

# INDUSTRIAL RELATIONS

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TESTIMONY OF MR. CLARENCE S. DARROW.

Chairman WALSH. Please state your name.

Mr. DARROW. Clarence Darrow.

Chairman WALSH. And where do you reside?

Mr. DARROW. Chicago.

Chairman WALSH. What is your profession, please?

Mr. DARROW. Lawyer.

Chairman WALSH. How long have you practiced law?

Mr. DARROW. About 37 years.

Chairman WALSH. How long in the city of Chicago?

Mr. DARROW. Twenty-eight or thirty years.

Chairman WALSH. Have you during the course of your professional career had to do specially with labor cases or with cases growing out of industrial disputes?

Mr. DARROW. I have had a good many of them.

Chairman WALSH. You might state, if you can, the professional connection you had with any labor organizations.

Mr. DARROW. I have never represented them only on occasions. I have never been the general attorney of any of them.

Chairman WALSH. You got the general outline of this hearing; that is, the application of the law in labor matters and the attitude of courts in industrial disputes and the fundamental underlying question has been couched differently, and different phases, and do you think that the laws are equally administered between the rich and the poor?

Mr. DARROW. I think they are not.

Chairman WALSH. Now, can you give your own comment and illustration to back up that statement?

Mr. DARROW. To my own satisfaction; yes.

Chairman WALSH. Try it on Commissioner Weinstock and myself.

Mr. DARROW. I might not convince him; I might have a little better luck with you. The law is made by the acts of legislatures and Congress and decisions of courts. Most all the law is made from court decisions. Legislation is a small part of it. The first trouble is that all the men that make the laws are

lawyers, and they are what we call good lawyers—that is, lawyers who get good fees—who have no sympathy with any union except the lawyers' union. Their associations are all with the rich. Their clients are all on that side; they have no knowledge of the questions that confront the poor. If they ever knew anything about them, they have forgotten them, and on any question that arises their whole feeling and whole life is on the other side. Members of Congress and legislatures are pretty nearly all lawyers who have had good practices. If they have not had, they expect to have, and good practice for a lawyer means working for the rich. Judges are all lawyers, and lawyers of standing in their profession. Most of them have been corporation lawyers, and those that have not been hope to be, and their opinions are governed by their views of life.

Men do not act from logic and reason but from impulse. Any man with good intellect can give a good reason for anything he wants to say, and his opinion on either side of the case he is on is always logical if the court is an able man. He first makes up his mind what he wants to do and then gives a good reason for doing it, and if the law had been made by carpenters and shoemakers and day laborers it would have been different from what it is. It would have represented their side of it, perhaps, not any more fairly, but their side. The whole law has been made and administered by the controlling force of society, like everything else in this world, and it could not be any other way. I could give illustrations of it now.

Chairman WALSH. Now, we have called you in, Mr. Darrow, as one from the field of life, as it were, who has had much to do with actual contact with courts and juries and the administration of law, and we have had academic gentlemen here, law writers and students, and people that have given it a great deal of thought, and we are drawing them now from the field of conflict, as it were, and we would like to have you give us any comment that you can that will enlighten us on this subject, and do it in your own way. Give us any illustrations that you can that are pertinent growing out of your actual experience.

Mr. DARROW. Why, here are some as I have observed them, and I think they are.

Reference has been made here to the Debs case, for instance, by Mr. Davenport, I believe, who represented the other side of these questions. First, he did not state his facts right, and next he does not state the law right. The witness who just left the stand referred to the McNamara case, and in that he said that McNamara, by whom he means J. J. McNamara, the secretary of the Bridge and Structural Iron Workers, was arrested in Indianapolis, and it did not make any difference whether he was legally transported or not, that he afterwards pleaded guilty; which is not true. Mr. McNamara was arrested on a warrant charging him with murder, for the blowing up, or setting a bomb in the Times Building, and a fire resulted from that causing the death of a number of people. He did not plead guilty to that charge. He did afterwards plead guilty to a charge of having placed dynamite under the Llewellyn Iron Co.'s Works, for which he had not been indicted until he reached California. Neither does he state the legal proposition right. Whether they had a technical right, whether it was simply a technical right as to whether or not McNamara was to be taken 2,000 miles away to be tried or not, it was a right, and it was a substantial right to anybody, for instance, that lives in Washington, whether he is going to be tried here at home, or taken to Germany or France or Lower California. It is a technical right, but a legal right, but perhaps involves his whole case. Mr. McNamara was arrested and kidnapped. A police judge was called at a late hour on Saturday night, a police judge who had no jurisdiction in his case, and, of course, the courts would have been opened Monday, there is no question about that. He was arrested in that way and taken in that way, so he could not resort to the courts, nothing else. It is not a correct statement of law that the only thing the court had to do was to inquire if he was the right man and there was a requisition. The court had the right to pass on the primary question, whether he was a fugitive from justice and he was not a fugitive from justice. A fugitive from justice is one that commits a crime and runs away, and J. J. McNamara had never been in California.

Chairman WALSH. Is that the legal test, that at the time of the commission of the alleged crime he was in the State?

Mr. DARROW. He must be in the State at the time of the commission of the crime, or he can not be extradited under the law. He may be kidnaped. If there was ever a charge of murder against J. J. McNamara, or a charge such

as he pleaded guilty to, as having planted dynamite at the Llewellyn Iron Works, if that charge was one which could be prosecuted at all, it could only have been prosecuted in Indianapolis, Ind., where he lived. Whether it could or could not, I can not give an opinion, because I am not certain about it.

But if the State or Government were entitled to try him they were bound to try him where he lived and not take him 2,000 miles away from home, and that is a substantial right. He was taken to California. That was not the first time it was done. Moyer, Haywood, and Pettibone were arrested in Colorado charged with the crime of murder in Idaho; they were arrested on Saturday night also, which is a favored time of arresting labor men, long after dark, and long after the courts were closed. They were loaded on a train and taken to Idaho. Under the law they could not have been taken to Idaho, and if they were guilty they should have been tried where they lived, and there is a mighty sight of difference between trying a man at home and in a hostile country. They were taken to Idaho, and the question was raised that the State of Idaho had no right to try them because they had been kidnapped, and did not get there by due process of law. That case was taken to the Supreme Court of the United States by writ of habeas corpus, and the Supreme Court of the United States held that they had no right to take them, and that they were kidnapped, but they were there, and since they were there it was none of the business of the Supreme Court to inquire how they got there. And in that opinion Justice McKenna dissented, but no judge, as far as I know, and I think I am familiar with the cases, has ever held that you had a right to extradite a man unless he was present in the State when the crime was committed, bodily present. Both these cases were entirely different, and still they were tried.

Commissioner LENNON. Before leaving those cases, please tell us how they are a cause of social unrest.

Mr. DARROW. Why, I think pretty much all working people think that they do not get a fair show in the courts of the land, and these cases are common cases that are pointed to as examples of it.

The Debs case, which in a measure was discussed the other day, is another case in which I happened to take a part. Eugene V. Debs was the president of the American Railway Union, and a strike was called by that organization, I think, some time in 1893—I am not sure of the date. It tied up the railroads of the country, especially of the West. The strikers stated various grievances. The American Railway Union consisted of members in all lines of railway employment, and, of course, the railway service was pretty well paralyzed because of it. Anticipating this kind of action, the railroad companies had formed a general managers' association, which consisted of one member from each of the great railroads of the West, and perhaps of the East, whose business it was to deal with labor difficulties.

I am not criticizing their purpose at all. They anticipated this and got ready for it and opened headquarters as soon as the strike came on.

Their attorney was Edwin Walker, one of the ablest lawyers we ever had in Chicago, who for years had been general counsel of the Chicago, Milwaukee & St. Paul Railroad Co. When the strike occurred Mr. Walker went to what is called the Department of Justice and laid his troubles before them, and the Department of Justice immediately appointed him to represent the Department of Justice. It is hardly conceivable that they would have appointed Mr. Debs's attorney to represent the Department of Justice, but they did appoint Edwin Walker, and he filed the bill against Mr. Debs and his associates, signing it as "Assistant Attorney General," which he was, although he never represented anything but the railroads and represented them all through the case.

He filed a bill to enjoin the strikers, and he likewise went into the court and had them indicted for the very same act. That injunction was granted, not by Judge Fuller, as Mr. Davenport stated, but by Judge Woods, of Indiana. The case came on for trial, and Justice Woods sent Mr. Debs to jail for violating the injunction, and the facts he found was that he violated the injunction because violence and force had been used in the strike and that Mr. Debs was responsible for the violence and force, although there was not a scrap of evidence in the case that Mr. Debs ever raised his hand in any way or gave any orders or directions excepting that the men conduct themselves peaceably and not destroy property or interfere with the law. But he did hold that Mr. Debs had started it, and therefore he was responsible for the consequences.

Afterwards the case came on for trial in the Federal court, under the indictment, where the exact facts were applied on trial before a jury, and after fighting that case for six weeks or more we were told that a juror was taken ill—I never knew whether he was or not—but, anyway, we offered to go on with 11 jurors, and they refused, and the case was continued because the juror was taken ill. We demanded a trial again, and rather than try the case the Government dismissed the criminal case on exactly the same facts.

We went to the Supreme Court of the United States for a writ of habeas corpus on the civil case, in the Debs case, and the Supreme Court of the United States did not pass on the question of whether Debs had been guilty of the act—but, as the chairman here understands at least, it was a question of purely of jurisdiction as to whether a bill had been filed before the Federal judge, which gave him jurisdiction of the case, and they held that it had. Mr. Debs was sent to jail for six months—the first time the courts had found a case where the Sherman antitrust law would operate. It would not operate on any of the various corporation cases that had been before the courts before, but here it did.

After it was amended—after many years of agitation, they pronounced the Standard Oil Co. an illegal combination and a violator of the same act, and they gave them six months, not in jail, but six months to amend their charter, so they could do the same things over again, and their stock is worth more and they get more money out of the people than they ever did before the Supreme Court declared them an illegal combination.

Those are some of the facts that every intelligent workingman knows, and what is true of the Standard Oil Co. is also true of the Tobacco Trust and pretty much every combination that has been prosecuted.

The whole business of injunction in labor matters has grown up in a few years; within the memory of all of us. I think perhaps in the railroad strike of 1893 about the first one was issued; possibly one somewhat before that against Arthur. Before that time the courts of chancery had universally held they were only interested in property, and that they would not use a court of chancery to interfere with personal relations, or that they would not use a court of chancery where a court of law could be used, or to interfere where the charge was the commission of what amounted to a crime; but gradually during these labor strikes they have enlarged the powers of the courts of chancery in that direction until they have held that an injunction may be issued against strikers, making service by publication in newspapers, and by posting it upon telegraph poles, or anywhere else, binding everybody, whether they are parties to it or not; and that a man may be tried without a jury; he may be sentenced to prison without any hearing, if necessary, upon affidavit. We have had them sentenced in Chicago where no witnesses appeared on either side, simply on affidavit, and they were sent to jail. Everybody that knows anything about affidavits know that they are easy to get, and under that power the courts have enjoined strikers from quitting collectively on the ground that that was a boycott or use of force; they have enjoined them from committing acts of violence; they have enjoined them from sympathetic strikes where one body of men goes out to help another; they have enjoined them from levying assessments to get money to feed the wives and children of those who are on strike, and they have practically said that they must work unless the courts gave them permission to stop.

And that whole law as to injunctions has grown up—oh, in 20 years at least—until there is not a well-informed lawyer to-day who dares advise anybody as to what the law is on injunction. You do not know. It depends on what the judge is going to say, and the reason for it all is that judges act from their feelings, as all of us do. I am on the one side, some other man is on the other side; it is no use to try to convert you by argument; no one cares anything about that. The instincts and intuition are the moving power with all of us, and that is the way the law has grown up.

If we could get the people on the other side of these questions to make the law a while it would be different, but that is out of the question; the rules of our lawyers' union are too strict for that. Before a man can be a lawyer he must have had at least a high-school education, which carries him along toward 20 years of age; then he has to study law three years after that, which carries him along so that after that most of the poor people are barred; and it is quite a while after that before he can get on the bench, and it is simply natural gravitation which no one can help.

Take another branch of the law that has borne as hard upon the working people as anything else—take personal injury cases. Switchmen perhaps have a chance to live six or seven years and keep all of their more important members intact; ironworkers perhaps the same time; I would not be sure about the figures. When one of them gets hurt, he may have been careless at the time he got hurt; but when we lawyers are careless we do not fall down from the top of a 20-story building, we stumble over and get up again; but it is death to the switchman or the man on top of the building. Sooner or later everybody is careless. A man is careless and he gets hurt, or he is not careless and he gets hurt; he gets a leg cut off by a steam engine and is brought into court. The judges say, "No; you can not recover; you assumed the risk. If you had had any sense you would not have been a switchman, you would have been a banker.

Commissioner WEINSTOCK. Does that hold equally when workmen's compensation laws are in force?

Mr. DARROW. I am going to get to that in a minute; I will cover that.

They will say: "True, you got hurt, but it was not the railroad corporation that was to blame; it was the train dispatcher who gave the wrong order 500 miles away; and if he had given the right order you would have got through, so you can not recover; it is the act of a fellow servant."

We always go back to find out the law, and when we go back we find that in 1815, which is the date of the Battle of Waterloo, which is the only way I remember it, two men were employed driving a butcher's cart in England; the butcher had two men going out to sell meat on the road. In the morning one of the fellows greased up the axle of the wagon, and in putting the wheels back on forgot to put on the nut, and they got on the wagon and started off, and after they had driven a ways the wheel ran off, and the fellow that did not know anything about it got hurt and sued his employer. The case came on for trial, and the employer no doubt had the best lawyer; the case was argued, and the judges decided that where two men worked together for a common master public policy required that they shall know each others habits, and if one of them is not a safe man the other fellow ought to tell the master and have him fired, or else quit himself and open a law office or something like that.

And that law has been repeated and enforced by the decisions of courts for a hundred years, until it is the law that if a train dispatcher in Pittsburgh gives the wrong order which causes a train to go wrong and kill a trackman in Washington, that that is the act of a fellow servant; and in the case of a company like the Pennsylvania Railroad that employs 200,000 men, every employee ought to know all about the character of every other employee, which would not leave him much time for his work.

The reason for the law has entirely disappeared in a hundred years. There were no railroads in existence then and there were no factories in existence such as we speak of now, and no one knew about the application of steam.

The modern world has been made over, but lawyers still apply the old precedent until people outside of the law take a hand; all of the reforms in the law have come from the people outside, the same as all reforms in medicine have come from others than doctors. And they finally became so shocked over it that in many States within the last few years, probably within five or six years, they have changed the law of fellow servants and the law of assumed risk; and in many States they are getting an employers' liability act which gives a man in most of the States for a leg something like, oh, I should say, \$1,000; the workmen's compensation law fixes a regular table—so much for the phalangeal of a finger, so much for the second, and so much for the third; and while it is very inadequate I think it is a law along the right line and will probably be worked out. That is quite common in many States, but through all these years, by these decisions and others, the employer has had all the best of it.

If the lawyers had been lined up right in 1815, the court might have said that an employer who hires a man ought to be responsible for the kind of man he hires, rather than the other fellow, who did not have anything to do with hiring him; but they did not decide it that way. They decided it the other way, and this is the natural evolution of the law.

Then, it takes lawyers to get legal rights. For instance, a bill of rights in Illinois says every man shall have redress for every grievance that he suffers, and then he goes on with another clause which says—but no one pays any attention to it—it says he must have it immediately and without expense. That is in the constitution of Illinois and the constitution of most of the

States; but if a man loses a leg by the negligence of a steam railroad and brings suit in Chicago it is two years before he gets a trial; and then, if he happens to win, which he probably wont, then it is appealed to the appellate or supreme court. If he loses, he can not go any further himself, because he can not afford it; but if he wins, it goes there and takes two years more. That is four years. Then, if he and his family are alive they spend half of it for lawyers and court expenses, while the constitution says he shall have a remedy immediately and without cost. And that is true everywhere; the poor man can not get into court with any kind of safety.

