? A Drawn on the Riggs National Bank, according to
25 this.

26 Q Now, with the check in your hand, you may state what

1 the circumstances were of your receiving that check?

2 MR ROGERS: That is objected to as incompetent, irrele-
3 vant and immaterial, and no foundation laid and hearsay.

4 MR FORD: We desire -- With the deposit slip in your hand,
5 you may state the circumstances that occurred on that day
6 about your receiving the check for \$10,000, and its
7 having been deposited to the credit of Mr Tveitmoe in
8 your bank.

9 MR ROGERS: I make the same objection just stated.

10 THE COURT: Overruled.

11 MR ROGERS: Exception. A This check was presented to
12 me on the 2nd of September, and my recollection is that
13 the party presenting it said Mr Tveitmoe would like to get
14 some large bills for it, and I then stepped down to our
15 paying teller to see if he had large bills. He told me
16 that he didn't have them in the cage, but he could get
17 them from the vault. The check was not endorsed by Mr
18 Tveitmoe, and I asked that it be so endorsed. Whether Mr
19 Tveitmoe was there at that time or not, I do not know,
20 but a little later Mr Tveitmoe endorsed the check, and
21 while he was endorsing it, I think I filled out this de-
22 posit tag just as an accommodation.

23 MR APPEL: We move to strike out all the testimony of
24 the witness, what Tom, Dick and Harry said to him and
25 what he said to Tom, Dick and Harry, as hearsay, no
26 connection between those parties and the defendant.

1 THE COURT: You are entitled to a motion there, but I think
2 it is a little vague and indefinite.

3 MR APPEL: On the ground it is incompetent, irrelevant and
4 immaterial.

5 MR ROGERS: Some person -- Tom, Dick and Harry, is a slang
6 phrase for some person.

7 THE COURT: If you can make that a little more definite--

8 MR APPEL: I move to strike out the testimony of the wit-
9 ness what anybody said concerning what kind of bills were
10 needed or what Mr Tveitmoe needed or wanted, the person
11 not having been named by the witness, and no name given by
12 him, on the ground it is hearsay, and it is incompetent,
13 irrelevant and immaterial for any purpose. Whatever con-
14 versations the witness testified to as having had between
15 himself, and any third party, or between himself and Mr
16 Tveitmoe, is incompetent, irrelevant and immaterial, and
17 we move it all be stricken out.

18 THE COURT: Now, read that answer.

19 MR FORD: We will ask one question before your Honor rules.

20 MR ROGERS: No, we will take the ruling before he asks
21 a question.

22 THE COURT: Read the answer.

23 (Last answer read by the reporter.)

24 THE COURT: Motion to strike out is granted.

25 MR APPEL: We ask your Honor to instruct the jury that it
26 is incompetent, irrelevant and immaterial, and they should

1 not pay any attention to it, and that, at the same time,
2 now, we take an exception to the conduct of the District At-
3 torney in introducing this incompetent evidence, he know-
4 ing at the time what it was and knowing that it was in-
5 admissible and was put in for the purpose of prejudicing
6 the rights of this defendant by fraudulent means.

7 MR FREDERICKS: How much of it is stricken out, your Honor?

8 MR APPEL: The conversations.
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9s 1 THE COURT. I think that the objection-- the motion to
2 strike out as last made by Mr. Appel makes it very clear
3 that the portion stricken out is the portion of the answer
4 in which the witness said that someone came to him and
5 informed him that Mr. Tveitmoe wanted large bills and that
6 he did not have those large bills in the cage but did have
7 them in the vault, and he could get them. That is the por-
8 tion or substance of the answer.

9 MR. FREDERICKS. Also what he said to his cashier is
10 stricken out?

11 THE COURT. Yes.

12 MR. FORD. Q Now, what was the name--

13 MR. APPEL. Wait a moment.

14 THE COURT. One other thing: Mr. Appel has very properly
15 asked the Court to direct the jury that the portion of the
16 answer as now indicated by the Court in response to Mr.
17 Appel's motion, has been stricken from the record and is
18 not open to your consideration at all at this time.

19 MR. FORD. Who was the person who first brought the check
20 to you?

21 THE COURT. I think this is a good time to adjourn. It is
22 12 o'clock.

23 MR. ROGERS. Just a moment before your Honor adjourns. I
24 want to ask Mr. Hunt a question. I never have had an oppor-
25 tunity to do so. I intended to go to San Francisco to ask
26 him for a little information, and while he is on the stand--

1 it doesn't relate to the matter about which he has been
2 interrogated, but it does relate to another matter and
3 may I have your Honor's permission to speak to Mr. Hunt
4 in behalf of my client and elicit from him, if I may, some
5 information which I think relates to our case, not in
6 reference to any matter which he is being interrogated at
7 the present time.

8 MR. FORD. Mr. Hunt can talk to him right after court adjourns

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

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