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Oshkosh Woodworkers' Strike (1898)

Michael Hannon (2010)

Sawdust City

By the late nineteenth century, Wisconsin was one of the premier lumber producing states in the country. Oshkosh, Wisconsin, surrounded by forest, became a major lumber manufacturing center. As early as 1866, there were fifty saw mills operating in Oshkosh and that same year their combined output produced "eighty-five million feet of lumber, eight million shingles, and about fourteen million lath."[1]

The sawmill industry grew and by 1870 Oshkosh had 20 sawmills as well as several factories to turn the wood into sash, doors, blinds, furniture and other wood products.[2] The great Chicago fire in 1871 turned out to be a boon for Oshkosh because much of the lumber used to rebuild Chicago came from the sawmills in Oshkosh. The saw mill operations in Oshkosh expanded to such an extent that by the 1870s it became known as "Sawdust City." But while the industry prospered, the workers in the factories toiled for very low wages. The workers' standard of living got much worse during the Panic of 1873, a deep, nationwide economic depression that lasted until 1877. The economic depression was severe enough that many of the sawmill and shingle factories in Oshkosh went bankrupt. After the area recovered economically, large factories devoted to making sashes, doors, blinds and other wood products replaced the smaller sawmills and dominated the industry. Building and operating large factories required much more capital than smaller sawmills; as a result, ownership came to be concentrated in a few powerful men.

Paine Lumber Company

By the 1890s, the manufacturing of sashes, doors, and blinds, also known as millwork, was dominated by seven large factories. The largest and most powerful, Paine Lumber Company, was started in 1855 when Edward L. Paine closed down his sawmill in New York and moved it to Oshkosh.[3] His son George M. Paine took over the company in 1885. Paine Lumber Company under George Paine's leadership became the largest door and sash producer not only in Oshkosh but in the entire country. In a single day, Paine

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[1] *Fur, Logs, and Human Lives: The Great Oshkosh Woodworker Strike of 1898*, 3 GREEN MOUNTAIN Q., 11 (1976) [hereinafter *Fur, Logs and Human Lives*].

[2] VIRGINIA GLENN CRANE, THE OSHKOSH WOODWORKERS' STRIKE OF 1898: A WISCONSIN COMMUNITY IN CRISIS 377 (1998) [hereinafter OSHKOSH WOODWORKERS' STRIKE].

[3] *Fur, Logs, and Human Lives, supra* note 1, at 11.

Lumber was capable of producing half a million board feet of lumber.[4] Such production capacity from Paine and the other large factories made Oshkosh the "world capital of sash and door manufacture; it shipped up to half the United States production."[5]

Given their powerful position, the factory owners were able to set the prices they sold their goods at and decide what wage they would pay their workers. These large and dominate factories actually benefited greatly from the success of the labor movement in Chicago and other areas which also made millwork, because the demands of the Chicago workers for shorter workdays and higher pay drove up the price of the final product. Paine and the other factory owners in Oshkosh could sell their products much cheaper because they paid much lower wages.

In May 1886, in response to the Haymarket violence in Chicago, 15,000 Milwaukee workers left their jobs in protest. A battle between labor and state troops at the North Chicago Rolling Mill in Bay View, Milwaukee resulted in five workers being killed.[6] George Paine, very wary of labor radicals, fired 100 of his employees and to replace them he began to lure cheap laborers from Eastern Europe.[7] This resulted in a cheap foreign labor pool which the factory owners could employ at even lower wages.

Panic of 1893

Conditions for labor got much worse during what has come to be called the Panic of 1893. Lasting until 1897, it was the worst economic crisis to hit the United States up until that time. In response to the economic downturn, the owners of the seven large millwork factories in Oshkosh decided in June 1893 to shut down their factories for two weeks in July. All of the workers were laid off without pay.[8] When the factories were reopened, many of the laid-off workers were not rehired and those that were had their wages cut by 10 percent.[9] The loss of two weeks of wages for those already barely making it as well as the subsequent pay cut prompted a heightened interest in union activities.

The workers, even more marginalized that before, contemplated going on strike and invited Hiram F. Hixson, a populist leader from Milwaukee, and Thomas I. Kidd, General Secretary of the Amalgamated Woodworkers International Union, to give them advice about such a move.[10] Hixson, who was born in Ohio, was president of Ashland College in Ohio from 1883 to1885. He also became the spokesman for the Populist Party. Kidd and Hixson attended a meeting in Oshkosh in August, 1893.

Thomas I. Kidd

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[4] *Id.*
[5] *Id.*
[6] OSHKOSH WOODWORKERS' STRIKE, *supra* note 2, at 28.
[7] *Id.*
[8] *Id.* at 73.
[9] *Id.* at 74.
[10] *Id.*

Thomas Inglis Kidd was born in Edinburgh, Scotland in 1860 and emigrated to the United States in1883. He worked for the Union Pacific Railroad in Nebraska for a time but then took a job in a millwork factory. He stayed with the woodworking trade, gaining experience, but he also moved around to different areas and joined various unions, including working in the woodworking trade in St. Paul and Winona, Minnesota. He got into union organizing and eventually created the Machine Woodworkers' International Union by bringing together independent unions from different cities. This brought Kidd national notice as a labor leader and the American Federation of Labor (AFL), led by Samuel Gompers, chartered Kidd's union.[11] Kidd became a vice president of the AFL as well as a very important figure in the woodworking labor efforts at the national level. Kidd became General Secretary of the Amalgamated Woodworkers International Union on August 5, 1890 and served in that position until January 1, 1905.

The meeting in Oshkosh in August 1893 did not lead to a strike, but Kidd became very interested in the Oshkosh woodworkers' plight when he learned that they were paid the lowest wages and that there were more women and children employed in the mills than in any other such industry in the country. To make matters worse, the Oshkosh woodworkers were woefully unorganized and politically naïve, and since Oshkosh was the woodworking capital of the country, their plight threatened to undermine the entire organization of woodworkers.[12]

Kidd and some other labor leaders were invited back to Oshkosh to participate in the newly-created federal Labor holiday. The woodworkers as well as workers from other professions staged the "most impressive demonstration of union strength" ever seen in Oshkosh, including a procession of about 1,000 union marchers.[13] Kidd was the featured keynote speaker at the celebration.

Kidd conferred with local union leaders during the Labor Day festivities but he cautioned against a strike because the workers were too unorganized and weak to sustain it. But he did investigate conditions and compiled data about wages and working conditions and used this to publish an article in the Amalgamated Woodworkers International Union official journal. The article laid out the situation by showing that in the Oshkosh factories, the woodworkers earned the lowest wages in the country and the factories also employed women and children who were paid much lower wages than the men.[14] This threatened the rest of the industry because the Oshkosh factories were so dominant they could set the price for woodwork for the whole country and thus threaten the wages of other workers who were paid much more than those in Oshkosh.[15] Kidd believed the Oshkosh workers' plight was caused by their lack of organization. He counseled them against striking at this time and gave advice about organizing, which they listened to.