Chairman WALSH. Are judges usually qualified by education and experience to decide upon economic and social questions brought before them in labor cases?

Mr. DARROW. Well, they do not pass any examination in that; they are just examined in the law; they are qualified to look up decisions of courts to see what the decisions are; but as to economics, they have not got time to do that; they are studying law.

Chairman WALSH. How is the institution of law meeting the present economic and social questions that seem to be predominant at this day?

Mr. DARROW. Holding them back as hard as it can, and it always has. The law essentially goes back to the old things; it is a creature of precedent. If they want to know what the law is, they want to see what some other judge has done a long ways back; and that applies now. The industrial world is made over; the world of medicine is made over. A doctor who would take a prescription book of 25 years ago and go out and practice on his patient under that authority would be tried for murder; but the farther a lawyer goes back for precedents the better he finds it established.

Chairman WALSH. Dr. Goodnow suggested the other day that perhaps the time for legal study should be extended and instruction taken by applicants or intending practitioners along economic and social lines. What would you say about that? Dr. Goodnow, you know, is a constitutional lawyer and president of the Johns Hopkins University?

Mr. DARROW. Yes; he is an able man. I know about him. Why, if you could extend the course and have them belong to a labor union and work as a switchman for several years and work in a structural iron works, then, if they were alive and got through, that would help; but to extend the course for them to study law would simply make them worse.

Chairman WALSH. Dr. Goodnow, in answer to a question asked by Mr. Lennon, said that it would not be desirable to have them work in workshops.

Mr. DARROW. Well, he must be a lawyer.

Chairman WALSH. Do you think of any plan by which economical and social advice could be given to judges who are not otherwise equipped for the settlement of these questions that are constantly coming up now, like minimum-wage laws and laws limiting the hours of labor, and so forth? I ask that question growing out of the suggestion made in the Oregon and other questions where outside lawyers intervened and who had also given study to such subjects and gathered data for judges?

Mr. DARROW. Why, these questions we are discussing are the most important questions of the day, and any man who has any feeling or imagination is interested in them and will know something about them. But the trouble with lawyers is, that, like everybody else, it is a profession, a business, and they want to make money out of it, or get in office, and they have to stick close to the ordained thing, and they have to make money where there is money. We really haven't any system for the establishment of justice, we have courts but all the courts do is to give a forum for lawyers to try cases, that is all. Courts do not look up the law, they take no hand in the trial, and the different lawyers on the different sides enter into a combat to see who can win, and in the combat, of course, the man who has been able to get the best lawyers, going on down through the ages, consistently prevails, the decision in one case being the starting point in another case, and all the time the strong force pressing against the weaker force until it has made the law entirely lopsided.

I do not know any way under that system, which is the system of the common law of America—I do not know any way that it can be changed. If we had courts to inquire into matters, to settle things without lawyers, to examine facts, and examine law so as to get at justice, something might be done.

But you take an ordinary case, and two lawyers go in, the corporation generally having the most successful lawyer, and the best talent that they can, against the poor fellow with a leg off, having an inferior lawyer, perhaps his

first case. They fight it out. If that occurred in the prize ring, and you led out a dwarf to fight a man like Jack Johnson, the crowd would not stand for it, and yet it occurs every day in court—a constant pressure. One thing furnishes the basis for another until property rights have become nearly the whole thing.

Chairman WALSH. To what extent, if any, are the interests of poor persons prejudiced by the selection of jurors, or have you given any attention to that?

Mr. DARROW. Yes, sir. Of course, the different States have different laws as to that. Federal courts—they are only chosen from the well known in the community—politicians and people who have some standing, some class about them. Not the people who work. Then, of course, in our Federal courts the judge is the whole thing, anyway. The jurors, they very readily find out what the judge thinks about a case, and most all of them unload it on the judge, and say, "I couldn't do anything else under the instructions they gave us." You never yet got beaten in the Federal court but what the jurors came and told you that they wanted to find your way, but they couldn't do it because the judge said so and so.

In the State courts—there are some States where every juror's name as it appears on the poll books, or every person's name as it appears on the poll books goes in, and from the whole the juror is drawn indiscriminately. That gives a workingman a jury not prejudiced against him, sometimes prejudiced for him. In our State we have a jury commissioner who picks out the jurors, in Chicago at least, and very carefully examines the list and looks over their occupation, and we find as a rule a large number of foremen and clerks and very few working people. It is a good deal safer to try a case before an employer than his clerk. In many States there is a property qualification for jury service, which, of course, makes it more or less a class proposition, but so far as it can be done every citizen ought to be drawn impartially for jury service. This helps the workingman and he gets a fair standing in court.

Chairman WALSH. What would be your suggestion with regard to that; that is, the man that possibly insists on the administration of justice should disturb themselves?

Mr. DARROW. Yes, sir.

Chairman WALSH. Has it not been taken up by workers generally, the fact that they are, if it is true as you stated, discriminated against in the selection of jurors. Is it not a sort of basis where justice or triers of facts is concerned?

Mr. DARROW. It has not been taken up very much, but in some cases. Sometimes the better-paid workingmen, as we call them, are in a way to blame for it. The workingman gets from three to four or five dollars a day, always poor at that, can not afford to do the jury service for \$2 a day. It is a very serious handicap to them, and they often get excused, where they might otherwise serve. And the lower paid workingman seldom gets on a jury, although they sometimes do. It could be remedied somewhat by paying more to jurors, but it is an important question, I think, in the administration of justice.

Chairman WALSH. Do you find a reluctance in everyday practice and everyday observation on the part of labor organizations, as well as individual workers, to present their grievances to the courts of the country for judicial determination?

Mr. DARROW. I never knew anybody that wanted to get into a court but lawyers. Farmers are taught to stay out or lose their property; mechanics and business men and everybody are taught to stay out. It is regarded as cumbersome and expensive and a wholly unsatisfactory tribunal. Workingmen, of course, in their labor disputes feel that they have no chance as a rule; not before juries, however, because many times they have the best of it before juries. Take a criminal case, where it is a question of a labor organization, and you get a jury of trade-unionists, they will probably stand by him, and the other fellow would go the other way, neither paying much attention to the facts, but each going for their side. That is human nature.

Chairman WALSH. I am calling your attention to what might be called guaranteed constitutional personal rights and ask you to make whatever comment you might have to make on the conservation of these rights by law or the lack of it. For instance, first, the trial by jury. Is it being observed?

Mr. DARROW. Well, in labor cases constitutional provisions have been absolutely nullified. For instance, a court can issue an injunction against a strike or anybody engaged in it, which would only enjoin them from committing unlawful acts, and if they do the act it is a crime, but in order to



escape the right of the defendant to have a jury determine whether he commits a crime or not, the court won't try him for the committing of the crime but try him for disobeying his order not to commit it, which amounts to the same thing if a man is in jail, but it is legal under the law.

I noticed Mr. Davenport's statement of the proposition, which, of course, he did not state correctly, the other day in reference to the Debs case and Mr. Gompers's case. They went into the court defending an injunction on the ground that the court of chancery had no jurisdiction and thereby confessed that they were criminals. I believe he said infamous criminals, a different kind, perhaps. But no such thing ever happened. What they did say was, "You charge me with being a criminal and therefore I want a jury to pass on it," rather than you. They didn't admit it in either case.

Chairman WALSH. As to the personal right to the writ of habeas corpus, is that being conserved, from your observation, or not?

Mr. DARROW. Courts have great reluctance to grant a writ of habeas corpus. Once in a while they do it. The trouble with the writ of habeas corpus, like everything else, is it is such an easy matter to get around it if you want to. It is not hard for a court, any more than for you and me, to decide a thing the way we want to decide it. It is perfectly easy, and we give excellent reasons for it, just as I do for my views of the law, but if a court thinks that a writ of habeas corpus should not be granted in a particular case, it is easy to conjure up any number of technical reasons against it, and then it is impossible for the poor man to get into court. The ordinary man that is in jail has no money or he would not be there. He is poor. You go through the jails in this country and you can hardly find money enough to hire a lawyer, and he can not get into court with a writ of habeas corpus or anything else. No jailer comes around and tells him, "I think I could get you a writ and I will get it for you"; but he sits there, and if he does get a lawyer it is somebody that has been looking him up, and he is generally better off without him.

It is the administration of the law which is all on the other side.

Chairman WALSH. Has your attention been called to the specific violation of that alleged—or specific alleged violations of that writ in cases where the military was called into the district?

Mr. DARROW. Of course there is no such writ when there is the militia. As a witness said the other day, "The Constitution provides for it, but that don't help the fellow any." Any governor can declare martial law when he wants to, or the President of the United States. I believe the court issued a writ of habeas corpus for Mrs. Surratt before she was executed in Washington, but he couldn't deliver it—the military authorities took her away and tried her before court-martial. In West Virginia the courts are all right perhaps, but the governor declared military law, and there were no courts. In Colorado, not also recently but in the strike of the Western Federation of Miners, they at once declared martial law.

Chairman WALSH. What became of the constitutional provision, for instance, in Colorado and perhaps in West Virginia, I am not so familiar with that, which provides that the military law shall always be subordinate to the civil power, and in the case of Colorado the governor issued no proclamation of martial law.

Mr. DARROW. As I recall the Moyer case, I am not very clear on it, they held that while they had not really declared martial law that in effect they had. It was simply a way of getting away from it.

Chairman WALSH. In everyday practice of a man that is deprived of his liberty rightfully or wrongfully, has he access to a writ of habeas corpus, and is it generally used?

Mr. DARROW. It is almost impossible to use the writ of habeas corpus. In the first place, a court, under writ of habeas corpus, takes notice only of the record. The thing is, have you made a paper case against the man. He takes no note of the fact, and any lawyer of fair attainment can write a paper or file an information or draw an indictment that is good on its face. It goes to the face of the case, whether the papers are true, barring the case of extradition that I mentioned a while ago.

Chairman WALSH. I was going to ask you was Joseph McNamara entitled by right, or under the Constitution, to the writ of habeas corpus?

Mr. DARROW. There can be no kind of question about it. The reason he was taken out of Indianapolis on Saturday night was so he could not get to the courts. He asked for a lawyer and they would not give him one.

Chairman WALSH. I have left the subject I was discussing to ask you that question, but now, going back: What is the basis and reason for the right of trial in the district, or in a man's own community? Where does it come from, the right to be tried in his own community, or what is the basis of it?

Mr. DARROW. That is as old as the common law; it comes from England, and I don't know but from way back in Germany. A man has some friends, some standing, perhaps his reputation, if he has any, in that community. It is a community where he can defend himself, his witnesses may all be there and he can't get them some place else; he can't take them 2,000 miles if he is poor, and for that reason a man is entitled to a trial in the vicinity where he lives.

Chairman WALSH. Ought it to be looked upon as a mere technical right?

Mr. DARROW. It is about the most substantial right.

Chairman WALSH. Going back to this question of guaranteed personal rights, I wish you would say from experience in courts generally, the class of cases that you have been in and observed, whether the constitutional right of free speech and free press is carefully conserved by the law and the courts?

Mr. DARROW. Every provision means nothing, when you come to have them interpreted. For instance, the Constitution says every man may bear arms, but a city ordinance in a town of 2,000 people can pass a law sending a man to jail for having a pistol. The Constitution of the United States says he may have them. The right of free speech is hemmed in, and legislated in by every village council, and by every State legislature, and by the Federal Government, until it simply means you have a right to speak if you say what we want you to say, and the right to publish comes to about the same thing. Whether a piece of literature is obscene depends on Anthony Comstock; whether it is revolutionary depends upon the courts that have been educated along the line, believing that almost any kind of talk against existing things is revolutionary. Nobody can tell what they will hold on the question. It is out of the question to tell. The constitutional guaranties, where you do find them working, is when it reaches property.

Chairman WALSH. I was just going to come to that. Could this not be worked out under a proper administration of the law so that due process of law would mean that a man could not be deprived of his right to speak, or right to trial by jury, and other rights? In other words, could that guaranty of right of due process of law be extended to personal rights to be invaded?

Mr. DARROW. It could if the courts and lawyers didn't find some way to get around it after a while. Legislatures could do it and Congress could do it. They have done it, but we find it easy to get around it, and while they are constantly limiting the constitutional provisions that protect the individual, they are constantly increasing those that protect property. For instance, we have a constitutional provision that where a person sues a citizen of another State, he can go into the United States court, because they are citizens of different States. The theory of that is perfectly plain. That was done because a man who would be at home amongst his friends would be supposed to have a better chance, and if citizens of two different States are involved, they go into the Federal court where they stand equally. But the courts have held that the word "citizen" applies to corporations. Of course, a corporation is nothing but an intangible business created by the law, but they say a corporation is a citizen within that amendment, and a body of high-finance men in Chicago get an organization to run the street cars in the city of Chicago, every one living in Chicago, and organize under the laws of New Jersey, which issues letters of marque and reprisal in commerce and calls them charters, and a man sues the street car company in Chicago, it is a foreign corporation and you immediately go to the Federal court.

Chairman WALSH. What does he want to go before the Federal court for?

Mr. DARROW. Because judges in Federal courts are appointed for life or during good behavior, and they always behave and never die. The idea of the Federal court does not depend on lawyers like me, whose sympathies are with the working people, but there is not a corporation lawyer in the United States that doesn't go there when he can; not one. You never heard of a corporation lawyer that didn't move a case to the Federal court the first chance he gets, invariably, because they are sure that their chances to win are greater.

Chairman WALSH. To what extent are boycotts legal?

Mr. DARROW. I don't think anybody knows; you have to get at your boycott, and then get a decision of the court on it to define it, whether it is legal or not, but boycotts ought to be legal; there is no reason why a man can refuse

to trade with any man because he doesn't like his religion, or why he need not work with another man because he don't like the color of his hair, or due to a mere whim; if he is going to be free, he can and should. Of course, the boycott has fallen into disrepute because it has been used by working people, but it has a very distinguished and respectable history. In this country, at the time of the Revolutionary War, the revolutionists got together and boycotted every Tory there was in the country, not only boycotted them, but hanged them, drove them out of the country and settled Nova Scotia with bankers and preachers and lawyers. They refused to buy goods made in England, and refused to associate with anybody that bought goods made in England, and now, of course, the great-grandsons and great-granddaughters of the American Revolution are sending people to jail for boycotts. The boycott has been used in good causes and was respectable until the common people came to use it. It may be a drastic means, but we use it in society. Everybody is boycotted, some for being good citizens and some for being bad, but it simply means that people in this world choose their kind, and they do it unjustly many times, but they have a right to do it, or should have a right to do it. I think in the main—I don't know what I do think about it. They have said everything about it. A fellow that starts a boycott, he has to take a chance; maybe the court will say it is legal, maybe they won't.

I don't hear of many of the other people being prosecuted. There is not a corporation of any great strength scarcely but that will refuse to sell goods if a little merchant buys some goods of its rival. Over and over again they do that and nobody pays any attention to that. "Take our goods or leave them alone. You can't take part unless you take all." All of us are in the boycott business.

Chairman WALSH. Have you observed to what extent private guards and detectives are used in the industrial disturbances?

Mr. DARROW. Yes; I have observed a good many of them.

Chairman WASH. I would like you to give us an idea, if you can, of the extent and method of such uses?

Mr. DARROW. Well, it is safe to say that there is no great labor organization in the country that is not full of detectives—full of them. There are employment agencies whose whole business is to furnish union men to work in labor organizations. There are over and over again officers of unions, secretaries, treasurers, presidents, who are detectives. There is hardly anybody who dares speak to his neighbor, no matter how closely he is associated with him, without fearing that he might be turned up, whatever he says, and that his statements might be lied about. I know in the trial of the Haywood case in Idaho we had one man closely associated with us who at the last minute developed to be a detective who was in the employ of the other side all the while. We had a number of detectives in the office; have them in every great trial; and we use them when we can on the other fellow, but they have the best chance.

Of course, the private gunmen, everybody, I think, knows about that. There is a firm down here in New Jersey that is a common example of it. I had occasion to go over a lot of affidavits made by people in Michigan during the copper strike—affidavits of men who were appointed as guards or officers in Michigan and must be citizens of that State. Those men had been appointed first in West Virginia, then in Kansas City, then in Chicago, and then in Michigan; going right around all the way wherever they were used, where they were wanted, sent here and there.

Chairman WALSH. Have you observed any feeling or unrest on the part of workers on account of delay in securing legislative enactments for their own relief? A question arose here the other day on a statement made by Mr. Johannsen to the effect that efforts had been made for 21 years to secure a seamen's bill before there was one secured. I am not familiar with the provisions, but the general provisions, he said, were simply to release the seaman from what might be termed a condition of slavery, and to give him an opportunity to express himself, to work out his own salvation, I believe he said.

Mr. DARROW. Yes; I understand that bill. I am not very familiar with it, but I understood from what Mr. Johannsen said and what I have heard of it and what Mr. Weinstock here said in asking him the questions, that it was a bill which permitted seamen to leave their job whenever they wanted to do so—that is, in a port; simply leaving them free. And I know they have been working some generations to get that bill—just to have a right to freedom.

Chairman WALSH. Is there a history connected with efforts to get other legislation of a similar nature?

Mr. DARROW. I used to know a good deal of details of it and have forgotten a good deal of what I did know about it and some of the rest is vague. But I think it took 16 years to get a safety-appliance bill for the railroads, so as to get rid of the man-killer coupling and couple cars automatically. Then it took about as long to get it enforced afterwards.

Chairman WALSH. What causes this delay?

Mr. DARROW. Why the vested interests—the people making money out of it. Of course, in some instances no doubt it takes time to equip and get ready, but everybody opposes everything that will cut down profits. That is the first thing. One of the commissioners said they had a doubt as to whether that seamen's bill should have gone through, because it might interfere with our competing with Japan. Now, I don't know. I would not examine that question at all. I should say if the American merchant marine could not live without making slaves out of the sailors, better let all of the ships rot in the harbor or be sent to the bottom of the ocean. There is not a single move made along this line that they do not say, "You can't do it. You can't shorten the hours of labor. You can't keep children out of the factories, because otherwise it will interfere with the profits," as it will. But that's not a matter of any importance.

Chairman WALSH. In your observation is there a general feeling of industrial unrest in the country?

Mr. DARROW. Oh, I think there is no doubt about that.

Chairman WALSH. Among the workers?

Mr. DARROW. No doubt about it at all; about that at all.

Chairman WALSH. What are the principal causes of it?

Mr. DARROW. Well, of course, life is unrest. It is idle to talk about curing unrest, because when you get it cured you are dead. It is the aspiration of people for power and to live; that is the cause. And you can not cure anything in this world. You can only help along to new adjustments and better adjustments. Of course, the great mass of people who are interested in a social question will not stop to analyze accurately. They see a few facts, just enough that they know, for instance, here is all the oil there is in the earth owned by one great corporation; they know that 8 or 10 railroad lines exist between Chicago and New York, but the rate of fare is the same on each except they permit a differential among themselves on passengers. And they know that perhaps a dozen men in the United States are influential enough to shut down the wheels of industry when they want to; and they know the coal mines are owned by a few people; and they know if you get a job you have got to get it from the fellows who have things, and that the great mass of men are poor and struggling along, in debt, hard up, can't get their teeth filled, and can't get anything that the rest of us get; that's about all they do know; and that's enough to know. And there will always be unrest as long as that exists, and if you cure it why they will get restless about something else, of course.

Chairman WALSH. What would be your suggested remedy to relieve the situation? But before you leave that do you think the wage question bears upon it in any way?

Mr. DARROW. Certainly; certainly. The men who see that others get so much more than they do are not satisfied with their wages. They don't live as well. So long as the fellows who do the work of the world live the poorest and the fellows who don't do it get all the good things of the world they are not satisfied, and they would not be if they were fit to live at all. And there is a constant effort to increase wages.

Of course, what you are going to do for it, that is harder. That is what this commission is for—to find out. I presume we will know after you get through, but it's hard to know what to do.

So far as any help for this generation or the next generation, the most substantial things are the organizations of labor. There have never been anything else that I know anything about which has stood back of the working people, excepting their organizations. Otherwise, they stand alone and have no power whatever to make a bargain. Talk about collective bargaining, there is no use for the individual to bargain any more. The Pennsylvania Railroad employs 200,000 men. Suppose they are not organized and one man should go there and say, "I think it is about time for you to raise my wages as a switchman." What do you suppose he would hear? They would say, "I think it is about time for you to quit your job." If there is no organization there is no bargaining at all. They simply post their schedule up there on the wall and say we will give you so much an hour and so much a month. Take it or let it alone as you please and go on about your business. But the railroad men have got to

get together as the railroads get together. But if they are organized and say, "If we can't have this or that there won't any of us work," then there is a chance to bargain. Of course, they might do something by law, but there is not much chance to effect anything by law. Our Government is so medieval in its construction and its institutions that there isn't any chance for the people to be heard from.

It does not seem like a system of Government like ours could be got up by design. It is a lot of stupendous blunders. Suppose the working people wanted to get some law that really substantially affected things. How are they going to get it? Well, you have first got to get it through Congress perhaps. Congress is made up of a body of men from all over the country, elected for two years, and taking seat a year after they are elected and have had time to forget everything; and then if you win there you have got to get it through the Senate, and that is made up of fellows who have their seats for six years, two-thirds of them elected on some other issue entirely. And if you get it through the Senate, then it has got to be signed by the President, and he is elected for four years on some other question, and you have got to get all three, and get all three at once, or else you are lost. You can't get all three by getting one this year and then one the next year, and so on. You have got to get it all at the same time. Then if you have been able to get it through Congress and signed by the President—which you won't—then there is the Constitution. Then you have got to inquire whether John Hancock or some of the rest of them told us whether we could do it a hundred years ago, and, if not, it is all off. And the only way you can tell what the Constitution says—you can't read it and tell; nobody can tell—you have got to ask the Supreme Court, and there are nine judges there for life, and most of them old men who are clear out of this generation; and you have got to do it all and get it all at once and—well, the only way you can get along with it is to not think about it.

Commissioner LENNON. What is your view as to the authority of courts under the Constitution or under legal enactment to pass upon the unconstitutionality of laws?

Mr. DARROW. Why, it is not given to them anywhere; it is not necessary; they have got it.

Commissioner LENNON. It is a usurped power?

Mr. DARROW. Oh, well, lawyers have all kinds of theories. They say that the Constitution is part of the organic law of the land, and the judges have to decide what the organic law is, and therefore they take it into consideration. But I don't think it was ever meant to be used by them, but it is. Yes; there is no constitutional provision requiring it. Take the English Government, for instance, and compare it with ours and you will find that you can do something in England. There is a House of Commons. The House of Lords is about out of it. And the House of Commons is elected directly by the people and goes immediately to work. And the King can not pay any attention to it. He has no power, only sort of to fix the table manners for the people. He has no political power at all. And the House of Lords can not affect it, and they have no constitution. So if the English people want something and pass it through the House of Commons, they have got it. But we can not do it in the life of any generation, and few people have an imagination running beyond their generation.

Chairman WALSH. It will be impossible to finish with you this afternoon, Mr. Darrow, and there are a lot of the commissioners have said they have something to ask you, and so I am going to excuse you and put on a witness that has to leave and whom we call in this 25 minutes that we have left. I am sorry, but—

Mr. DARROW. I will stay over until I can get away to-morrow.

Chairman WALSH. All right.

Mrs. Benedict.

#### TESTIMONY OF MRS. CRYSTAL EASTMAN BENEDICT.

Chairman WALSH. State your name, please.

Mrs. BENEDICT. Crystal Eastman Benedict.

Chairman WALSH. Where do you reside?

Mrs. BENEDICT. New York City.

Chairman WALSH. What is your profession?

Mrs. BENEDICT. Well, I am—I have been an industrial investigator, writer, lawyer, organizer of one kind and another.

Chairman WALSH. Have you made a special study or given special consideration to the question of women in industry, and women in industry particularly so far as the administration of law is concerned?

Mrs. BENEDICT. I can not say that I have made a special study of women in industry except as a person interested in labor problems as a whole. I have studied the works of others in this connection and associated very closely with people who have made these individual studies. But my own labor investigations have not been with reference to women in industry.

Chairman WALSH. Have been in industry generally?

Mrs. BENEDICT. Yes, sir.

Chairman WALSH. What, in a general way, are the statistics as to women wage earners in America to-day as compared with, say, 10 years ago?

Mrs. BENEDICT. Well, Mr. Chairman, I have some facts in regard to that from the census. In 1910, 23.45 per cent of the females over 10 years of age were wageworkers. In 1900 this was 18.8. Without going into the figures from 1880 up, which I have here, if the increase continues at the present rate, by 1920, five years from now, 50 per cent of the women over 10 years of age will be wageworkers. By "wageworkers" I mean paid workers, excluding women who work in their homes without definite recognized economic reward.

Chairman WALSH. Do you know of any cases where women doing the same work as men are receiving currently lower wages for their labor?

Mrs. BENEDICT. I should say that generally speaking it is a matter of common knowledge that both in public employment—Government employment, city, and State, and municipal work, and in private industry, women, generally speaking, receive less for their work than men. At least this is true in the nonsuffrage States. I have a few figures in regard to that also. And many figures can be submitted to the commission afterwards.

In the first place, the general average of women workers throughout the country get one-half of what the general average of men workers get. This, of course means little. It is simply an indication.

Chairman WALSH. I did not get that. What are those figures?

Mrs. BENEDICT. The wages of the women who are income-producing women, definite recognized income-producing women, average a rate of one-half of what the wages of income-producing men are.

Commissioner LENNON. Do you make an application of that to where women are employed in the trades that are organized as, for instance, in the printing industry?

Mrs. BENEDICT. Now, there, when it comes to the question of organization, I want to get back to the special point of view which I am presenting to-day, and I think if I may state that, Mr. Chairman—

Chairman WALSH. Why, you may; we will be very glad if you will do so.

Mrs. BENEDICT. As a preliminary statement, I am here representing the Congressional Union for Woman's Suffrage. I am a member of the executive board of that body and have asked for a hearing by the commission—a brief hearing on the question of the disenfranchisement of women as one of the causes of social and industrial unrest. I just want to get that stated so that these figures in regard to women in industry may be listened to and regarded in relation to this point of view.

We do feel—I personally feel that the continued disfranchisement of women is one of the causes of social unrest to-day both because there goes with it a growing deep resentment and sense of injustice that this fundamental right has been denied after so much of a struggle and, in addition, because we feel that denial of political rights to women is an actual and practical handicap to them in economic advancement.

The organized women workers have been mentioned, but before I go into that I should like to take up the chairman's question in regard to whether women are paid less than men for similar work. Take, first, Government employees. The advertisements for Government clerks right here in the Federal Government at Washington recite that women start in at \$720 per year, and men start in at \$900 per year. These women pass the same examinations as the men and their general average is higher, yet they start in at \$720, and the men start in at \$900. We know of many, many cases where many women earning \$1,400 a year after years of service are instructing men clerks at \$1,800 per year in the duties of their offices, and the men clerks as soon as instructed will, of course, be passed on further. These women are instructing men who are getting more money than they are getting.

There is actually a statute which provides that the head of any department may, at any time when he finds that he can, substitute a "lower-class" clerk

or a "female" clerk. That mere phrase, I think, makes it very clear that the women are considered lower paid, regardless of the value and efficiency of their work.

So much, then, for the Government clerks. It is a matter of common knowledge that teachers of public schools, who are women, except where vigorous campaigns have been conducted in their interest, receive lower pay for exactly the same class of work than men; this is true, then, not only of Federal work, but State and municipal work and all kinds of public work.

Now, that is comparatively a small group of women; but it is small only in the face of the enormous number of people involved in the problem of industrial unrest, and it is growing. It is a growing group. And as the Government takes over more and more social activities a greater number of women will be employed by the Government. In regard to these Government positions, the disfranchisement of women is an actual handicap, which no one could deny, in securing equality of opportunities and wages. And in addition, I would say that with the Government setting a standard which declares women to be of less value than men, it is no wonder that private industry follows that standard.

Now, let us take the position of women in private industry as a whole. There are about 8,000,000 women wageworkers in this country to-day. This 8,000,000 is about 24 per cent of the women over 10 years old. If the rate of increase continues, there will be 50 per cent of the women over 10 years of age gainfully employed in 1920.

The question of whether these women are getting wages that they can live on as a whole need hardly be brought before this commission. I know that your own investigations have brought out the fact again and again, no matter how low the wages of men are, the wages of women are lower, and that, I think, is a matter which needs no proof.

But let me give you a few facts from a most recent exhaustive inquiry made in New York covering four trades, the confectionary trade, the paper box-making trade, shirt factories, and retail stores. In the first, of over 90,000 persons for which weekly rates were given, more than three-fifths of the male workers received less than \$15 per week, while more than three-fourths of the women received less than \$10 a week. In the stores half the males get less than \$14 a week, and half the females get less than \$7.50 a week. In the shirt factories half the men get less than \$12 a week and half the women less than \$6.50.

Mr. Chairman, I know you are better educated on these matters, after two years of this kind of work, on all these facts, than I am, or anyone else is. I merely want to call your attention to these facts about women. In facing this tremendous industrial question which you have before you do not forget the women; do not forget that whatever you can say about the wages of men, the wages of women are less.

Now, then, the question is, has this thing any relation to the vote? If it has not, then I, as a representative of a suffrage organization, have no logical reason to be here before the commission; but I think it has. Women can not raise their wages directly by the vote, except in Government employ. They must raise their wages as men have raised their wages, by organization. But I think even Mr. Johannsen would admit that the vote has been essential to labor in winning what it has won. It is not always the actual casting of the ballot; it is not always the immediate control over legislators whom you have put in office that counts, but it is the fact that the vote makes a person a little less defenseless in the face of power than he would be if he did not have the vote.

I just want to give one historic illustration of this.

The greatest strike of women, I guess, in the world was the shirt-waist strike in New York. During that strike the women pickets were subjected to probably as crude a line of police abuse as any strikers ever have been subjected to. During that strike some 5,000 of those women strikers marched down through the streets of New York with their women supporters to see the mayor and appeal to him, not in the interest of their demands, but in the interest of police protection and fair treatment from the administration, and the mayor refused to see them. He said he was not interested. Now, regardless of how powerless the men workers of to-day are, and we have many instances before us of that, I doubt if it would be possible to find in history of the United States any instance in which 5,000 voters, no matter how poor and downtrodden, have gone to see an elected official and been refused admission—refused an interview. I think that epitomizes the situation of women workers.

Commissioner O'CONNELL. So that there may not be a wrong impression from the record, you might state the time that was so that some person might not be held responsible for it that should not be.

Mrs. HARRIMAN. Just what mayor was in office at that time?

Mrs. BENEDICT. I think it was Mayor McClellan.

Commissioner HARRIMAN. Wasn't it Mayor Gaynor?

Commissioner LENNON. No; the big strike was under—at the time of Mayor McClellan.

Commissioner O'CONNELL. I will ask, then, that you supply for the record the exact data on that.

Mrs. BENEDICT. Yes.

I would state that this opportunity has come to us very recently, and that my preparation has been brief, and that the Congressional Union will be very glad to furnish an authoritative statement in regard to this whole proposition and our claim.

Now, Mr. Chairman, I also want to mention another great class of workers. After all, I can only say that 24 per cent of the women of this country are wage earners. That leaves us the vast majority who, you might say, have no economic responsibility, and after all perhaps you might say that my plea is in the interest of a very small proportion.