Women and Children

[11] OSHKOSH WOODWORKERS' STRIKE, *supra* note 2, at 30-31.
[12] *Id.* at 76-77.
[13] *Id.* at 76.
[14] *Id.* at 77.
[15] *Id.* at 78.

Paine and the other factory owners employed women and children to hold down labor costs. Many children worked in the factories as they did in other industries during this time. Paine Lumber employed 53 children in 1898.[16] Although there were state laws against the practice, they were routinely violated. The children earned about 55 cents for a 10-hour day working at Paine Lumber.[17] Women were the other source of cheap labor in the Oshkosh factories. Twenty-two women worked at Paine Lumber in 1898 where they earned about half of what men made. Both women and children worked at hard jobs, including those using heavy machinery, and some were seriously injured.

In 1894, a labor publication described the law wages in the Oshkosh factories: "A combination among the factory men has forced wages to a starvation level. The best of machine hands are now working for as low as $1 for ten hours work. Competent authority places the average at even less than eighty cents a day for factory help . . . ."[18]

Hiram F. Hixson took over the *Labor Advocate* paper in December 1893 and he soon became aware of how bad the woodworkers' lives were, with 1,500 workers unemployed and the rest working for substandard wages in January, 1894. Hixson contacted Kidd for advice on whether the workers should strike, but again Kidd cautioned that they were too weak to hold out during a strike, especially because of the depressed economic conditions. Hixson continued to use the *Labor Advocate* as a platform to publicize the workers' plight and also to expose the chasm between the workers living in poverty and the wealthy factory owners. Hixson was a tireless advocate and throughout the spring and summer of 1894 he worked continually to improve the working conditions as the voice of the Oshkosh woodworkers. And during this time, the workers strengthened their union organizing efforts. But Hixson took ill and died in the fall of 1894. His death along with the economic depression weakened the nascent union movement in Oshkosh and it was to stay that way for another four years.[19]

In 1895, Thomas Kidd gained more prominence when he successfully negotiated the merger of two large unions into the Amalgamated Woodworkers International Union and was chosen as its first general secretary.

Paine was involved in all aspects of his company's operations and he was so driven that he went to the factory before anyone, even showing up at three or four in the morning.[20] He was ruthless in trying to drive down the cost of production and his motto - "'[l]umber costs more than labor'" - was implemented through "low wages, controlled costs, and . . . high productivity."[21]

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[16] *Id*. at 37.
[17] *Id.*
[18] *Fur, Logs, and Human Lives, supra* note 1, at 17 (citing THE LABOR ADVOCATE, Mar. 17, 1894).
[19] OSHKOSH WOODWORKERS' STRIKE, *supra* note 2, at 83.
[20] *Id.* at 34.
[21] *Id.*

By 1898, the company's capital stock was valued at about a million dollars, the physical plant was spread over 50 acres of land, and it employed 768 workers which amounted to about 35 percent of the 2,000 woodworkers in Oshkosh.[22]

With the exception of the Gould Manufacturing Company, the other millwork factories in Oshkosh - while smaller than Pain Lumber - operated more or less along the Paine model with low wages. In contrast to how the workers viewed George Paine, James Gould apparently had the respect of many of his employees and they did not express numerous grievances as the workers at other factories did.[23]

Conditions in Oshkosh continued to deteriorate. Technological advances allowed Pain Lumber to use machines to replace some of the higher-skilled workers with lower-skilled workers, including more women who were paid about half of what men earned.[24] Because they lived in a very patriarchal society, this threatened the self-esteem of the men who were replaced because they had not only lost their jobs, but they had lost them to women. In the 1896 Presidential race between William Jennings Bryan and William McKinley, the workers at Paine Lumber were promised that if the Republican McKinley - who was pro-business - won, their wages would be raised. But if Bryan won, the factories would be closed. This fooled some of the immigrant workers into not supporting Bryan. After McKinley won, wages stayed the same at Paine Lumber.[25] This angered the workers and was an additional factor prompting the workers towards unionization.

Unionization efforts picked up in 1897. When Kidd traveled back to Oshkosh, he brought along a German-speaking member of the executive committee of their national union named Richard Braunschweig, who was referred to as the "German orator." Braunschweig, who only spoke German, was a powerful speaker and he was able to communicate with the large body of German-speaking workers Paine had helped bring into the country over the years, where he had hired them at lower wages than native-born workers.

Kidd had to travel to Muscatine, Iowa to deal with a labor crisis when wages there had been cut by 20 percent so the factories could compete with Paine Lumber and the other Oshkosh factories. During this trip, Kidd became acquainted with William Roche, a local factory owner who was under great pressure because he had to compete with the low wages in Oshkosh. Recognizing their shared interest in this matter, Roche decided to travel to Oshkosh so he could assess what he needed to do to compete successfully. After visiting Oshkosh, Roche concluded that he was not being undercut in price by technological advances in machinery, but simply because Paine and the other owners in Oshkosh paid such low wages.[26]

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[22] *Id.*
[23] *Id.* at 36.
[24] *Id.* at 90.
[25] *Id.* at 90-91.
[26] *Id.* at 91.

Thomas Kidd was a cautious union leader. He was wary of strikes and preferred to avoid them if possible. Kidd saw that it would be much more beneficial for the Oshkosh workers to get properly organized than to impulsively engage in a strike. But his caution angered the more hot-blooded laborers who saw a strike as the only action open to them. In the fall of 1897, the Oshkosh unions invited Eugene Debs to speak to the workers. Debs was nationally known because of the dramatic but ultimately disastrous American Railway union strike against the Pullman Car company in 1894. He was defended by Clarence Darrow in the aftermath of the strike on conspiracy charges. It was the strike against Pullman that drew Darrow into the labor movement and also made him known as an effective legal advocate for labor unions. Debs was tried and received a six month jail term. Debs, who became a socialist after he got out of prison, gave a speech that prompted the Oshkosh labor leaders to warn Kidd that they were losing patience with him and the AFL and were considering the significant step of leaving the union.[27]

Kidd then took the unusual step of writing an article about the low wages in Oshkosh woodworking factories and sending it to an Amalgamated union in England. The article may have resulted in some boycott efforts against Oshkosh millwork products and it also brought Kidd to the attention of Oshkosh factory owners.[28] The owners denied Kidd's accusations and they and Kidd traded responses in the local paper. In November 1897, Kidd and Braunschweig spent five days in Oshkosh and plans were worked out for a possible strike the following spring. Braunschweig's appeals to the German-speaking workers were very effective. In early 1898, the local labor leaders asked Kidd to return to Oshkosh which he did, bringing with him Frank Weber, the head of the AFL's state affiliate. The two men spent several weeks assisting and educating local leaders and workers about strikes and the labor bargaining process. Later Kidd denied that he ever advised them to go on strike.[29]

In early 1898, the Great Panic of 1893 began to recede and some workers in Oshkosh left to take jobs elsewhere. Enough workers left to get the attention of the factory owners, who were already aware that a strike was being planned. To counter this, they promised a wage hike to take effect on March 1.[30] The mill owners brought in a journalist for *The Timber Trades Journal* in London who was shown around the mills to get the owner's version of the situation.[31] The journalist wrote an article that was the complete opposite of the workers' views and which was filled with propaganda from the owners. The promised pay increase did not happen and it was later promised for April Fool's day, which also came and went without any wage increase. The workers were then promised that it would happen on May 1. The workers' cynicism only deepened.