However, it is not true that the vast majority of women who do not work for wages do not work. It is not true that they have no economic responsibility; it is true they have no economic reward of any definite character. They are relieved of economic reward but not of economic responsibility. These women, especially the poor ones—because I am not now speaking of the very few who actually are supported by men, but of women who work in homes, who work on farms, who cook and wash and sew, who produce children and train them and keep them clean, perhaps more continuously than any other class of workers we have, these are the women who have no recognized economic reward. They have the right in law to support from their husbands. That is all. If the husband goes away or is irresponsible, this right is practically nonenforceable.

Now, some solution of the problem of those women must be worked out by this commission, if this great cause of social unrest is to be removed, and I can not see any way it can be done except through legislation, and I can not see how legislation can be achieved until that great mass of women have some representation in legislation. So, I think, it is perhaps even more important for them to have the vote, than it is for the wage-earning women, certainly equally as important.

Now, Mr. Chairman, I have, so far as I feel prepared, stated why I believe there is a connection between economic power and the ballot, lessening as the years go on, but still in existence.

Would the commission care to hear what I wish they would recommend in regard to that?

Chairman WALSH. Yes; just make any recommendation you please, Mrs. Benedict.

Mrs. BENEDICT. I should like to see this Industrial Relations Commission recommend the passing of a Federal women's suffrage amendment (of the bill) of a bill which would prohibit the States from denying the right of suffrage on the ground of sex. And I should like the commission to make that report now, not wait until it makes its regular report. I should like to see you make it now, and this is my reason: This reform I am talking about, granting suffrage to women, has no business in the twentieth century; it is an eighteenth-century question we are talking about. Now, I think it would be a great thing if you could clear the decks of this whole question of giving women political rights for what they amount to. Get that out of the way; make this great body of courageous, devoted, intelligent women in this country, free to help in working out the big industrial-labor problems of the future; free from this irritating, humiliating, continuous demand for political rights, which they will not cease to make until they win. That is why I should even ask that the commission make a report on this question at once, remove it from their minds, go on record on it, and then go on. It does not belong in the twentieth century.

Commissioner O'CONNELL. The body to which this commission reports does not meet until next December.

Mrs. BENEDICT. I have thought of that, and I think it would be a great thing for you to make your report on that to President Wilson. He can bring



about this reform. If you could convince President Wilson during the summer that the success of the Democratic Party depends on taking a stand on this question you will have done a great thing.

Commissioner O'CONNELL. But the law says that we shall report to Congress.

Mrs. BENEDICT. There would be ways of getting that expression of opinion into the public press.

Commissioner WEINSTOCK. Just one question, please. Do you think that a legal minimum wage for women and minors would be of advantage to women and would help equalize the wage problem?

Mrs. BENEDICT. Mr. Weinstock, I have never fully made up my mind about the minimum wage; I don't know.

Commissioner WEINSTOCK. You have no opinion on it?

Mrs. BENEDICT. I have no final opinion; no.

Commissioner O'CONNELL. You are not alone in that opinion then.

Mrs. BENEDICT. No.

Commissioner LENNON. There is one member of the commission who could report on the women's suffrage question years ago.

Chairman WALSH. That is all, thank you, Mrs. Benedict.

We will now stand adjourned until to-morrow morning at 10 o'clock.

(Whereupon, at 4.30 p. m., Monday, May 17, 1915, the commission adjourned until 10 o'clock Tuesday, May 18, 1915.)

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WASHINGTON, D. C., *Tuesday, May 18, 1915—10 a. m.*

Present: Chairman Walsh; Commissioners O'Connell, Harriman, Weinstock, Lennon.

Chairman WALSH. We will please be in order.

Mr. Darrow, please resume the stand.

#### TESTIMONY OF MR. CLARENCE S. DARROW—Recalled.

Chairman WALSH. I had finished your examination, Mr. Darrow, as far as I am concerned, and I think Mr. Weinstock has some questions he would like to ask you. Had you finished your answers last night?

Mr. DARROW. I ran onto this [indicating]. A friend handed me this magazine; this is a copy of an old boycott bill, which would be considered respectable now; the Sons and Daughters of Liberty, in the days of Revolution. This is a placard that was put up:

"William Jackson, an importer at the Brazen Head, at the north side of the townhouse, in Corn Hill, Boston.

"It is desired that the Sons & Daughters of Liberty would not buy any one thing of him, for in so doing they will bring disgrace upon themselves and their posterity forever and ever, amen."

The modern boycott does not generally use that word at the end, but it is the same thing.

Commissioner WEINSTOCK. The name of Dr. Goodnow, the president of the Johns Hopkins University, was brought in during your testimony yesterday?

Mr. DARROW. Yes, Mr. Weinstock.

Commissioner WEINSTOCK. I would like to read some statements which were made by Dr. Goodnow, and invite your opinion thereon with a view of seeing how far you concur with Dr. Goodnow in his attitude; this is how it reads:

"Taking a concrete case, doctor, taking the case, for example, of the Colorado situation, and analyzing it, let us see what your counsel in the matter would lead to. The governor ordered out the militia in connection with some coal strike that took place in Colorado. There was a conflict of testimony there as to the cause and effect. The National Guardsmen maintain that they fought in self-defense; that they were first attacked by the strikers. The strikers deny that and claim that the initiative was taken on the part of the National Guardsmen, which led to riot. Let us assume for the purpose of our illustration, and for the purpose of our analysis, that the workers are correct in their statement and that the militia did take the initiative and did abuse their power and did harass and fire upon innocent people. Your advice and counsel under those circumstances to the worker is, take the result? Yield for the time being; do not attempt to take the short cut and get immediate redress, but recognize the existing authorities and abide by their demand? Let your remedy

come by use of the ballot, see to it that the commander in chief that is responsible for this is either recalled, under your recall law, or is condemned by public sentiment and not reelected? Do I follow you?

"Dr. GOODNOW. Yes, sir; it seems to me that any other advice is going to lead to anarchy. It seems to me that the fundamental proposition you have to start with is that we must have peace, and we shall not recognize any such thing legally as right to restrain the constituted authorities. The right of revolution or violence or anything of that sort. We must as civilized men adopt that idea, or else there is no peace for our Government.

"Commissioner WEINSTOCK. In other words, the short cut to the remedy must be condemned?

"Dr. GOODNOW. Yes, sir; as I look at it.

"Commissioner WEINSTOCK. And that it is better for a group of men to suffer from real or fancied injuries temporarily than to have chaos prevail?

"Dr. GOODNOW. Certainly. One of the many troubles seems to be the workers in the country never will gain anything by any such thing as organized violence. The people as a whole condemn it, and they can do very much better by presenting their case as forcibly as it can be to the courts, where that is possible, or to the public as a whole."

Now, will you please, Mr. Darrow, state how far you are in accord with Dr. Goodnow's attitude and position in the matter?

Mr. DARROW. Not very far. The officers of the law have the least right of anybody to violate the law. If a constable seeks to arrest a man without having legal authority to do it the man not only has the right to resist, but ought to. If the militia attacks people brutally and without authority they should be resisted if there is a chance to resist them and win. Of course, if they can not, safety might dictate something else; but because a man is a militiaman that does not give him the right to make the law or violate it so far as it is made, or outrage conscience and decency. The idea that a man who is an officer can do anything is only fit for slaves to harbor.

Commissioner WEINSTOCK. Well, are we to gather from that, Mr. Darrow, that if the governor of the State should order out troops, and do it in accordance with the law, and those troops under their command should exercise their very best judgment, and do what they believed was necessary to be done, in order to preserve law and order; that if in the judgment of the strikers the troops were exceeding their authority, would you justify the strikers in resisting and restoring to violence?

Mr. DARROW. As a plain question of law, whether the troops thought they were right or not cuts no figure, the question is, were they.

Commissioner WEINSTOCK. The strikers then would be the judge, whether they were or not?

Mr. DARROW. No; afterwards, I suppose, it would be submitted to some tribunal, and if nothing else, to the people, as to whether they were; but neither one are the judges, each one acts for himself as far as he can.

Commissioner WEINSTOCK. Then, if in the judgment of the strikers they were warranted in resisting the constituted authorities, and did resist, and bloodshed followed and lives were lost and property was destroyed, would you say the strikers should or should not be punished, under the law, for such resistance?

Mr. DARROW. Well, suppose blood was shed and property destroyed, but liberty was saved, then what? There are other things to consider besides property and other things to consider besides bloodshed. The liberty of the man, which is the one thing worth defending, and it is to be judged by history, in the light of all that has happened, and the consequences and result of it. There has been very little improvement in the world that has not, at least, been accompanied with bloodshed. It seems to be the law of nature. The scriptures put it, "Without the shedding of blood, there can be no remission of sins."

Commissioner WEINSTOCK. Are you a believer in bloodshed?

Mr. DARROW. Neither a believer nor disbeliever in it. It is in the course of nature, and we have nothing to do with it. To say that I believe a thing, do I believe it exists, or approve of it, or disapprove of it? There are times when it is absolutely necessary. We would not have any Government here except for bloodshed. The slaves would be slaves yet except for bloodshed. Lots of good has come of it. You take from the world everything that is gained in that way, and we would still be living in caves and clothed with hair instead of wool.

Commissioner WEINSTOCK. You have heard it said, Mr. Darrow, I think it was brought out here at different times before the commission, that the attitude

of—I won't say all organizations, but the attitude of some labor representatives and some labor leaders is that a strike is war, and that everything, so to speak, is justifiable in war. Are you in sympathy with that point of view?

Mr. DARROW. I don't think that everything is justifiable in war, to start with. I think there are many things in the present war in Europe that are not justified under the laws of humanity, and I think it is a mistake to say everything is justified in war. One ought not to forget their human instincts in time of war, although they are often swept away. But a strike is in the nature of war, and conflict between capital and labor to-day are in the nature of war, so regarded by both sides, each side trying to win, and using such power as they have to win, but I think employers do many things they should not do, and the working men do many things they should not do. They are cruel and unnecessary.

Commissioner WEINSTOCK. Do you think, living in a Republic, enjoying, as we are permitted to enjoy, our political and civil rights and liberty, do you think anybody has a right to declare war except the Government itself?

Mr. DARROW. I don't think we live in a free country or enjoy civil liberties. Of course, it is almost impossible to get at whether you have a right to do a thing; there is no way of fixing what you mean by that word. Things happen in this world, and the happening is a justification of it alone. I don't know that the San Francisco earthquake was right, but it came. What are you going to say about it; was it wrong? It don't make any difference whether it was or not, it was in the order of nature. Whatever is right, according to philosophers, as Pope said it is in the order of nature. There is no use quarreling with it.

Commissioner WEINSTOCK. I want to make sure that I follow your reasoning and get your point of view. I should infer from what you said, reading between the lines perhaps—

Mr. DARROW. Yes, sir.

Commissioner WEINSTOCK (continuing). More than what you say, that we are living under a delusion and a snare, and we imagine we are living in a free country and enjoying political and civil rights, and since we are not living in a free country and are not enjoying civil and political liberties, we are practically as much warranted in resisting authority as in Russia, where there are no civil and political rights, and any group of us that have wrongs, or think we have wrongs, are justified in resisting the authorities?

Mr. DARROW. I don't think I stated it that way or meant to put it as strongly as that. I want to be perfectly frank with you about it, and although the subject that we are discussing is apt to be wrongly quoted, and we are apt to be misunderstood, still I will attempt to tell you fairly. Freedom, of course, is a relative term. People of the United States are freer probably than the people of Russia or Germany; they are not as free as the people of England. They are nowhere near as free as they were 75 or 100 years ago. Everybody, I think, must, who has any vision, know that they are not as free as they should sometime be, when they are ready for it. It is all relative.

As to protecting it by the courts and statutes, they are invoked by the strong and can not be invoked by the weak, as I tried to show yesterday. It takes money; it takes education; it takes opportunity to resort to such safeguards as the law gives us; and the weak are without them. Pretty much everybody in jail are poor people, and in all the prisons all over the world.

Now, the constant struggle of every individual, as of every animal and plant, is for liberty, reaching out for it in all directions, and struggling for it. When the masses struggle for it and the strain gets too great it breaks. Of course, the individual who alone takes up arms against the constituted authority must die. It is the law of nature. A few individuals must die. If I had any power over it, and men should ask us, Shall we do it, I should say "no," probably almost in every instance. I do not know of a time that I should not say "no," because I think the unrest has not reached that point where the change of system should come. The revolutionists in America were against the same proposition. The English Government was fairly free—the English Government that controlled the United States. There were many matters of injustice, practically the same as exist to-day, and a few of them started the revolution, and it went on until it grew and they resisted against the law and won. John Brown got 19 men to wage war on the United States Government; and the movement he started won in the end, because people were ready for it. The injustice was so great and the imaginations of men worked and it made a new system. If it succeeds, it is all right; if it fails, you have to take the consequences. That is all. I don't know whether I have made it any clearer or not.

Commissioner WEINSTOCK. Well, your attitude is, as I understand it, that while, so to speak, on paper we enjoy a free government, as a matter of fact we do not enjoy free government. Now, can you conceive of any more effective way of securing for the big body of the people their civil liberty and their political rights than by manhood suffrage; or, let's go a step further and say in the States, where it has been carried out—universal suffrage plus the referendum, plus the initiative, plus the recall.

Mr. DARROW. Why, I don't know. Now, I don't see anything else; some time we may be discontented with it. Of course, I can conceive of better ways. For instance, if every coal miner in the United States refused to dig coal until the coal mines became public property, they would get at it a thousand years ahead of the ballot.

Commissioner WEINSTOCK. Well, do you know of any better way of the coal mines becoming public property than by giving not only the coal miner but every other worker the ballot plus the referendum, plus the initiative, plus the recall? Supposing—I am sure you will not dispute the fact—that the great body of the voters of every Commonwealth in the Republic, and the great body of the voters of the Nation as well, are not wage payers, they are wage receivers.

Mr. DARROW. Yes.

Commissioner WEINSTOCK. Now, suppose that the great body of the wage receivers of the Nation felt that the time was ripe for the Government to take over the coal mines, for example, as you have suggested. What would prevent it?

Mr. DARROW. Congress, the Senate, the President, the Constitution, and the Supreme Court.

Commissioner WEINSTOCK. Who elects the Members of Congress?

Mr. DARROW. The people.

Commissioner WEINSTOCK. Who elects the President?

Mr. DARROW. In a round-about way, the people.

Commissioner WEINSTOCK. Exactly. Now, if the people wanted—and who appoints the Supreme Court?

Mr. DARROW. The President.

Commissioner WEINSTOCK. Exactly. Now, if the great body of this Nation wanted to own the coal mines, and said so through their ballot, how could it be stopped?

Mr. DARROW. Well, we will assume that there is an election next year, and assume that we could get that issue; of course our country is so spread out and diversified that it would be hard to make an issue in Kansas or Oklahoma or Nebraska on the coal mines in Pennsylvania; but assuming you could—you go to work and elect a Congress that does not take their seats for a year—don't begin working. In the meantime they take their places with the Senators who have been there some four years, and some near six years; two-thirds of them have been elected two years sooner on some other issue. Then you have a President who comes from a different place in society; and then you have the Constitution, which was made 125 years ago and which told us we could not take private property without due process of law; and you have a Supreme Court, the majority of whom have been in their offices for 25 years, and who, I would say, would average 65 or 70 years old, and who, from the natural order of things, could not be seized with any new emotion, if any; and it is out of the question to get them all to say this thing together; never has been done in any very substantial way. You have got to get them all, and have got to get them all at once. It is too clumsy.

Commissioner WEINSTOCK. Well, may I call your attention to this fact, then, Mr. Darrow, as an evidence of the possibilities along the lines of achieving desired results in legal ways. A decade or more ago such a thing in this country as workmen's compensation, the eight-hour day for miners, and the eight-hour day for women and minors, the minimum wage, child-labor laws, public ownership of street railways, State insurance, and women's suffrage were practically unknown. Now, doubtless there were hot-heads and zealots who, feeling that the public weal and the public welfare and individual liberty and individual rights depended on some or all of these things, might have been ready to take up a gun and fight for them, but time has shown that that would have been a very unwise thing to do. Absolutely by virtue of the ballot, and, in some Commonwealths, aided by the initiative, referendum, and recall, which, likewise, were unknown in this country a decade or more ago, every one of these things has been brought about peacefully.