On April 25, 1898 the United States formally declared war against Spain. The Spanish-American War caused a sharp rise in prices for essentials like food and fuel, which lasted during the four months of the war while worker wages stayed the same. This latest

[27] *Id.* at 92.
[28] *Id.*
[29] *Id.* at 95.
[30] *Id.* at 95-96.
[31] *Id.* at 96.

downturn in the workers' already meager standard of living prompted the local labor leaders to convene meetings to which Kidd was invited to attend. Kidd traveled back to Oshkosh for the meetings but he stayed on the sidelines for the most part because strikes had to be started and managed locally according to union policies.[32] Even when he was asked if they should strike, Kidd continued his refusal to advise a strike but he knew that a strike was inevitable if factory owners did not follow through on their promised May 1 wage increase.[33] Paine and the other owners stayed true to form and May 1 came and went without any raise in the workers' wages. This was a defining event and labor leaders called for a mass meeting to be held on May 7 in order to plan for a strike. Knowing that a strike would be called, Kidd secured authorization on May 6 from the executive committee of his international union for the Oshkosh workers to go on strike.

Several workers on an individual basis did approach factory management asking for the promised pay raise and a few were given raises, but most were denied and even insulted for asking. This dissuaded other workers from asking. With the strike looming, Samuel Gompers, president of the American Federation of Labor, sent Kidd to Oshkosh to stay for the duration of the strike. The critical promise of strike benefits which would be financed by union workers from other areas was also secured. On May 8 Marshall Kimball, secretary of one of the locals and leader of the woodworkers' council drafted a letter setting forth the workers' demands and delivered a copy to Kidd for review. Kidd softened the letter by changing the demands into requests and setting a more deferential tone, but he did not change the request for a minimum wage even though he thought it was too high. Upon receiving Kidd's revisions, Kimball made copies of the revised letter for all seven factory owners and the letters were delivered on May 13. In addition to the request for an increase in wages, the letter asked for the abolition of labor by women and children, recognition of the union and a weekly pay day. The owners were asked to respond by the next evening at 6:00 pm.

Paine treated the letter with disdain and to demonstrate that he would not concede to the workers' requests he threw the letter away. The other owners did not reply by the deadline. Paine and the other factory owners agreed to work together to resist the workers' requests.

With a strike looming, a state arbitration and mediation board traveled to Oshkosh to try and resolve the dispute. They met with Paine and the factory owners the same evening as the letter deadline and the owners informed the board that they would not meet the union's demands; they tried to explain why it was not economically possible to do so and even appeared to claim that they had not made any profit during the economic depression from 1893 to 1897.[34] As much as the owners were against raising wages, they were even clearer and more resolute in stating that they would not recognize the union. The board met with the woodworkers' council the next day, May 15, and tried to urge them not to strike and to have individual workers approach the owners. They offered their services as

[32] *Id.* at 99.
[33] *Id.*
[34] *Id.* at 107.

arbitrators. The union agreed to bring this up for consideration before the union members at an important mass meeting later in the day.

Strike

At the mass meeting, the arbitration board's proposal was rejected in short order and the workers agreed that all further negotiations could only be through the woodworkers' council.[35] After being informed that the owners refused to respond to the union's request letter, a motion to strike was put before the workers. Kidd had arrived back in Oshkosh for this meeting but when asked, he again stuck with his refusal to advise them to strike; however, at this point he was not telling them he was against a strike as he had before.[36] In the face of the factory owners' stubbornness and workers' unwillingness to endure such low wages any longer, the workers met and by a large majority voted to go on strike at 7:00 a.m. on Monday, May 16, 1898. It was one of most important moments in Wisconsin labor history. The workers at Gould Manufacturing regretted that their company had to be included in the coming strike.[37]

After the strike vote, Thomas Kidd gave a speech to the assembled workers in which he blamed the strike on the owners. He also gave the workers advice on how to conduct themselves during the strike because of the importance of public opinion. He told them to stay away from the factories when not on picket duty, not to loiter and to stay sober.[38]

The following morning between 1,300 and 1,600 woodworkers, which comprised about 75 percent of workers at the seven millwork factories in Oshkosh, followed through on their strike vote and not a single union member went to work that day.[39] A newspaper estimated that 75 percent of the strikers were German. The union and factory owners gave conflicting figures on how many workers were on strike and how many reported for work, but it was clear that the factories could not run on the skeleton crew no matter the number and this became more evident during the first week of the strike.[40] Significantly, about 400 non-union workers walked off the job to show solidarity with the strikers; about 200 of them joined their local unions that day and nearly all 400 had become union members before the first week of the strike came to a close.[41]

Strike benefits would amount to $3.00 per week for each striking union member, which was only about half a week's pay. The money would come from a fund created by Kidd's Amalgamated Woodworkers International Union and unions in other parts of Wisconsin and Chicago would contribute.

Thomas Kidd had invited Samuel Gompers to speak to the workers on May 22 but Gompers cancelled. As a surprise, Kidd then invited William Roche, the millwork owner

[35] *Id.* at 108.
[36] *Id.*
[37] *Id.* at 36.
[38] *Id.* at 109.
[39] *Id.* at 117.
[40] *Id.* at 118.
[41] *Id.* at 119.

from Iowa, to speak to the workers. Kidd also took the unusual step of inviting the wives and daughters of the strikers to attend the presentation.[42] Kidd was not moved to do this because he was an ardent champion of women's rights. He wanted to educate the workers' wives and daughters so they could help support the striking workers in a long, drawn-out strike.[43] It turned out to be a significant decision in the weeks to come. Kidd talked to the assembled crowd first and then he introduced Roche, and the workers were immensely surprised that a factory owner supported their cause. Roche was very candid with the workers, explaining that he supported their efforts to get higher wages because he was being undercut by the Oshkosh factories that were paying such low wages.[44] Roche's factory was unionized and he paid union wages and could not afford to compete against the meager wages paid to the Oshkosh workers.

The strikers continued to stay off the job and picket the factories. On May 26 the Gould Company closed its factory and two days later the Foster-Hafner plant closed.[45]

Later Samuel Gompers did travel to Oshkosh and he spoke to the striking workers on June 2. Gompers stressed that unions did not like strikes and they used them only as a last resort. He sharply criticized reports that the average wage in the Oshkosh factories was a $1.35 a day because to get that wage figure required averaging in the $2,000 yearly salary of factory supervisors along with the wages of the workers who were only making about 90 cents a day.[46] Gompers also promised the woodworkers that the American Federation of Labor would support the strike.

Worker committees met with factory management, including Paine Lumber. While the factory owners seemed more conciliatory in regard to wage increases, they were adamantly opposed to recognizing the union. Thus, the two sides were at an impasse because the workers were following Kidd's advice that the recognition of the union was the most important goal, while the factory owners saw it as the greatest danger.[47]

The strike was a success during the first month because the factories were unable to run on skeleton crews. But George Paine and the other owners were far from beaten. They were determined to continue production without the striking workers and to do so they needed to bring in new employees. In this endeavor they got the support of Mayor Allison Baptist "A.B." Ideson who was a Paine Company executive, who authorized the establishment of an employment recruiting agency in Chicago to try and secure workers who were willing to go to Oshkosh.[48] Prospective recruits were assured that because the Mayor of Oshkosh had an interest in one of the factories he would use his authority to punish any strikers who "made the slightest move against" any replacement workers.[49]

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[42] *Id.* at 151.
[43] *Id.*
[44] *Id.* at 155.
[45] *Id.* at 158.
[46] *Id.* at 164.
[47] *Id.* at 166.
[48] *Id.* at 173.
[49] *Id.*

It was legal to picket peacefully, but a 1897 Wisconsin law protected workers not on strike and replacement workers by prohibiting "'interference'" with workers during a strike.[50] By interpreting "interference" under the statute very broadly, those in power who had a strong interest in ending the strike could have strikers arrested for very minor incidents. This strategy was implemented so that arrested strikers would incur legal fees for their defense, which would be paid out of the union treasury and thus deplete the treasury of money needed to sustain the striking workers.[51] However, some strikers decided to greet replacement workers by forming an 'entertainment committee' to meet the new workers at the train station and convince them not to cross the picket line and to return to Chicago.[52] It appears that they were able to use some union funds to pay the return fare of some of the replacement workers who were persuaded to return to Chicago. As it turned out, replacement workers from out of town were a minor factor in the strike and it was the local workers who refused to go on strike that proved more troublesome for the union.

The first real trouble began on June 2, 1898 when the police started to arrest striking workers gathered near factories on what appeared to be trumped up charges. All that was required was for a worker to claim he was interfered with and he could have the alleged perpetrator arrested. Matters escalated during this time when the union learned that Pinkerton detectives were operating undercover by mingling as strikers as they gathered intelligence. Pinkertons were also accused of engaging in acts against the factories and men who refused to go on strike, which could then be blamed on the union.[53] An early example was sabotage at a local rail yard which was blamed on strikers. Thomas Kidd was greatly alarmed by this development and strikers were put on guard at the rail yards to prevent undercover saboteurs from such activities.[54]

Kidd and the strikers were up against more than factory owners with more wealth and resources. They were also facing abuse of the legal system. At some point before June 23, John F. Kluwin, the City Attorney, had informed Kidd that representatives of the manufacturers had approached him to see about instigating legal action against Kidd to drive him out of town.[55] More specifically, they wanted Kidd arrested but Kluwin responded that he could not do that as Kidd had not broken the law. But they persisted and encouraged Kluwin to manipulate the law to bring charges. Kluwin again refused and put Kidd on notice that he was in danger of being arrested on flimsy charges by others with legal powers.[56] This threat of arrest would loom over Kidd throughout the summer.

The local newspaper, the *Northwestern*, was unabashedly on the owners' side and went to great lengths to portray the strikers in a bad light.

The Women of Oshkosh

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[50] *Id.*
[51] *Id.*
[52] *Id.* at 174.
[53] *Id.* at 178.
[54] *Id.* at 179.
[55] *Id.* at 201.
[56] *Id.* at 202.

One of the most interesting aspects of the 1898 strike was the eventual involvement of women in the strike. Towards the middle of June numerous women from families who had a member on strike organized themselves into a force to support the strike and picket the scabs who worked in the factories. Kidd had contributed to women taking an active role about a month previously when he had encouraged them to attend meetings about the strike in order to educate them about the issues and the need for support from family members. Although he did not intend for them to engage in physical altercations, the women decided their own course of action. They planned to demonstrate in front of a particular factory gate in the morning and then target another factory in the evening. They would be in position to verbally harass and throw things at strike breakers who were entering or leaving a factory. They chose to throw sand, salt, and pepper into the eyes of strikebreakers as well as toss rotten eggs at them.

The women put their plan into action on June 22 when they and other strike supporters formed a mob 1500 to 2000 strong to harass the workers leaving the Radford factory in the evening. The workers were met with a barrage of verbal epithets and eggs. The police were called but were unable to quell the angry strike supporters and did not try to arrest them or use force against them. After a brief time the incident ended. Thomas Kidd was actually very worried about the escalation of antagonism and urged the strikers to refrain from that type of confrontation with the Radford workers.

Riot at McMillen Factory

A more serious riot took place on June 23 at the McMillen factory. Demonstrators, mostly women and some teenage boys, gathered outside the factory just before five p.m. When the McMillen workers, who numbered between 20 and 30, left the factory they were met with angry shouts and eggs from the demonstrators and the workers retreated to the factory. Determined not to be intimidated, Edward Casey, an engineer, used the company fire hoses to spray the demonstrators, which only enraged them further. With hoses still aimed at them, the rioters tore down the fence around the factory and surged onto the property. The two sides then engaged in a fray with objects thrown back and forth.[57]

A Death

By far the most tragic event of the strike was soon to take place during the riot at the McMillen factory. At some point during the confusing action, Jimmie Morris, aged 16 and a painter at Pain Lumber, was struck in the back of the head with a wooden club or board, which knocked him unconscious. Witnesses identified Edward Casey, the engineer, as having struck Morris with a club.[58] Soon after this violence one of the women strikers was hit with a club and injured. Casey sought safety inside the factory and he was arrested and taken away to ensure the angry strikers did not take revenge against him.

[57] *Id.* at 234-35.
[58] *Id.* at 235-36.

Jimmie Morris died about 10:00 p.m. that night from a fractured skull.

Military Intervention

Paine Lumber Company was the next factory targeted for demonstrations. This was not a secret, and due to the ineffectiveness of the local police at preventing demonstrations at the other factories, Paine asked the sheriff to formally request Governor Edward Scofield to send the Wisconsin National Guard to protect his factory. Scofield quickly approved the request and National Guard troops arrived in Oshkosh early the next morning. Some of the troops went to city hall and some were sent to protect Paine Lumber property. The troops remained in Oshkosh for a week during which things were relatively quiet.