Mr. DARROW. And all of them are not worth a pinch of snuff.

Commissioner WEINSTOCK. Will you tell us why?

Mr. DARROW. Because they are insignificant. Minimum wage of \$6 or \$8 a week when the unions can get one much higher, and an 8-hour day for women and a 16-hours day for railroad men and a compensation act, which leaves them no better off than before. They are little bit of trifling things that do not go to the root of the question. I do not say they are entirely useless, but they are so near it that they are not worth the effort that has been taken. Instead of trying to find out whether there are any fundamental causes that tend to the great inequality between men to-day we are tinkering at little fool symptoms and spending the time and life of a whole generation curing some little symptom and leaving the world no better off than it was before.

Commissioner WEINSTOCK. You regard women's suffrage as a little fool symptom?

Mr. DARROW. Well, I have some friends here that believe in it, and I do not like to talk about it. I think it does not touch the industrial question at all. If you would cut out three-fourths of the men's votes, it would not make any difference on the industrial question; it is not how many votes, but how they vote.

Commissioner WEINSTOCK. The point I want to get at, Mr. Darrow, is this: Regardless of how much these things may be worth, which is only a question of opinion, you in your judgment may belittle them and think they are of little value, and others of us may regard them as of great value?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. But let us forget their value and ignore whether their value is great or small. I think we will have to admit, and I am sure you will be frank enough to admit it, that every one of these measures was fought and fought bitterly by the so-called interests.

Mr. DARROW. That is true.

Commissioner WEINSTOCK. And that, despite the alleged tremendous power of the interests in the Nation, a power believed by some to be great enough to stifle the things wanted by the many, despite that power all these steps in the direction of progress have been made, and if these steps have been taken before, why can not still broader steps be taken and made in the same manner without resort to resistance and violence?

Mr. DARROW. I do not want to minimize those things; I believe in them and I am glad to see them; I think it does show some progress. Complaints have gone on for years and years and these things have resulted. Of course, I know they were all fought by the strong and the rich; they instinctively fight anything that is new; I do not blame them; they are like the rest of us; they feel their own interests and they are on that side, but the things themselves are so insignificant; people are not richer on account of them, or very much richer; and you take the workmen's compensation law, which I know something about and I know you do, too; in pretty nearly every State in the Union this law has been framed by the employers and made by them. They did not want it, but when it was forced on them they say, "We will do this much; we will stand for this much." Now, that is something, but it is almost ineffectual. Poor people come to my office day after day injured and apply for relief under it, go away with next to nothing; they do get something, but it is so trifling and inadequate it is not worth the fuss made over it, instead of getting down to the simple fundamentals that would bring about relief. I do not like the attitude of saying, if you will pardon me, that these are legal ways and any other way I suggest is unlawful. I do not care much about ways or the laws to provide ways, but the thing is whether you get it. But if the coal miners say they won't dig any more coal as long as they are digging it for other people, it would be lawful, just the same as if they say they won't work more than eight hours a day or for less than \$5 a day; and if the people cutting lumber say, "We won't cut any more trees until the Government owns them," that is perfectly legal so far; and if it is not legal it corresponds with all of our conceptions of right, and many times in the history of the world we reach those things by going cross-lots, and pretty nearly all that labor has gotten has been gotten that way.

Commissioner WEINSTOCK. Two points you have made, Mr. Darrow, that I want to spend a few moments on, so as to equalize our viewpoint more sharply. The first is your criticism of the workmen's compensation act. If what you say is true, then the workmen's compensation act is a sort of delusion and a snare;

it gives the worker a stone when he asks for bread; and I think perhaps in some Commonwealths it may come pretty near being true, but it will not apply to all Commonwealths, and it will not apply to the tendency that is going on every hour of the day?

Mr. DARROW. No.

Commissioner WEINSTOCK. Now, to point out to you the merit of workmen's compensation and to show you how it is a very great one of the great remedies to remove industrial unrest, let me give you a leaf out of my own experience as a member of the Workmen's Compensation Commission of California.

I was called on recently by a little widow; her husband had been an elevator operator and he had been earning \$75 a month. He met with an accident in the elevator and was instantly killed. He left his wife and baby with just 15 cents in the world; that is all she had between herself and starvation for herself and babe. Without workmen's compensation the little woman, not being a breadwinner, the first thing in all likelihood that would have happened, she would have been separated from her baby, the baby would probably have been sent to some asylum, and the mother would have to shift some way for herself, and the chances are that she might have gone downward instead of upward. Under the workmen's compensation she was entitled to a reward equal to three years of her husband's wages; her husband received \$75 a month, \$900 a year, or \$2,700 for the three years, payable in weekly installments spread over about four years and one-half.

Mr. DARROW. Without interest?

Commissioner WEINSTOCK. Without interest; her income was about \$50 a month for four years and a half. She was saved from immediate distress to begin with; she was made independent; she was put in a position where she could take care of herself and baby for four years and one-half, and in the meanwhile she could qualify herself to become a breadwinner; and therefore she and her baby were saved from falling below the poverty line and becoming a burden on society, and she was able to become self-respecting and self-supporting. I simply state this as one of the thousands of cases that come under our observation?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. Now, it is true that all of the States do not treat their injured workers as generously as some of the other States; but those things are naturally a matter of growth, and with the ballot in the hands of the workers and their sympathizers it is not difficult to foresee the day when the highest possible degree of equity will be exercised in practically every State in the Nation toward their injured workers.

So much for workmen's compensation.

You take the ground that the coal miners, if they act as a unit and simply follow the I. W. W. preaching of sitting down with folded arms and paralyzing industry and refusing to dig out a pound of coal until the State or Government take over the mines, that the best possible results would be achieved.

It seems to me that could be hoped for only if the coal miners not only could get within their ranks every able-bodied man who could be taught how to mine coal and were in a position, either by force or coercion or intimidation, to prevent other men from taking their places. As long as it was possible for other men to take their places they could not monopolize the world of labor, and little if anything could be accomplished along those lines. Now, I would be glad to get your answer to that. What has been accomplished in the matter of better condition of the worker in the way of legislation?

I happen to know in my own Commonwealth, and I take it the situation is very much the same in other Commonwealths, organized labor, for which I have the greatest respect, and to which I give the fullest possible credit for having rendered labor heroic service, but for decades in my own Commonwealth organized labor endeavored to secure for women and minors an eight-hour day, and failed, except in some isolated spots. Here and there there was a union of women that managed to get an eight-hour day, but the number of women who had secured, through organized labor, an eight-hour day were infinitesimal. Through legislation, so to speak, overnight, with a wave of the hand, all the people collectively established for all the women workers and minors an eight-hour day. In other words, it was accomplished by legislation, so to speak, at the drop of the hat, what organized labor had not been able to accomplish in decades and would not have been able to accomplish for many, many more decades. The same thing will apply to the question of the minimum wage for the female worker and the minor. Organized labor has tried very earnestly and very

energetically to secure that minimum wage. In isolated cases it has been able to do so for women and for minors, but on the whole up to to-day it has failed. Again, so to speak, overnight and with a wave of the hand and at the drop of the hat, through legislation, the minimum-wage commissions have been appointed in Western States, and while those wage commissions may not have established the minimum wage that you and I and some others think is right, they made a tremendous stride along those lines, and they have succeeded in securing a living wage as a minimum, not as the maximum, and again they have accomplished overnight what organized labor has not been able to accomplish up to this time and is not likely to be able to accomplish for an indefinite period yet to come. In the face of these facts, will you still belittle the achievements that can be brought about by legislation?

Mr. DARROW. To go back to your statement, I don't want to be in the attitude of unduly belittling it, because I think the workingmen, and everyone sympathizing with them, should use every means they have, and the ballot is one, but at least stand up and be counted, whether it means much or not, and I don't want to say that your workmen's compensation act has not been of some value, or that it is a snare and delusion. The reason it is of some value is because the law before that had been a delusion and snare. That is because a man killed in the line of his duty and leaving a family had been left by the courts of this country in such a position that a family was destitute after his death, and therefore this law is of some little value. Take your elevator men for instance. That family you say got in the neighborhood of \$2,300?

Commissioner WEINSTOCK. Two thousand, seven hundred dollars.

Mr. DARROW. Four years interest was deducted out of it?

Commissioner WEINSTOCK. No; there was no deduction of interest. I probably misunderstood your question.

Mr. DARROW. No; I think we understand each other. This was payable weekly?

Commissioner WEINSTOCK. Yes, sir.

Mr. DARROW. The gross amount of \$2,700 was paid in four years?

Commissioner WEINSTOCK. Yes, sir.

Mr. DARROW. And the present worth would be less than \$2,300?

Commissioner WEINSTOCK. From that point of view, you are right.

Mr. DARROW. Under that statute the stingy States, and Illinois is one of the many, you can recover, or could before that statute, for a death \$5,000 as a minimum.

Commissioner WEINSTOCK. That was before the law, at common law?

Mr. DARROW. Yes. If the courts had not cut to pieces all of the rights of the poor, that widow would have been entitled, in any State of the Union, to \$5,000 or possibly \$10,000.

Commissioner WEINSTOCK. May I make a statement at this point on that issue? What you say is true, but this I think you will admit is also true, that under the common law the records show that the average time from start to finish under the common law in a damage suit is six years?

Mr. DARROW. Probably you are right; I don't know, but I presume you are right.

Commissioner WEINSTOCK. And the records further show that under the common law for every dollar that is paid out of the pockets of the employer in a damage suit the injured worker only got about 20 cents, the other 80 cents going—

Mr. DARROW (interrupting). I have no doubt you are right about that.

Commissioner WEINSTOCK. Those are the records. Now, under which of the two circumstances do you think the dependent is better off?

Mr. DARROW. I think under your compensation act, and I have always said for it, and do now, although it is very inadequate, and has been passed as a last resort in all of these States by the consent of the employers for fear they would get something worse. I won't say in all, but as a rule. We are trying to amend it in Illinois. It is almost out of the question. It may be, after long years, we will get something more, but it is very inadequate; but still I am glad to see that much, and I want to see people support it.

Now, as to your second proposition, which relates to the minimum wage and the ownership of coal mines and the like, I would disagree with you in saying that the law has first obtained the minimum wage, or the shorter hours. I think the labor organizations got shorter hours and minimum wages 25 years ahead of the law.

Commissioner WEINSTOCK. For women and children?

Mr. DARROW. Yes; not universally, but in most lines of work the law at the first did only what the organizations had accomplished before, and did not do that as completely. If they had—now in most building trades of the United States they have eight-hour days, and in most of the organized lines they have constantly reduced the hours of labor and raised the price. In unorganized lines of labor the hours have been longer and the price lower, depending on everything else in this world, on the amount of force back of the demand. But I think it has been the 30 or 40 years since they began reducing the hours of labor to eight hours. The general law has not added anything to it, except possibly in a few cases. For the coal miners it has added nothing; they have had an eight-hour day for 25 years; no longer than eight-hour day, when you take it on the average. They work less than that; they probably work less than that in any one day, or any one week. They already had that. There has been some lack of uniformity in it. Sometimes they work too long, and for a long time they do not have any work at all. I think I am pretty safe in saying that the working women of California, of the stores and shops, are not better off since that law has theoretically reduced their hours and fixed a minimum wage at \$7 or \$8 a week, which is below what life fixes—you can not get it much below life. It does one thing, in my opinion, and that is pretty near all it does; it interferes with what is supposed to be a sacred right of the employer to buy labor as cheap as he can buy it, and it says that the State has some right to say what the price shall be. That is about as far as it has gone, but I am glad it has done that much, although I think it could be done quicker. I admit the difficulty that you speak of with reference to taking the coal mines in the way I say. It is a terrible hard thing to get working men to stand together. It is easy for me, a lawyer, who had always more than I deserve, and the plain workman getting a fair living, to criticize because they don't stand together. Men like you or me have no right to judge of that matter. If we were living along the life line we would probably grasp the first crust of bread that we could get hold of and let the rest go. That is about what we are doing, anyhow. If they do stand together to a considerable degree, it does look like an almost impossible thing to say that all of the coal miners would refuse to dig coal until the coal mines became public property. It would not require them all. It would require 50 or 60 per cent, but you have the same difficulty with the balance. You have to get them together, and you can not get them any easier, and the man who is what the unionists call a scab in the mines, is a scab in the election, too. That is, he votes for the interests of his employer as against the interests of his class, and it is just about as hard to bring them together in one place as it is in another. They never can be brought together as a matter of reason; nobody acts from it. They are brought together through some great emotion that sweeps them along, and it is hard to get it focused on the election; you can generally get it focused on a general strike. Men don't think anything about it, they just do it. In that way some of these things come to pass by a general movement, and when it comes to pass it will come that way.

Commissioner WEINSTOCK. Let us see where your line of reasoning leads us to. On the one hand you admit it is almost an impossible task to get all the coal miners to act as a unit along the line of securing public ownership of coal mines, and on the other hand you admit that it is almost a hopeless task to get the workers to work together with the ballot. If that is true, what is the remedy? If it can not be done through the ballot or collective action, where does your remedy come from?

Mr. DARROW. I don't know whether my philosophy is helpful or cheerful. I don't believe there is any remedy for anything in this world. I am not an optimist, and don't think life is worth while. We are here because of the will to live. You can not prove we get pleasure out of it or it is worth anything. We are here working out our instincts and emotions. You can not prove that the future is going to be better than the past. We are just living it, and we can not get out of living it.

Commissioner WEINSTOCK. Admitting all of that to be true, is it not better to look at the doughnut than the hole?

Mr. DARROW. We differ in our temperaments. It might be better for me to be constituted like you, or the chairman, but I was not, and I can not help it. The forces that mixed up the clay mixed them in a certain way. May be they didn't do right by me, but I can't help it. It is so with you and everybody else. My inclinations drive me to be on the side of the poor man. My emotions are



quickly reached, and my sympathy is quickly touched, and I have a lot of imagination which has caused me a lot of trouble, but I can not help it.

Commissioner WEINSTOCK. You heard the comparison made before this commission in the last few days, and if I mistake not I think you yourself made use of it, along the lines of justifying the boycott?

Mr. DARROW. Yes, sir.

Commissioner WEINSTOCK. By quoting the action of the American colonists during the Revolution. That was practically a boycott on England?

Mr. DARROW. Yes, sir

Commissioner WEINSTOCK. And was resistance to constituted authorities, and that has been used possibly by yourself?

Mr. DARROW. Yes, sir; I did use it, Mr. Weinstock.

Commissioner WEINSTOCK. I know it has been used by other witnesses as a justification for boycott and for resistance, but is that a fair comparison, Mr. Darrow? Are the conditions parallel? Is it not a fact that the Revolution was brought about and there was resistance to the constituted authorities on the part of the colonists because they had taxation without representation? That was the issue? Can it be said to-day that you and I and the rest of us have taxation without representation? Have we not the fullest representation?

Mr. DARROW. Women say they have not.

Commissioner WEINSTOCK. Admitting that it is so, as far as the women are concerned, in the States that do not have women suffrage, can you and I say that as citizens, as voters?

Mr. DARROW. No; but that is only a small thing. The idea is that the boycott is a natural weapon which is resorted to for good and evil which comes from the philosophy of life. I have been boycotted all my life, sometimes because I ought to be, and sometimes I ought not to be, and sometimes because I was too good for the bunch I was living with, and sometimes perhaps because I was too bad for them. A man gets out of line of the common life and he is boycotted. It does not make any difference whether he is ahead or behind. He has got to keep step. There is no man here who has not been boycotted, or does not boycott. I boycott people because I do not like them. I know they are just as good as I am and just as bad, but they don't mix with my chemistry. There is no chemical affinity with me. Everybody boycotts what he don't like. You can't mix a scab and a trade unionist, because the trade unionist believes the class should stand together, and you bring in a workman that won't stand with his class, they don't like him and won't associate with him. I don't want to be personal, but I can take a man like yourself who has been really and honestly interested in the labor movement, as doubtless you have, and you have doubtless found a good many of your employing class, your associates, who look upon you with considerable doubt. You let an employer be interested in the cause of the poor and the employer thinks he is a traitor, and don't like him. You let the poor be used by the employer, and the poor thinks he is a traitor and don't like him. We are boycotted for our religion and politics, and social views and conduct, and everything else good and bad; and it is a natural thing and you can not help it, and the law is idle to try to help it.