On June 27, District Attorney Walter W. Quatermass began criminal proceedings against about 30 of those identified as ring leaders of the demonstrations. Two of the women were arrested and charged with unlawful assembly and riot, a felony charge. Later one of the women was acquitted in a jury trial and the other woman's trial ended in a mistrial. The district attorney later dropped all charges.

Conspiracy Charges

During the first week of August, the factory owners decided to pursue another strategy by using the force of law against the strikers. This new strategy was designed to break the strike by charging Kidd and several others with criminal and civil conspiracy. The legal strategy was put into action on August 5, when Nathan Paine, one of George Paine's sons, swore out a complaint against Thomas Kidd, George Zentner and Michael Troiber accusing them of criminal conspiracy for conspiring to damage Paine Lumber Company.[59] Zentner and Troiber were both local union men. They were accused of damaging Paine Lumber by interfering with workers and preventing some from working for Paine by using threats and intimidation.

Kidd and Zentner were arrested and charged the next morning with criminal conspiracy. They each posted $2,000 bail and were then released. Troiber was arrested later. But soon after they were released, Kidd was arrested again because Nathan Paine had also filed a civil lawsuit against him alleging civil conspiracy for damaging the company; he sought $15,000 in damages.[60] This time the authorities acted stealthily and arrested Kidd on Saturday evening without notice. Then instead of taking him to the local jail where he could post bail, he was whisked away to the village of Winneconne about 14 miles away and held in the custody of the sheriff the rest of the night through Sunday.[61] This was obviously designed to keep Kidd from speaking at a union rally on Sunday, and rumors were also spread that Kidd had simply taken off and left the strikers on their own.[62]

[59] *Id.* at 375.
[60] *Id.* at 377.
[61] *Id.*
[62] *Id.* at 378.

A preliminary hearing was held in August during which the judge denied a defense motion to dismiss the charges. The most dramatic event at the preliminary hearing occurred when the defense questioned Harry Gould, a son of the founder of Gould Manufacturing, about his knowledge of plans to have Kidd arrested. Eventually, the defense got Gould to more or less admit that he had attempted to pay money and offer other benefits to Marshall Kimball, the secretary of the woodworkers' council, in exchange for information that could be used against Kidd.[63] Gould and Kimball knew each other because Kimball had worked at Gould's factory. Allegedly, Gould offered Kimball $2,000 and an offer of work in Kansas City as well as paid expenses for Kimball and his mother to travel there.[64] The offer to Kimball was very substantial because the $2,000 alone amounted to about 10 years' wages. To Kimball's credit he refused the bribe and notified Thomas Kidd of the attempt. The judge set the trial to begin on October 1, 1898 in the Oshkosh municipal court.

After the preliminary hearing, efforts to end the strike by some type of negotiation picked up. On August 19 the workers voted to officially call off the strike.

Clarence Darrow

Fortunately, Thomas Kidd had a friend in Chicago who practiced law. That friend was Clarence Darrow, and Kidd asked Darrow to defend him against the conspiracy charges. It was a natural fit because Darrow was well-known in labor circles because four years earlier he had defended Eugene Debs against conspiracy charges following the famous Pullman Strike. Darrow informed Kidd that given the questionable legal tactics used against him, Kidd might even have a legal case against Paine and the others involved.[65]

The Trial

Although the strike was over, George Paine was not backing down from the conspiracy case. He had employed eight attorneys to help prosecute the case.[66] Kidd and the other defendants would need a good defense against a prosecution that was backed by wealth and power. Paine paid a private attorney from Green Bay to combine the civil and criminal conspiracy charges and District Attorney Quatermass filed the new complaint.[67] Quatermass would also be assisted in the prosecution by a private attorney, F.W. Houghton, who was hired by Paine.

Kidd, Zentner and Troiber were facing trial in a small municipal court based on the charges leveled by one company in a local labor dispute.[68] Although it seemingly only affected the local area around Oshkosh, Wisconsin, the upcoming trial was potentially very important to organized labor. If George Paine and his legal team won and Kidd and

[63] *Id.* at 408.
[64] *Id.*
[65] *Id.* at 396.
[66] *Id.* at 398.
[67] *Id.* at 436.
[68] *Id.* at 437.

the other defendants were convicted, similar charges could be brought in other towns and cities across the country. Potentially strikes could be made illegal with union workers and leaders facing the threat of criminal conspiracy charges.[69]

The trial was presided over by Judge Arthur Goss. Darrow would be assisted by the two local attorneys, Earl Finch and H.I. Week, both from Oshkosh, who had represented the defense at the preliminary hearing. Soon after the trial began the defense objected to private attorney F.W. Houghton assisting the prosecution. The defense made a motion to have Houghton removed because his assistance was not proper under Wisconsin law, and because Houghton was clearly biased and was being paid by Paine to prosecute the defendants. Judge Goss denied the defense motion. The prosecution then objected to Darrow's participation because he was from out of state, but the judge denied this attempt to have Darrow removed.[70] Unsuccessful in getting Darrow removed from the case, the prosecution would try to paint Darrow as an interloper and troublemaker brought in from Chicago to stir things up.

Darrow Challenges Jury Selection Process

As he would throughout his legal career, Darrow placed great emphasis on picking a jury. Darrow started by challenging the actual jury process used in the municipal court. Under the court's jury selection process, the clerk of the court would draw the names of 12 potential jurors out of a box; both sides could strike six and then more names would be pulled from the box.[71] This process would continue until they had 12 unchallenged jurors to hear the case and at that time the jurors would be brought before the court and asked about possible biases.[72] However, there would be no peremptory challenges at this point and Darrow planned to object to this as well as scrutinize every potential juror for bias against labor and the union.[73] Darrow caused controversy when he stated that under the law each party was to have six strikes to use and since there were three defendants, they were entitled to 18 strikes.[74] Predictably, the state objected and the judge had to take Darrow's bold objection under advisement to study it, but he later ruled against Darrow. It was then that Darrow challenged the whole process by which juries were picked. Again the judge ruled against the defense and the objection was put on the record.

The examination of potential jurors for bias was long and tedious, and so many citizens were rejected by one side or the other that numerous jury pools had to be called. In the end it took four days and the examination of over four dozen prospective jurors to get 11 jurors seated.[75] The defense proposed that they go forward with 11 jurors instead of 12 and although the prosecution team was divided about only having 11, the district attorney agreed and the judge allowed it. It appeared that the long jury selection process had been

[69] *Id.*
[70] *Id.* at 438-39.
[71] *Id.* at 439.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.* at 446.

worth it to the defense because a majority of the jury was composed of citizens from the working class and skilled labor.[76]

As would happen with many of the trials Darrow participated in, crowds gathered early in anticipation of seeing the proceedings and hundreds had to be turned away.[77] The trial began with the prosecution's opening statement, which was focused on tying Kidd and the other defendants to the strike, the picketing and to the alleged acts of violence.

One of the more distasteful actions by the prosecution was to read a transcript of Kidd's eulogy at Jimmie Morris's funeral as evidence that Kidd advocated violence. The transcript came from notes taken by a stenographer and the defense objected to the accuracy of the transcript and the prosecution's twisting of Kidd's statements to support the prosecution, but the judge overruled these objections.[78]

George Paine was called as a witness by the state and while the prosecution asked easy questions, Paine soon had to endure the defense's much tougher cross-examination. Paine tried to recount the conversations he supposedly heard from the picket lines but the defense objected that this was hearsay.[79] The defense also objected when Paine could not identify any one of the strikers even though he claimed to have heard what they said. The defense argued that Paine's testimony prevented the defendants from confronting witnesses against them. The judge eventually agreed with the defense and Paine's hearsay statements were not allowed.[80]

Paine Cross-Examined by Darrow

When court resumed the next day, anticipation was even higher because Paine was to be cross-examined by Clarence Darrow. For almost two hours Paine was subjected to a withering cross-examination by Darrow. He elicited from Paine that Pinkerton agents had been hired by the manufacturers and that while investment in Paine Lumber was well over a million dollars, it paid no dividend for years.[81] Paine stated that his firm had an annual payroll of about $300,000 and that the union's demand for a 25% wage increase would mean another $100,000 added to the annual payroll.[82] But this opened Paine up to Darrow's probing questions and Paine had to admit that the annual wage amount he claimed included the much higher pay given to company officers and other management positions in the factory. Darrow also grilled Paine about how much his firm's officers were paid and why Paine had dismissed and not answered the union's letter; he even got Paine to admit that his refusal to answer the letter was at least a partial cause of the

[76] *Id.*
[77] *Id.*
[78] *Id*. at 450.
[79] *Id.* at 452.
[80] *Id.*
[81] *Id.* at 453.
[82] *Id.*

strike.[83] Darrow's sharp questioning perturbed Paine enough that he conceded that he had been motivated to have Kidd arrested and sought legal advice about how to do it.[84]

Darrow Accuses Paine of Conspiracy

Darrow's approach to attacking Paine was probably something he planned to do from the time he first agreed to defend Kidd. Darrow wanted to turn the tables on Paine and show that if any conspiracy existed, it was the one that Paine and others were part of when they planned and schemed for ways to abuse the legal system to bring Kidd down and to destroy the union's efforts to help the impoverished workers obtain higher wages and bring them a better standard of living. When the secretary of the woodworker's council, Marshall Kimball, was called by the prosecution and later cross-examined by Darrow, he was asked about attempts by a factory officer to offer money in return for information to help convict Kidd. The prosecution strongly objected to this line of questioning and the judge agreed and ruled it inadmissible, but not before Darrow had succeeded in getting the allegations of bribery and conspiracy on the part of the factory owners before the jury.[85]

George Paine's son Nathan Paine, who actually filed the charges against Kidd and the others, was an obvious presence in the courtroom. So intertwined was Nathan Paine with the prosecution, he often left his seat to go up and confer with Houghton the prosecutor. At one point, defense attorney Weed interrupted the exchange and asked that Nathan Paine be entered into the record as an assistant prosecutor. Darrow also objected to Nathan Paine's presence because it amounted to intimidation of witnesses who were at the mercy of Paine Lumber if they did not testify in the right way.[86] Although Judge Gross overruled the defense, Nathan Paine remained seated during the trial.

Darrow used a technique that would serve him well throughout his legal career. He was able to divert the jury away from the actual charges against Kidd and the other defendants.[87] Furthermore, "[j]ust as Darrow had scant respect for technical expertise in the law—the closely reasoned argument, the well-honed brief, the scholarly citation of precedent—so he expressed utter lack of interest in Kidd's formal guilt or innocence, which he suggested was irrelevant . . . ."[88]

Instead, Darrow sought to put the prosecution on the defensive. As part of their defense, Darrow and his co-counsel wanted to show that the real conspiracy was on the side of Paine and the others involved in prosecuting Thomas Kidd and the other two defendants. To do this, Finch called John F. Kluwin, the City Attorney, as a witness but the prosecution vehemently objected. Finch argued to the judge that if they could show that it was Paine and the others who were the true conspirators, then the case against Kidd and

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[83] *Id.* at 454.
[84] *Id.*
[85] *Id.* at 455-56
[86] *Id.* at 459.
[87] J. ANTHONY LUKAS, BIG TROUBLE: A MURDER IN A SMALL WESTERN TOWN SETS OFF A STRUGGLE FOR THE SOUL OF AMERICA 316 (1998).
[88] *Id.* at 316-17.

his co-defendants was an invalid malicious prosecution and the case should be dismissed.[89] The defense suffered its most significant setback when the judge ruled that Kluwin's testimony would not be allowed. At this point, Clarence Darrow strongly objected but quickly informed the jury that if Kluwin had been allowed to testify he would have recounted how the factory owners had asked him to manipulate the law to have Kidd and the others arrested.[90] Surprisingly, the judge did not stop or scold Darrow for this action.

Shame of Child Labor

An important part of the defense's strategy was lost when the judge would not let them attempt to show that Kidd and the other defendants were the victims of a conspiracy. But the defense continued on and Darrow went after Paine on another important issue. Darrow and the defense sought to discredit and shame Paine by bringing up the issue of child labor. They did this by calling to the stand some of the children who had labored at Paine Lumber while clearly under the legal age for such work. The testimony of the six child witnesses showed that nearly all of them had started work when they were only 13 years old or even younger. They worked 10 hour days handling machinery for only 30 to 60 cents a day.[91] Darrow showed how this illegal child labor further undermined the wages of the adult workers. The judge overruled the prosecution's objection to this line of testimony.