Commissioner WEINSTOCK. Were you present yesterday, Mr. Darrow, when Mr. Drew gave his testimony?

Mr. DARROW. I heard some of it.

Commissioner WEINSTOCK. Well, possibly you may have heard his explanation of where he draws the line between a legal and illegal boycott. Let me see if I can present his thought clearly. He took the ground that the mere refraining from buying things or patronizing other people, individually or collectively, is not illegal. That this group, for example, would have every moral and legal right to say that for any reason, or for no reason, we won't patronize this hotel or that hotel or some other hotel. Nobody could find fault with that or take exception to that. But that the moment that we went beyond that and intimidated or coerced other people because they did what we did not want them to do, then we went beyond the limit and committed wrong, moral and legal wrong, and are subject to punishment.

Mr. DARROW. Those fellows are always strong for the law; they make it. Now, let us see how that question really works out. Under the law, as it is fairly well understood, I think, or has been, to constitute crime, there must be an association of act and intent. Well, what it might be in mental philosophy I won't discuss, because it is outside of the realm of law and lawyers; but there must be a combination of act and intent. A prayer meeting is a perfectly legal thing, but if a combination of men, for the sake of breaking up

the business of John Smith, would arrange to hold a prayer meeting at 12 o'clock every day in front of his store or saloon it would be an illegal combination, because the purpose is bad. The purpose is malicious and born of spite against the man. A boycott should be—I don't know what it is any more in the law, because nobody knows. These fellows all talk learnedly about it, but they do not, any of them, know, because these judges are guessing all the while, and there are so many judges that they can't all guess together. But under the law as it was fairly well laid down, if a combination of men should say, out of pure malice, to me "I won't trade with you," and should go around amongst neighbors and say, "You must not trade with him," through a desire just to work havoc and destruction to me, that is illegal; but if a body of union men or a body of any other men would say, "Here is Darrow running a store; he pays low wages and he hires children, and he cuts prices and we want to make him come into line with the rest of us and pay decent wages; and we are not going to trade with him until he does, and we go around amongst our neighbors and everywhere else and say 'Don't trade with him until he conforms with what we think is right.'" That is not illegal. The purpose is high.

Now, I won't say that some court has not said it was, but the courts make a good deal of illegal law; that is, law that does not correspond with the principles of justice and equity, or to many of the other decisions of courts, which I think are more in line. But that is the line at least. Any body of men ought to have the right to say where they will trade, and where they will buy, and where they will sell. Now, of course, the boycott lots of times works a good deal of injustice. I remember as a boy at district school the boycotts of us children were terribly hard and unjust; we couldn't get out of it; we stood and had to stand them, and everybody else did. But you can't help it until human nature is good, and that probably will never be. But it is a weapon which is an important one, and which has always been resorted to, and everybody else resorts to it, and the workingman has a right to resort to it.

Commissioner WEINSTEIN. Then you are a believer in the justice and moral and legal right, whatever the law may be, of the worker to collectively resort to the boycott to the very limit to gain his ends?

Mr. DARROW. Well, I don't know what you mean by "the very limit." As far as I have indicated I think they should have the right not to trade with anybody, or not to trade with anybody who traded with anybody, or to buy or not to buy of anybody, or to associate with anybody who bought of anybody.

Commissioner WEINSTEIN. You think they are justified in doing this. Mr. Darrow, as has been brought out in the evidence here. I haven't it at hand, but I think I can remember it. Do you think the workers would be justified in carrying the boycott to the limit which they are said to have carried it in Pennsylvania, where they compelled—I think it was a district school—to discharge a teacher against whom there was no complaint of any character, who stood very high, but they insisted she must be discharged because she had a brother who was a so-called scab?

Another instance, which I think a lad was employed in a baker shop, and either his brother or his father was a so-called scab, and he was driven out of his job by the workers, who insisted that unless the baker dismissed him they would boycott him. Do you think it is justifiable to carry the boycott to that extreme and to punish innocent people?

Mr. DARROW. I was the attorney in the coal strike case—arbitration case—and your statements of fact are substantially correct. One of the most striking illustrations of a boycott was at a Catholic mass one morning, when some man got up and said, "There is an unfair man in the house," and everybody left, except the man and the priest. Now, the cleavage in Pennsylvania was absolute and complete. I don't want to leave the impression with you that I am a hard-hearted fellow, for I am not. I am sorry for anybody that suffers under these things; but the innocent and the guilty suffer alike. Natural law knows no such thing as innocence and guilt. A saint is just as likely to be struck by lightning as a sinner, and even more so, because he don't know where to go so well.

I know when I was a boy my father's family was boycotted because my father was not a Christian—that is, because he was, but did not belong to church—and it was kind of tough on us children, but we could not help it.

The anthracite region was in a state of war. There was an absolute cleavage between the one side and the other. The employers were bringing scabs from the four quarters of the earth to defeat the miners in what they thought was a just fight—and what was. The miners, of course, were busy, too. The employers brought gunmen indiscriminately from every big city in the country,

who handled their guns without mercy, and it was a fight to the death. Women and children were on the verge of starvation. The strike lasted for months. You asked me whether they should have said to the teacher, "You can't teach school because your brother is a scab." They hated the brother, and that was reflected to the teacher. You might ask me whether I think the English are justified in the mobs in Liverpool against the Germans. Sitting here, no. Being there, with the *Lusitania* in sight, I can not criticize them. It simply means the emotions of life uttered themselves, and when they do, reason and judgment have to step aside while the emotions are working. That is all it amounts to. I don't know as I have answered your question. I don't know; it is true, that is all.

Commissioner WEINSTOCK. Well, do you say, Mr. Darrow, that you think the law should permit men to exercise the hate within them and the spirit of ill will within them to do what was done to this school-teacher, or would you have the law forbid it and draw the line at hate?

Mr. DARROW. Mr. Weinstock, if you were a lawyer and broad-minded, you would not have such unlimited confidence in the law. The law can not forbid any of the passions in the human heart, and if it did it could not affect them. The human heart does not take any account of statutes at all. It just acts. As the heart drives the blood around through the system, it does not take any kind of law. Now, you may pass a law that every man that does thus and so shall be hung by the neck until dead, but that does not control his emotions. It is just simply to annoy somebody after the trouble is over with.

Commissioner WEINSTOCK. It is a fact that the law itself can not prevent me from committing murder, but it can punish me if I do commit it, and that punishment may be some restraining influence to prevent the commission of such an act by others?

Mr. DARROW. To prevent the next fellow, perhaps.

Commissioner WEINSTOCK. Now, if a law were passed to prohibit strikers from doing what they did to that school-teacher, it might not prevent their doing it, but it would punish them for doing it, and that punishment would act as a restraining influence on others from repeating that act?

Mr. DARROW. Well, isn't that all theoretical? Does it act so?

Commissioner WEINSTOCK. That is the history of civilization?

Mr. DARROW. No; it is not.

Commissioner WEINSTOCK. Our civilization is thousands and thousands of years old, and up to date that has been the best method we have been able to devise—the best method the human mind has been able to conceive of.

Mr. DARROW. I think the ablest people who are studying criminology doubt the whole idea of whether the punishment of one man affects another; but be that as it may, if you punish the people who acted from a perfectly natural impulse to boycott a teacher, punished them long after it was all over with, and the passions had subsided, it would only work cruelty in that case; and when you work up the same feeling again the human heart once more would do the same thing. I think so anyway. We may differ about that, but that is the way I think of it.

Commissioner WEINSTOCK. But don't you know that the reason for punishment is because we believe it has the effect of restraining others—

Mr. DARROW. I think punishment is barbarism, and vengeance.

Commissioner WEINSTOCK. Very well, then; how would you protect life and property against the vicious and criminal?

Mr. DARROW. Well, the vicious and the criminal have the property and should protect it themselves. But to answer your question: I think it is somewhat aside, but I am always glad to discuss it, because I think perhaps I know about this subject more than others which have—which I have been talking about. The idea of punishment is formed on the theory that a man knows right and knows wrong and willfully and wickedly chooses the wrong. It has no foundation in logic or philosophy. A man is a creature of circumstances. He acts from motives. He goes where he must. Nobody is entitled to either credit or blame for what he does; they do it; that is all. Now, to consider the matter a moment, let us assume that it is true. If I punish you for doing something, why it keeps somebody else straight. That is all theoretical. The origin of punishment is not that at all. The original of punishment is vengeance. You hit a dog with a stick, and the dog will bite the stick because he is mad at it, and in that way punishments have grown up. You are mad at somebody and want to harm them, and you punish them and hurt them, hang them, put them in jail, burn them in oil, start a fire around them—something so they will

suffer. That is penalty. That is what the brutal parent does to his child—whips it when it does something that the parent used to do when he was the child's age.

But people have got ashamed of it, and so they accordingly say: "We are not doing that because we think the fellow is bad, but to serve as an example to some one else." To start with, it is not fair to punish me to keep you straight; to hang me to make a good citizen. That is all theoretical; no one knows whether you will or not. You have been doing it for a long while, and there are just as many murderers; and intelligent people are beginning to find out that there is a cause for crime, the same as there is for typhoid fever. Lawyers are the most ignorant people in the world; that is the trouble about these things. They think we can cure a condition by hanging some one.

Now, suppose a doctor was called to treat a case of typhoid. He would go and examine the well or find out about the milk supply and find out whether there were any poisonous germs around, and then have the well cleaned; but if a lawyer came along to treat it, he would give the patient six months in jail, thinking he could cure the typhoid, and at the end of six months he would let the patient out whether he was cured or not; and if he got well in six days, he would keep him until the whole six months was up. That is the whole theory of punishment. There is a cause for burglary and a cause for robbery, just as there is a cause for going to church.

You may take all of the murderers and all of the robbers, and as a rule they come from a certain section of a town or city; they come from the slums or the poverty district, where boys have no place to play but on the railroad tracks and the streets; and they come, in the main, from among adolescent boys, boys between the ages of 15 and 25 years, who may do anything. You can not tell anything about a boy between those ages, and it is just as natural for them as for other boys to work on the farm. Sometimes we will try to find the cause and get somewhere with it. Now, we are simply brutal. We say, "You have done this and should suffer thus"—no relation at all. "If you do that, we will send you to jail for 30 days, and next after that for 60 days." You do not think of 40 or 45 days, but 30, and then after that 60, and after you pass 60 it is 90 days and not 70, and then after you pass 90 days it is a year. It is not 7 or 8 months; it is just purely a matter of guesswork and vengeance and ignorance; that is just what it is.

Commissioner WEINSTOCK. It is not to be denied, Mr. Darrow, that you have an uncommon knowledge of human nature.

MR. DARROW. I don't know; I have been fooled a good many times.

Commissioner WEINSTOCK. You have a knowledge of human nature that I envy you.

MR. DARROW. Thank you.

Commissioner WEINSTOCK. And I think you have diagnosed the case quite correctly when you point out that when you or I or the rest of us are wronged we are filled by hate and revenge, and I think that if, as in prehistoric times, the remedy was to be left to us as individuals, we would be very cruel and unjust. I know I have been filled at times toward individuals who have done me what I thought was a wrong with such feeling; I have had murder in my heart, and if I had had my way I suppose I would have used the big stick.

MR. DARROW. Yes.

Commissioner WEINSTOCK. And you and the rest of us are no different, but that is not the legal way of dealing with conditions. While I, as an individual, may feel that feeling of hate, bitterness, and revenge against my enemy, it is not true as a rule—there may be exceptional cases—that a court and jury are filled with the same feeling of hate, bitterness, and ill will, and therefore, except in exceptional cases, I should gravely doubt the statement that the average criminal who is brought before the court for having violated a law or having committed some crime, that he is dealt with in a spirit of revenge, hatred, and ill will.

MR. DARROW. May I just—I do not want to be philosophizing here and using up your time, but you are kind of suggesting this. I guess I have lived in the courts for 37 years. I ought to know better; ought to have better sense, but I have not. I do know how courts and juries—I think I do, anyway—know how courts and juries act. If not, I have not made much of my opportunities. Juries do hate and courts hate, and they love, too. I think you do not mean personal criticism, because you think what others do; you think too much of the words "criminal" and the "law." Most people have an idea that a man who is a criminal is different from a man who is not a criminal. There is no

difference; we are all partly criminal and partly conventional; put it that way. It is a question of degree, and that is all there is of it. And some of the fellows who have done what society thinks are the worst things have also done some of the best things, as everybody knows who takes any pains to find out; that is, we are creatures of all kinds of emotions, sometimes one kind predominating and sometimes another.

Now, a practicing lawyer, if he has any sense, knows that a jury does love and does hate, and a lawyer prosecuting a man tries to arraign a whole lot of things to make the jury hate the victim; it does not appeal to his judgment or logic; that does not appeal to anybody; but they stir up the feelings. On the other hand, if you are defending a man, you try to throw around the case a feeling of pity, of love, if possible, for the fellow who is on trial. If you can do that, the jury thinks, "Well, I am on trial;" through their imagination they feel the other fellow's pain and position and they act to satisfy themselves. We all do that; we can not act from any other motive, and it is the real feeling of the jury, and a juror can give a good reason for anything he wants to do. If a man wants to do something, and he is intelligent, he can give a reason for it, but you have got to get him to want to do it; you can lead a horse to water, but you can not make him drink; but if you can get a man to want to do an act, he can find a reason for doing it. That is the way the mind acts, I think.

Commissioner WEINSTOCK. You were saying a little while ago, Mr. Darrow, that under our modern system, the poor man has little or no chance in the courts, and you pointed to the statement that the jails were filled, as a rule, with poor men. Do you think that holds good as applied to men brought into court in connection with labor troubles?

Mr. DARROW. Why, no; I did not refer to that. The labor leaders who are brought into court are able to defend themselves generally; but they are a very small number of the people who are in jail. Of course there are often a good many that are very helpless fellows who are arrested. I refer to the ordinary run of people in jail.

Commissioner WEINSTOCK. Yes. Of course the theme that is of prime interest to us here, and the theme to which we are directing our thought, is the labor problem, the industrial situation.

Mr. DARROW. It does hold good that injunctions and the processes of the courts, and all those things that involve labor unions, that they are poor and can not do it.

Commissioner WEINSTOCK. You defended the McNamaras in California?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. And I take it that the McNamaras as individuals are poor men?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. I would hesitate to ask you this question, Mr. Darrow, had not my friends on the commission who represent organized labor established a precedent.

Mr. DARROW. You may ask me anything; perhaps I will answer it.

Commissioner WEINSTOCK. They asked Mr. Davenport, who represented the employers, what compensation he received; may I ask you what compensation you received for defending the McNamaras?

Commissioner O'CONNELL. Mr. Davenport declined to answer.

Mr. DARROW. I will not take advantage of him, Mr. O'Connell; I would just as soon tell.

Commissioner O'CONNELL. I thought you ought to know that Mr. Davenport declined to answer.

Mr. DARROW. May I preface that with a little sketch about it?

Commissioner WEINSTOCK. Yes.

Mr. DARROW. I presume I have been working for 25 years on labor cases. I have managed to make enough out of the rich to help the poor now and then for nothing, and I presume that I have given—well, I think I am safe to say one-third, and I think one-half of my time, in my office in the defending of poor people without any pay at all, and I think three-fourths of the labor cases I have tried for nothing. I have tried—I have been employed in three cases where I got something like a fee from labor. Now, that is not the fault of labor at all. It has always meant to treat me generously, but I know their situation. It is an organization on a strike, and I do not care how rich they are, they have to feed their women and children, and they do not have much left for the courts.

In the coal-strike case—I had just as soon state the three at once, if you do not mind—I spent four months' time; I was the chief attorney for the strikers. We got an award which I think in the course of years amounted to ten or fifteen million dollars and about a half million dollars back pay. For the four months' time I charged them \$10,000 and got it. I have no doubt that any corporation lawyer would have charged them ten or fifteen times as much and got it, as I would have, if I had asked them, and they would not have thought anything about it. That is the only case in which I ever made anything.

In the Moyer, Haywood, and Pettibone case—I have a large office in Chicago, and, like every other lawyer, his business is his income, and it takes a long time to build up a business, I left my office and went to Idaho, and spent a year and a half, and not only ruined my business, but my health. I was operated on afterwards, and it was six months more before I could go to work, and I got \$35,000 and I came back and my practice was gone. But that was all right, I got what I asked.

In the McNamara case—of course I dissolved my firm and closed out my business, hoping that after that case I would not have to practice law any more. I spent six months and a little over on the work in that case, and I got about \$48,000. I spent a year and one-half after that defending myself, and that took it all, practically all, and I have gone back to work; but I got my pay as I went along.

Commissioner WEINSTOCK. Well, you have the reputation, Mr. Darrow, and I think you thoroughly deserve it, as being one of the ablest attorneys in America, on these questions especially. Then it is clear that despite the fact that the McNamaras are poor men, that they had the benefit of the ablest lawyer money could employ?

Mr. DARROW. Well, I am too modest to admit that. I did the best I could for them; I know that. I am sorry I could not do more.

Commissioner WEINSTOCK. So it is clear, then, that so far as poor men who are brought into court in connection with labor troubles are concerned, it can not be said they are not properly defended.

Mr. DARROW. Well, that case and the Moyer, Haywood, and Pettibone case were two striking examples of there having been money raised sufficient to give them a good defense, as good as they could get; but as a rule that does not hold good, Mr. Weinstock. I defend many of them for nothing.

Commissioner WEINSTOCK. I take it in that connection you are very much in the position of the physician who was obliged to treat a great many charity cases?

Mr. DARROW. Yes, sir; I am; but I am sorry to say that most lawyers are not. A lawyer will let a man die on the gallows, because he has no money to pay him. A physician will see that the poorest man has an operation by the best physician, to save his life. Their profession is ahead of ours.

Commissioner WEINSTOCK. May I ask, Mr. Darrow, whether you regard public opinion as of any value to organized labor in striving for its objectives?

Mr. DARROW. I think it is the greatest force and value.

Commissioner WEINSTOCK. You believe then that organized labor can not hope to achieve its ends, and can not hope to go on striving to secure a higher wage, shorter working day, and better working conditions unless it can bring public opinion up behind it to aid it?

Mr. DARROW. It is very important, Mr. Weinstock, and probably I will go pretty near as far as you will, even if I see what you are leading to.

Commissioner WEINSTOCK. Now, if that is true, and public opinion is of value, and of course you can not hope to have public opinion behind us unless we can win the good will and the respect and the confidence of the public generally?

Mr. DARROW. Now, you are putting in some things I can not stand for.

Commissioner WEINSTOCK. You mean that it is not necessary to win the respect—

Mr. DARROW. No at all.

Commissioner WEINSTOCK. Of the public?

Mr. DARROW. Not at all. Capture their imaginations, that is all. Nothing else in the world, especially public opinion. You have to strike while the iron is hot.

Commissioner WEINSTOCK. But then we know that organized labor's objectives are not things that can be achieved; things that organized labor has in mind must necessarily take time to bring about, and perhaps a very long time. Now, do you think it is possible to so blind public opinion that it can be held

and restrained indefinitely, despite unfitness and unworthiness of the object that they are striving to get the benefit of public opinion on?

Mr. DARROW. You can not hold public opinion to anything indefinitely. Everybody, you take any person in the public eye, good or bad, if we can classify it, they have a season of popularity, and then they throw stones at them, or vice versa. I have had my day of it both ways, and the public was wrong at both times. I did not deserve their praise, and I did not deserve their stones. Every public or quasi-public man has been through the same mill, more or less. It does not make any difference whether a man is good or bad, as far as public judgment goes. You take all the heroes and martyrs in history, and wherever you go it is the same thing. Nothing so changes and shifts as public opinion, and nothing is so powerful. We are just victims in its hands.

Commissioner WEINSTOCK. Admitting for the sake of the argument all that you have said, is it not a fact, as far as you know, whether the American people deserve it or not, they at least have the reputation of standing up for what is right and condemning what is wrong?

Mr. DARROW. If they had that reputation, I never heard it. I think they are about the poorest class there are on earth, as far as that goes.

Commissioner WEINSTOCK. The American people as a unit?

Mr. DARROW. Yes, sir.

Commissioner WEINSTOCK. Are the poorest class for what?

Mr. DARROW. As to standing up for what is right and going back on what is wrong. In the first place, we are not a Nation at all, we are a conglomeration of everything from everywhere. We have no nationality. You could depend pretty well on what an Englishman would do, because they are one people; or what the Frenchmen would do, because they are one people; or what the Germans would do; but you can not tell what Americans would do. It will take hundreds of years for them to get welded into a country, and they veer around, and one day Mr. Roosevelt is the idol of the American people and the next day they are busy to see who can throw the most stones at him; because he is conspicuous and spectacular, and those things about him. Look at Dewey. Let me give you one simple illustration. There is a man—captured the imagination of the people because he battered to pieces a few old tubs in the harbor of Manila, without heroism or anything else; but the whole country went mad over him. People got up excursions from the remotest points in America to go to New York to greet him. They got up a donation for him and bought him a house and lot, and he deeded it to his wife and they all went back on him in a minute.

Commissioner WEINSTOCK. Are we to understand from what you say, Mr. Darrow, that the American people, you believe, stand up for the wrong and condemn the right?

Mr. DARROW. Right or wrong cuts no figure. People like it because it is a spectacular thing; it is imagination that moves people. Something captures them. Right or wrong cuts no figure in the world anywhere as to moving people. A great warrior will go out and kill thousands of men without what we would call moral excuse. Napoleon is possibly the most popular idol of the world; maybe he had good qualities, but he was popular because of the great many people he killed, and his dash and brilliancy. Morals had nothing to do with it; just the spectacular part.

Commissioner WEINSTOCK. If you were advising organized labor, who stood before you as a unit and invited your counsel and advice and would say to you, "Mr. Darrow, we want to get public opinion in our favor," I take it you say to them, "First capture the imagination of the American people, regardless of what you do, whether it is right or wrong. Capture their imagination and you will have public opinion behind you, whether right or wrong, and you will have it permanently."

Mr. DARROW. Yes, sir; but the trouble is you have to capture the newspapers, because the great mass of people only know what they read in the newspapers. Of course what you say is right. Capture the imagination of men and then you can do something, because popular opinion is irresistible; no human being can stand up against it and live. They may duck a while until the waves go by and get up in a kind of dazed way, but you can not live against it.

Commissioner WEINSTOCK. The first thing to do along those lines, if organized labor believes as you believe—that public opinion is of great value to it, and that public opinion is influenced primarily by the imagination, whether right or wrong, the first step is to capture the press, and your advice would be, "Boys, go out and capture the press." How could they do it?

Mr. DARROW. It is a hard job; I don't know that they can do it at all. It is pretty nearly necessary to get public opinion to get the press. I don't know how they could do it, Mr. Weinstock. I wish I did.

Commissioner WEINSTOCK. That would be in the nature of a circle. To get public opinion you have to get the press; and to get the press you have to get public opinion?

Mr. DARROW. I don't believe I said that; but that is what it would result in. Capturing the press is a hard job. Mr. Scripps has been trying to establish a newspaper in this country that would not take advertising—he has one in Chicago—and he says he thinks he can do it all over the country. If he can do that, it might go some distance; but to run a big newspaper you have to be very rich, and the owner feels what Grover Cleveland once called communism of combined capital. You can not help it. It is a tough job, and I don't know how we can do it. I would rather raise problems than settle them; it is easier.

Commissioner WEINSTOCK. I have been asked to put this question to you, if you will be good enough to answer it: Will Mr. Darrow point out what principles, if any, have been applied to the issuance of injunctions in labor cases which have not been generally applied to all combinations, irrespective of the character of the persons forming the combination?

Mr. DARROW. I will answer that as near as I can, Mr. Weinstock, but the trouble with that and this whole discussion about the poor and the law is the impossibility of the weak to use the machinery and the ease with which power can use it against the weak. Now, you make a statute which on its face looks like it hits every man alike, but it doesn't hit every man alike. I remember Anatole France in speaking of this question said: Of course, the law is perfectly equal; it provides that it is a crime for anybody to sleep under a bridge, whether he is a millionaire or pauper. But the millionaire don't sleep under bridges. The law is equal, all right, but it catches the poor man only. You take the constitutions of the States, which provide that legislation shall be uniform all over the State, that you can not make it for one section and not the other. Thereupon the legislature will say it applies to all cities over 1,000,000 population where there is only one in the State. You can not make it apply to the city of Chicago, but you can make it apply to any city of over 1,000,000 population. Indirectly they accomplish the same thing.

Now, this particular question. If you can imagine any combination of men outside of the labor unions that would be injured by these injunction cases, it would cover them. You can imagine some acts that would be covered by them like boycotts, which are common in mercantile business, as I am informed, but I never heard of it being applied. I never heard of it. You could imagine that it might be applied to a great mine, where its owners have determined that they would lock out their men, which often happens. Can a workman go into the court and ask for an injunction against their closing down the mine? The theory would be the same thing, but it has never been done, and I don't apprehend you could find a court that would grant it. For instance, in Pennsylvania they hold, and I think very properly, that an employer may refuse to hire any union man simply because he is a union man, but these and other courts have held that a workingman can not say that he will not work with a nonunion man; that is illegal. It depends on the force back of it, and the application you want to make of it and the facility you have for making it. On the face it might look the same, but this whole thing has been built up on labor unions, and has not been applied otherwise as a rule.

Commissioner WEINSTOCK. Now, Mr. Darrow, summing up, may I review the different points that have been touched upon by you and see what we can take away as the result of this most interesting statement on your part?

Mr. DARROW. Thank you.

Commissioner WEINSTOCK. Speaking for myself at least, I wish to make sure that I understand your philosophy correctly. If I misunderstand you, I wish you would correct me as I go along.

Mr. DARROW. Yes.

Commissioner WEINSTOCK. The frame of mind that you have left me in is this: First, that while theoretically we are a free country, practically we are not; that while theoretically you and I and the rest of us have our civil and political rights, practically we have not.

Mr. DARROW. That applies to the weaker.

Commissioner WEINSTOCK. That applies to the weaker?

Mr. DARROW. Yes.



Commissioner WEINSTOCK. That the English, for example, are much freer than we Americans are?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. That they have rights and privileges that we do not enjoy?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. Second, that all the progressive laws that have been passed in this country and in the various Commonwealths in the last decade or two, including such laws as workmen's compensation acts, maximum and minimum wage acts, eight-hour day for women, and safety acts, and the initiative, referendum, and recall, are mere patches, are mere makeshifts, that they don't touch fundamentals, and therefore are of little value?

Mr. DARROW. That is about the way I put that.

Commissioner WEINSTOCK. That in the matter of violence you would justify resistance on the part of strikers, for example, if in their opinion the authorities were not giving them a square deal?

Mr. DARROW. Well, now, I will just have to explain that. I justify any man in doing whatever is right, whether rich or poor. The highest thing a man can do is to follow his conscience, no matter where it leads him, and the harder it is the higher credit the man deserves. I think that it would be poor wisdom to resort to violence when there is no chance. I would not advise it or urge it. I recognize it in the scheme of things as one of the inevitable things that go along with human development, but as to saying here I think you ought to go and do this or that, I never do it, and would not take the responsibility. If it is done, I understand it, and I don't blame the man. Remember Victor Hugo's *Les Misérables*, where he takes the old priest up on the mountain to see the revolutionist, and after the revolutionist has converted him on everything else, he said, "You remember the cruelty and bloodshed of the revolutionists," and he looked at him and said, "Yes; a storm had been gathering for thousands of years; it burst; you blame the thunderbolt." That is the attitude of the people that blame the men for the consequences of those things that have gone before. I don't think I gave any opinion one way or the other. It is not a question of opinion, but of fact and natural law.

Commissioner WEINSTOCK. Well, you say you would not blame the man; that while you would not justify him resorting to violence, if he did you would not blame him? Would you punish him?

Mr. DARROW. No, sir; I would not punish anybody for anything.

Commissioner WEINSTOCK. You think it is a delusion and a snare?

Mr. DARROW. I think it is barbarism. I don't think that anybody should be confined. I think there are people that are antisocial in their nature, and for many years to come there will be people that need confinement. It is not because of any wrong they have done, but a wrong that has been done to them, and they should be treated like hospital patients and kept until they recover or never turned loose.

Commissioner WEINSTOCK. You only leave us this inference that if you had your way you would wipe out all penitentiaries and prisons and establish hospitals?

Mr. DARROW. I would, but I would try to get at the cause of what we call crime and cure it, so there would be only a very small portion of it. But while it might look to you for the moment—and I guess I am carrying you away from what you were asking—it would not make much difference whether you called them jails or hospitals, but it makes all the difference in the world. You say to me you need to be restrained, but it is because you have an evil heart, then you punish me. Then you say to me you are ill and society has not treated you right or nature has not, and I am sorry for you and want to help you, and I must keep you here until you are well; that is another question entirely. It is the attitude of the world toward what we call criminals that I complain most about. If we get them we can cure it.

Commissioner WEINSTOCK. Admitting when we reach that ideal day, when Utopia is here and we wipe out jails and penitentiaries and substitute hospitals, what are we to do in the meantime? What will we do with our criminals?

Mr. DARROW. What we will do is to abuse them and misjudge them and practice all kinds of mistreatment. It is not so far away. I can see a great change in the attitude of the world in the last 10 years. Can't you?

Commissioner WEINSTOCK. Yes, sir.

Mr. DARROW. It was called at once a crazy idea to say what I have said about crime. Probably half of you people on the commission believe it; maybe all of you. Ten years ago very few believed it. Most of the criminologists of to-day have accepted it. We find people going at it as the warden in New York, in Sing Sing, is doing. We have very much the same attitude on the part of the warden in the penitentiaries in Illinois and Colorado. The attitude is growing very fast. I don't believe it will be 25 years until there will be no more prisons, practically. We will be looked on as barbarians for doing those things. There will be people confined, but not in that attitude. I think that is coming faster than a lot of these things, but maybe I am wrong.

Commissioner WEINSTOCK. Now, continuing as to the frame of mind I have been left in. On the question of boycott. I take it you feel it is morally and ought to be legally right; that the boycott be carried to the limit, no matter how many innocent people are injured or hurt?

Mr. DARROW. Of course I kind of shrink from the idea of injuring innocent people, and I don't suppose I could boycott anybody myself. I can justify other people who do it. But everybody is innocent. Mr. Rockefeller, of the Standard Oil Co., who represents, to my mind, what is the most antisocial thing in the world of business to-day, is doubtless as innocent as anybody who looks at it in any other way and justifies himself to himself, the same as the rest of us. Everybody is innocent. You might think there are degrees of it, but hardly that. These things happen. Putting it as you say, I would say that I would justify it, whether it affected the innocent or guilty. I would be sorry for it. But it is not only right, but necessary. For instance, you might take the same causes in the war in Europe. To destroy the German power England has thought it necessary to keep bread from Germany, although the wives and children and noncombatants suffer. It is absolutely justifiable and necessary from their standpoint.

Commissioner WEINSTOCK. You would then regard a strike as war?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. You believe that there is power other than the Government itself, then, that has a right, so to speak, to declare war?