Later in the trial, Darrow would boldly pursue the child labor issue by calling District Attorney Quartermass as a witness and questioning him about whether he had ever received any complaints about child labor against Paine Lumber. Quartermass was caught off guard but had to admit that a state factory inspector had brought the issue to his attention; however, when he investigated, a Paine official showed him an affidavit from the child's father stating that he was over 14 and that ended the investigation.[92]

Defense Alleges Bribery

Darrow tried to get Harry Gould to tell the jury what he had reluctantly told the grand jury about his alleged offer to Marshall Kimball of $2,000 and other benefits in exchange for information that could be used against Kidd. But Gould was not nearly as forthcoming in his trial testimony and strongly denied any bribery attempt. The judge ruled his testimony was incompetent and thus not admissible.[93]

Defense Alleges Nathan Paine Committed Bribery

But an even more sensational bribery allegation was to be heard before the trial ended. The last witness for the defense, Andrew Ryan, who was secretary of a woodworker

[89] OSHKOSH WOODWORKERS' STRIKE, *supra* note 2, at 468-69.
[90] *Id.* at 469.
[91] *Id.* at 471.
[92] *Id.* at 474.
[93] *Id.* at 473.

local, testified about an encounter he had with Nathan Paine during the strike. On the stand, Ryan testified that Nathan Paine had asked him about obtaining information about '"certain parties"' that were facing arrest. He allegedly offered Ryan $2,500 for information to be used against these parties. Paine did not explicitly mention Thomas Kidd but he did ask Ryan if Kidd's removal would damage the strike.[94] This explosive testimony prompted a vigorous objection by Houghton, who not only asked that it be stricken but accused Darrow of an ethical violation since the same type of testimony from Harry Gould had been ruled inadmissible. This led to a heated argument between the two until the judge stepped in and ruled that the testimony be stricken from the record. But as before, the jury had already heard at least part of the damaging allegations. Thus Nathan Paine, who brought the charges against Thomas Kidd, now had sworn testimony against him claiming a conspiracy involving bribery.[95]

Darrow Uses Letter Written by George Paine

During the trial George Paine wrote a letter to the editor in the *Northwestern* newspaper. In the letter, Paine claimed that reports of his testimony that indicated he and the other owners would have responded to the May union demand letter had they known then how the strike would play out were not accurate.[96] Paine explained that he was writing the letter to correct any impression that his testimony conveyed that idea. Paine claimed that what he intended to say was that the more he learned about unions and the trouble they cause the less likely he would be inclined to discuss matters with them. After learning of the letter, Darrow read it in court to show that it contradicted his trial testimony and amounted to contempt of court.[97] He also wanted to introduce the letter into evidence and call Paine to the stand to grill him under oath, but the judge ruled the letter inadmissible. The defense argued that Paine was trying to influence the jury by publishing the letter while avoiding having to do so under oath, but the judge refused to change his ruling.[98]

Clarence Darrow's Closing Argument

As he would do throughout his career, especially in his most famous cases, Darrow tried to show the jury and the court that the trial could not be confined to the mere facts of the particular case they were witnessing. For Darrow, the incidents leading to the trial and the trial itself were part of a much larger struggle - whether it was labor issues, the death penalty, racism or some other pressing social issue. Darrow refused to let the other side confine the trial to the particular facts of the case.

True to form, Clarence Darrow began by telling the jury that the issues involved were much bigger than this particular trial of Thomas Kidd, George Zentner and Michael Troiber:

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[94] *Id.* at 477.
[95] *Id.* at 478.
[96] *Id.* at 479.
[97] *Id.*
[98] *Id.*

> While you have been occupied for some time listening to the evidence in this case, and while the Court will instruct you as to the rules of law under which this evidence is to be applied, still, it is impossible to properly present the case to you without a broad survey of the great questions that are agitating the world to-day.
>
> This case is but an episode in the great battle for human liberty. The Paine Lumber Company may hire its lawyers and import its detectives into your peaceful community and it may send these defendants to jail; but so long as injustice and inhumanity exist, so long as employers build their palaces from the unpaid labor of their serfs, and rob childhood of its life and sunshine and joy, you will find others, thank God, to take the places of these as fast as the doors of the jails close upon them.
>
> This is not a criminal case, and every actor concerned in this drama understands it well. Counsel may argue as they please about the details, but deep in your hearts, deep in the mind of every man who thinks, is the certain knowledge that this drama in which you play such an important part is but a phase of the great social question that moves the world.

Kidd Prosecuted For Being Good

Darrow tried to show the real reason Kidd was being prosecuted:

> Let me repeat: This is not a criminal case; and, malicious as these Paines are, I have no idea that they would prosecute this case simply to put Kidd in jail. These employers are using this court of justice because in their misguided cupidity they believe they may be able to destroy what little is left of that spirit of independence and manhood which they have been slowly crushing from the breasts of those who toil for them. Ordinarily, men are brought into a criminal court for the reason that they are bad. Thomas I. Kidd is brought into this court because he is good. If Thomas I. Kidd had been mean and selfish and designing, if he had held out his hand to take the paltry bribes that these men pass out wherever they find one so poor and weak as to take their dirty gold, this case would not be here to-day. Kidd is a defendant in these criminal proceedings because he loves his fellow men. It is not the first time that evil men have used the law for the purpose of bringing righteous ones to jail; and so long as this great battle is waged, these incidents will continue to mark the history of the strife.

Darrow Vilifies Paine

Darrow could be very sarcastic and critical of someone who was against his client. This could be an important witness or even a member of the prosecution. During the Kidd trial, Darrow focused his wrath on George Paine. Paine would have to bear Darrow's biting remarks throughout Darrow's closing argument:

> But I undertake to say there was not a well-meaning citizen in the town of Oshkosh, not a man who had in him one drop of the milk of human kindness, that did not wish these poor boys could win. And yet, after the strike is over, and peace has come again, these malignant employers, not satisfied with the past, are bound still to pursue these defendants in the false name of your State for the sake of teaching these men that if they ever dare again to assert their rights, the doors of the jail will open to receive them. The malice of George M. Paine is exceeded only by his avarice. It was not enough that he should take the toil and the sweat and the life of these poor men for starvation wages; but when all is past and gone, he dares to take into his polluted hands the law which should be holy and above suspicion, and which was made to protect him, and to protect you and me; to take this law and use it as a dagger to stab these men to death.
>
> Paine had to find three conspirators; as one he took Michael Troiber. I never saw Troiber before. I probably shall never see him again unless Paine pursues him further, and then I hope to be present. But, gentlemen, whoever Troiber is, he is not a great man; just a common, plain man, probably an ignorant man in the reckoning of this world; born beyond the seas, hearing there, no doubt, as others have heard, of wonderful opportunities offered beneath the Stars and Stripes, and coming here with high hopes and grand aspirations to make a home for himself and his children, where he could be free and happy and contented and prosperous; and he came here and fell into the clutches of George M. Paine. If the emigration companies, instead of sending information to the poor of other lands in reference to the beauties and glorious opportunities of America, would send a picture of George M. Paine and his prison pen, we would not have so many aliens in this land to-day. Troiber came here, as thousands of others have come from all nations of the earth, to lend his brawn and muscle and life to the building up of this great land and he worked for ninety cents a day until he grew old and stunted and haggard and worn, and thought he had a right to ask something more; and then George M. Paine hired lawyers to bay him inside the prison doors.

Darrow spared nothing in going after George Paine, but he also directed his anger at Nathan Paine, the prosecution, and the others arrayed against the defendants. He described Nathan Pain as a “bloodhound and spy,” accused Houghton of being the “power behind the throne” and asserted Quartermass had filed the charges because he was told to do so by George Paine. He said that it looked like Houghton was “playing for a job as a slave-driver in the factory after his law practice is done.”

Commenting on Houghton’s deference and admiration for George Paine when Paine entered the court to testify and Houghton shook his hand, Darrow said: “I thought he would have been glad to have licked the dust from Paine’s boots, had he been given the opportunity to perform the service.”

Darrow Places Responsibility on the Jury

As he would do throughout his career, Darrow drove home to the jury that in the end it was really only they sitting in judgment that could convict his clients:

> Gentlemen, before any citizens of Wisconsin . . . or before any citizens of Illinois can be deprived of their life or their liberty, under the laws of this state a jury of Wisconsin men must take this liberty away. Quartermass may indict at the instance of Paine, but it takes a jury to convict, gentlemen, it takes a jury to convict.

Darrow directly accused Houghton of being part of a conspiracy to have Kidd arrested and sent to jail. He told the jury that if the "unexpected should happen" and they convict Thomas Kidd, then "for God's sake, gentlemen, don't forget to include in your verdict Mr. Houghton too. Then I hope for Kidd's sake that the jailer will give them separate cells while they are serving out their time."

Conclusion

Darrow concluded with themes of hope and he quoted poetry as he would do in many of his closing arguments:

> Gentlemen, the world is dark; but it is not hopeless. Here and there through the past some man has ever risen, some man like Kidd, willing to give the devotion of his great soul to humanity's holy cause. Here and there all through the past these men have come, and through the future they will come again, they will come to move the world onward and upward; they will come beckoning their fellow men to follow in their lead: they will point to a sunrise far away, so distant that the ordinary mortal cannot see, but which is clear to their prophetic eye.
>
> "Tis coming up the steep of time,
> And this old world is growing brighter!
> We may not see its dawn sublime,
> Yet high hopes make the heart throb lighter!
>
> We may be sleeping in the ground,
> When it awakes the world in wonder
> But we have felt it gathering round,
> And heard its voice of living thunder."[99]

Darrow left the jury with more thoughts about their responsibility:

> It has fallen to your lot, gentlemen, to be leading actors in one of the great dramas of human life. For some mysterious reason Providence has placed in your charge for today, aye for ages, the helpless toilers, the hopeless men, the despondent women and suffering children of the world; it is a great, a tremendous trust, and I know you will do your duty bravely, wisely, humanely and well; that you will

[99] Darrow quoted excerpts from *The People's Advent* by Gerald Massey.

> render a verdict in this case which will be a milestone in the history of the world, and an inspiration and hope to the dumb, despairing millions whose fate is in your hands.

Darrow's final summation lasted all day Monday, October 31 and he resumed the next day until he finished before noon. He spoke without notes for a total of eight hours.

Verdict

After a three week trial, the jury began deliberations on November 2, 1898. After just 50 minutes of deliberation the jury returned not guilty verdicts. Darrow was quite proud of his summation to the jury and as part of his defense arrangement, he was allowed to publish it as pamphlet and it was widely read and praised. William Dean Howells, an editor at the *Atlantic Monthly*, said it was "[a]s interesting as a novel."

Darrow had defended Kidd and the other defendants by refusing to admit the prosecution had a legitimate case. He argued the case as he saw it—as an episode in a long drawn-out battle for human rights and human dignity. Darrow was convinced that Kidd was on the right side of history and Darrow was there with him to use his legal talent and oratory skills in the struggle that was thousands of years in the making.

Darrow had intense disdain for conspiracy laws his entire career. Darrow was incensed at the use of conspiracy laws during the Pullman Strike and the trial of Eugene Debs, whom he defended in 1894. No doubt the Kidd conspiracy trial contributed significantly to this feeling. Darrow wrote in his 1932 autobiography: "If there are still any citizens interested in protecting human liberty, let them study the conspiracy laws of the United States. They have grown apace in the last forty years until to-day no one's liberty is safe."[100]

Edward Casey, accused of killing James Morris during the strike, went on trial for murder in early December, 1898. He was defended by John Kluwin and co-counsel and the prosecutor was District Attorney Quartermass. Casey's fate would be decided by a sequestered jury picked form the surrounding county.[101] The defense got the judge to prohibit any reference to the July jury report from the coroner's jury.[102] When the testimony was over, the jury took just 45 minutes to find Casey not guilty.[103]

While the criminal trial was over, there was still the civil conspiracy case against Kidd. Kidd and Darrow went back to Oshkosh in January, 1899 and the two sides reached an agreement under which the civil conspiracy case against Kidd was dropped in exchange for Kidd agreeing not to pursue a lawsuit against George Paine.[104]

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[100] CLARENCE DARROW, THE STORY OF MY LIFE 64 (Charles Scribner's Sons 1932) [hereinafter STORY OF MY LIFE].
[101] OSHKOSH WOODWORKERS' STRIKE, *supra* note 2, at 546.
[102] *Id.*
[103] *Id.* at 547.
[104] *Id.* at 544-45.

Results from the Strike

Despite the legal victory, it appears that the strike did not make any meaningful advancement for the workers. Although wages did increase after the strike, after the settlement and the outside agitators – Clarence Darrow and Thomas Kidd - went back to Chicago, wages went back down.[105] According to a leading scholar on the strike:

> What the union men and women of Oshkosh had set out to accomplish in 1898 was to increase workingmen's wages, and, more profoundly, to induce capitalists to share their profits and power with labor. It was an impossible dream. In practical terms, the woodworkers'strike was a failure. Wages were raised at selected companies by a few pennies a day but, overall, the millowners prevailed. Union leaders were blacklisted and union strength eroded. The exploitation of women workers continued as before. George Paine went to his grave in 1917 with no union at his mill, and there was none there until 1956. Jimmie Morris lay in an unmarked grave, and Edward Casey was tried and acquitted for the boy's murder.[106]

Clarence Darrow only briefly mentioned the Kidd trial in his autobiography. This is likely because it occurred about 34 years before Darrow wrote his autobiography. In his brief reference to the case he recounted:

> I assumed the defense of Thomas I. Kidd, president of the National Association of Wood Workers, and others along with him, all charged with conspiracy, growing out of a strike in the large sash-and-door factories of Oshkosh, Wis. As in all places outside of big cities and industrial centres, the feeling was very bitter on both sides. The division was, always, the rich of the community on one side and the workers on the other. The case was reported pretty closely by the newspapers of the Northwest, and the fight was intense and long drawn out. I shall not go into the details of this prosecution. It was one of the earliest conspiracy charges against working men growing out of strikes. The jury was drawn from people of all stations, but after short deliberation they returned a verdict of "Not Guilty."[107]

[105] *Id.* at 542.
[106] Virginia Glenn Crane, *"The Very Pictures of Anarchy": Women in the Oshkosh Woodworkers' Strike of 1898*, 84 WIS. MAG. HIST. 44, 57-58 (2001).
[107] STORY OF MY LIFE, *supra* note 100, at 75.