Mr. DARROW. Well, of course, legally, under the laws of the country, to declare what we call war must be done, if I remember it, by Congress. I have not read the Constitution for some time. That and the Book of Genesis I have kind of passed up. But the Constitution does not apply to industrial war, and if it did I would say they had the right to do it, or should do it. I don't like the word right; there is nothing to base a right on. Everybody has their own conception of right and wrong.

Commissioner WEINSTOCK. And finally, your view is that public opinion is very important to organized labor to aid it in carrying out its desired ends, and that to get this public opinion it is not necessary to be right, but it is very necessary to capture the imagination of the public?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. Either right or wrong, you are likely to win?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. But you think that the question of right or wrong would enter into an industrial trouble, or do you believe, as our friends the I. W. W. believe, that whatever is good for labor is right, and whatever is bad for labor is wrong?

Mr. DARROW. Well, those are kind of hard questions; questions that a man does not always like to answer, and questions that are not easy to answer, but I will be as frank with you as I can about it. Of course, right and wrong are purely relative terms. You say a thing is wrong, if it sort of shocks your sense of justice and fitness, and it is right if it does not. There is no way to base it. There is no foundation for right or wrong, so nobody can tell. Now, perhaps it is not hardly fair to say that right and wrong in that way have nothing to do with catching the imagination. If you could classify the emotions of men as between hate and fear and revenge, which are some of the emotions that move all of us, and love and pity and sympathy, which are emotions which move all of us, you might call them the higher and lower and the conflicting emotions. Now, we call the one class the higher. I think that on the whole the tendency is that gradually they will survive. You might look for more, based on it, but we are always being ruled by hatred and by fear, and the imagination of the world is always being captured by it, but I think perhaps in the evolution of things it is better the other way and stronger the other way. I don't know whether that makes my position clear on that question or not.

Commissioner WEINSTOCK. You have a faculty of making yourself very clear.

Mr. DARROW. I don't want you to think I am dodging any of these, but they are some of the things that are rather embarrassing, and a man is liable to be misquoted.

Commissioner WEINSTOCK. That is all.

Chairman WALSH. Mr. Lennon has a few questions he wants to ask you.

Commissioner LENNON. Mr. Darrow, this thing you call imagination, and the higher ideals of it that have been expressed by man, is the world making progress toward those higher ideals, or are we going backward?

Mr. DARROW. Well, Mr. Lennon, that is a hard question to tell. I have sometimes thought that we were going forward. I think, on the whole, we are, but in science or in philosophy I doubt whether there is any foundation for the theory that man is going forward. All we know about life is that there is constant activity and change. Out of that it may for a time go forward or backward, but I believe on the whole it is going forward at this time.

Commissioner LENNON. As to our conception as to what is freedom under government, and what are human rights in society, are we making progress as to those things?

Mr. DARROW. I think we are getting higher ideals and seeing further.

Commissioner LENNON. What force in the history of mankind has been the most potent in that direction has it been the struggle of the laboring class for better conditions, or the advocates of the policy to let things remain as they are?

Mr. DARROW. Oh, whatever position they may take there is no doubt but what the future is to have labor socialism. Whether you call it socialism, or labor, or any of the progressive ideas, the fact is that the imagination of men is working that way. Whether you do a thing to-day or to-morrow or some other time, they have everything to win and nothing to lose, and it is going that way.

Commissioner LENNON. You have been asked some questions regarding the violations of law by individuals and the consequences arising therefrom. Is it not a generally recognized principle that if men believe the law is wrong, and are perfectly willing to take the consequences of violation, that that is a right that they may exercise?

Mr. DARROW. Well, there are lots of people believe it. Who was the great statesman, or something, I don't remember his name, a lot of you recall it, who said that resistance to tyranny is obedience to God. I don't know his name, but his name ought to give it some weight beyond his words.

Commissioner LENNON. A fact was mentioned here the other day that had close connection to myself. My father operated a station on the underground railway before the War of '61-65, and lived in a slave State and did it. Has history justified that resistance to the laws as being right or wrong?

Mr. DARROW. I don't believe you could find many people, either North or South, to-day who would not justify it; there might be some; but events have justified it; as long as it happened that way, it could not have happened any other, although it was a terrible price.

Commissioner LENNON. You expressed at one point something of the hostility of the labor unions toward the scab, as you said?

Mr. DARROW. Yes.

Commissioner LENNON. Do you believe that there is a general hostility, industrially, to the nonunion man on the part of organized labor?

Mr. DARROW. Well, I think that you will disagree with me, but I think organized labor distinctly dislikes the man who would not join the union, and I don't see how they could help it. Whatever labor has now is practically through the labor organizations, and the nonunion man or the scab, as he is called, is the first to take advantage of it, and he is always used for the destruction of unions and the destruction of all their efforts, and I think the attitude of the union man is unfriendly to the man who refuses to come in. Of course, he does not hate the scab as a man, or does not hate him if he has no chance to get in, or is working where he can not be a member of the union, but in the great industrial strife a nonunion man lends himself to the employer to defeat the objects of the union man, which is really the situation, I think he is not liked; he is hated. Every effort is made by the unions to get them in. They spend their money and time trying to convince them they ought to come in, but a lot of men stayed out through selfishness, some through cowardice, and a lot that think they really ought to stay out.

Commissioner LENNON. Now, in the discussion of rights under the law, certain rights, this commission heard testimony regarding the situation in

Colorado of this character, that the civil courts were in operation. Upon a certain writ of habeas corpus two men were brought into court, and the militia were also in the field at the same time. Two men were brought into court on a writ, and after hearing the case the justice ordered them discharged, and the militia, however, took them and held them. Has the militia such a right to exercise such power when the courts are in operation?

Mr. DARROW. Not unless martial law has been declared; and as I remember it was not formally declared out there. The law is plain on the subject. Courts have jurisdiction everywhere except where it is declared.

Commissioner LENNON. Well, it seems almost like a farce that they should have been permitted to go before the court and their case be heard and their release ordered and that they should then have been detained in captivity. It would seem the legitimate thing for the militia to have done would have been to tell the court to go on and mind its own business and held them from the start.

Mr. DARROW. Well, that is what they generally do, surely. Of course, in the last analysis, the fellow that has got the most power has got the most right. The judge can not take a man away from the Army; he can take him away from the strikers because he has got an army back of him; but he can't take him from the Army.

Chairman WALSH. Mrs. Harriman has a question to ask you.

Commissioner HARRIMAN. You spoke, Mr. Darrow of a fair social system. I think you used that phrase?

Mr. DARROW. Yes.

Commissioner HARRIMAN. Will you give us your definition of a fair social system?

Mr. DARROW. Well, I don't know as I could. I think a state of society where everybody who is able to work and is willing to work, where one can find opportunity to employ his labor, and where people practically get the same reward for the same amount of time, would come about as near being a fair industrial system as you could get. I think you would have to abolish the private ownership of mines and forests and railroads and perhaps land, and possibly more, before you could ever reach it. We can approximate it—go toward it.

Commissioner HARRIMAN. Does that differ from the popular conception of socialism?

Mr. DARROW. Well, socialism says that you have got to abolish rent, capital, and interest, and have a cooperative Commonwealth where all production is done by the State—for the people collectively. Now, it may be they are right. The trouble is there is no way to determine exactly how anything will work out; and there is no certainty that any one road is the only road. Of course, I am sympathetic with socialism, sympathetic with single tax and labor unions, and pretty nearly any new thing that comes along; though I do discriminate a little I like to see the disturbance going on and giving them all a chance. If I was laying out a scheme I would say let's get the land monopolies first; let us take the mines and the forests and the railroads and see how they come out, and if that don't work let's get busy and do some more. We won't rest. I don't think anybody can tell in advance the absolutely necessary way or the easiest way; at the present time to feed the present generation and the next, while we are getting all these things, labor unions—organized labor—takes care of a number of these wants that none of these other things can do or have done at least.

Commissioner HARRIMAN. Mr. Darrow, do you think this commission has done or can do any good?

Mr. DARROW. Yes; I think both.

Commissioner HARRIMAN. How?

Mr. DARROW. Well, my answer to Mr. Weinstock as to public opinion—that is the greatest force there is in the country, and always has been; and so far as you reach public opinion, if it is nothing but talking about it, it has its effect. The recommendations that this commission will send out will have some effect on public opinion; whether you get it into laws nobody knows, or how effective they would be if they got into laws nobody knows. But from my standpoint the more fundamental and radical your recommendations are the more good they will do; and the more you recognize the division of classes and the injustice of it, the more good it will do; but it does good at least.

Commissioner HARRIMAN. That is to give it daylight?

Mr. DARROW. Yes, it attracts the attention of the public.

Commissioner HARRIMAN. That would be your remedy then for industrial unrest; or do you think there is no final remedy?

Mr. DARROW. There is no final remedy for unrest excepting the grave. We are all the time—society is all the time—in a state of unrest. You may take a piece of glass and every atom is revolving around another. You may melt it, and it takes new relations. Society, in the same way, is operating around certain orbits, and some great thing comes along and changes the orbits, and perhaps the resistance is less or perhaps it is greater. We can change only the immediate things. If we all get rich, we will have cancer or tuberculosis, or a tumor or corns, or something to bother us.

Commissioner HARRIMAN. Do you believe in arbitration of labor disputes?

Mr. DARROW. I think in many instances they have done good. I believe in everything that works at the job. I don't believe in compulsory arbitration. I think people should have more freedom instead of less, as a general proposition, in all lines of life.

Commissioner HARRIMAN. That is all, Mr. Chairman.

Commissioner WALSH. Commissioner O'Connell has some questions he would like to propound.

Commissioner O'CONNELL. Some writer said, Mr. Darrow, that I have read somewhere, that the real agitator was injustice, or that injustice was the real agitator, one way or the other. Since I have been on this commission and have heard approximately a thousand witnesses, the impression of a great number of those that have appeared before us seems to be that a great proportion, at least, of the so-called unrest is caused by the agitator, implying, I take it, that the agitator that he had in mind is the so-called labor leader—not necessarily the president of an international organization or the president of the American Federation of Labor, but the men who were in office locally, and by State and by national and international organization, and all that?

Mr. DARROW. Yes.

Commissioner O'CONNELL. Implying that all these men were the agitators, my observation of some 30 years or more of injustice being the agitator, the fact that a man or woman or child has to work under conditions that they feel unjust to them; low wages, long hours, and insanitary conditions; in days gone by terribly insanitary conditions; a total disregard for life and limb; the whole object of the employer being to get production out of his employees; what is your opinion as to the real cause, the real agitator?

Mr. DARROW. Well, I think it is largely an injustice, of course. My experience in 25 years of pretty close relation with labor unions and leaders is that the last man to encourage a strike is the labor leader. Of course that might not always hold true, but the man who is charged with the responsibility—like we call the walking delegate or business agent—is almost always most conservative, because he feels the weight of the thing. Of course, there is a large pressure behind him of people who want their conditions bettered, and then there is the terrible grinding down against men on the other side, and it places him in a hard position. But as a rule, and I think almost universally, the so-called walking delegate is the most conservative man in the whole body, no matter what he might have been before he got his position. I don't believe I ever saw an exception.

Commissioner O'CONNELL. As one having to do with courts—and I think you said when it came to speaking about the criminal law that you felt at home in dealing with that?

Mr. DARROW. Yes; very much at home.

Commissioner O'CONNELL. You must of necessity have given very much thought and study or made some comparison as to the class of people that are in the jails and prisons. I want to ask you if you have made a comparison or given thought as to the comparative number of so-called labor agitators, labor leaders, labor representatives, that are in jail as compared with the number of bankers, doctors, lawyers, and professional men?

Mr. DARROW. No; I never did. If there were more, I would not know whether it would be to their credit or discredit. I guess the labor leaders keep out of jail about as well as the rest of us, and better than the poor.

Commissioner O'CONNELL. I have been informed, and I don't know that I can give the figures exactly—I think it was in connection with Sing Sing, N. Y., as to the occupations that had been followed by the men who were in prison—I won't venture to quote the figures, but I know the comparison was not favorable to the professional man.

Mr. DARROW. Well, there are very few, comparatively, outside of poor people. There are some bankers and some lawyers. It is pretty hard for a banker to defend himself when you get him into court, and they presume he is guilty anyway of something; and also the same way with a lawyer. They are not far wrong, either. Might catch them on something. But, as a rule, they do not get into court much; but I would say 99 per cent of the people in all the prisons are poor. Their crime has been that they have tried to get something.

Commissioner LENNON. The poor, of course, are excepted in this case. I have reference to another matter.

Mr. DARROW. Yes.

Commissioner O'CONNELL. They can not help it when they get in jail—they simply break in. The circumstances compel them to break in?

Mr. DARROW. Yes, sir.

Commissioner O'CONNELL. I am talking now of the learned man. The labor agitator is held up to the police as a horrible example of a brute and a man with instincts of brute force, who cares little for life and less for the property of some one else and less for the rights of some one else, and seek to compare him with the learned man—the college man, the doctor, the lawyer, and the preacher, if you will—

Mr. DARROW (interrupting). Yes.

Commissioner O'CONNELL (continuing). Compare the number of these men that have been convicted and are in jail with their class—

Mr. DARROW (interrupting). I have no doubt there are fewer of them, but, of course, the people do not understand. They might view a surgeon as a brutal man because he cuts off a man's leg and makes the blood run. Lots of people thought that John Brown was a cruel man; but what he did he did because he loved the world and not because he hated it. Most of the labor leaders who have been imprisoned, wherever they have done the things they were charged with did them not for their personal benefit at all, but because they saw the sufferings of thousands and tens of thousands of poor and weak and out of sympathy for them; and the motives of men are everything when you come to judge them.

Commissioner O'CONNELL. Commissioner Weinstock was discussing the question of abolition or dissolution of jails and penitentiaries, and your suggestion that they be turned into hospitals. May I ascertain what could be done to reduce the crime necessary to keep these institutions for the home of criminals? Is not the greatest preventive of crime to do away with the things that result in crime, that cultivate crime? For instance, like lack of people having an opportunity for a fair livelihood—not even a respectable so-called livelihood, but a living opportunity?

Mr. DARROW. I believe you would get rid of nine-tenths of all the things we call crime in one generation if people had a fair chance to live. At least nine-tenths in one generation.

Commissioner O'CONNELL. As, for instance, we had brought before us the other day by the police commissioner of New York, evidence regarding a condition of crime in the city of New York; and we find that the trouble when we look into it is that those people, a considerable body of people who are committing these crimes, come from the terribly dense district in New York, the east side of New York City, where people live by thousands in single buildings and in single rooms; where there are dozens that are living, working, cohabiting in every way in a single room. Is that not in itself a condition begetting crime?

Mr. DARROW. You can not prevent it by punishing as long as those conditions are there. No one who had a choice would dream of letting their own children be raised under those conditions. Still they punish the children of other people for what they can not help.

Commissioner O'CONNELL. One of these subjects that has been before this commission more or less, and at this hearing particularly—two or three gentlemen have called it everything but a respectable name, and that is the so-called union shop, known by the employers as the open and closed shop and by the union men as a union shop or a nonunion shop. The employers charge criminality of purpose, depriving the American citizen of his right to work and the American employer of his right to employ whoever he pleases and under whatever conditions he pleases, and all that. I know you have spoken and written on this subject, and I am sure the commission would be glad to know, and I would, your opinion of the so-called open shop.

Mr. DARROW. I would be glad to say just a few words about that.

Commissioner O'CONNELL. I would be glad if you would take your own time about it.

Commissioner WEINSTOCK. Take considerable time, and I would be glad to have your opinion on the subject.

Mr. DARROW. Of course, there is a lot of nonsense talked about it. They talk about the inalienable right of a man to work; he has no such right; no one has a right to work, and the man who stands for the open shop does not care for anybody's rights to work, except the nonunion man, and they only care for him because they can use him. If a man has any constitutional right to work he ought to have some legal way of getting work. If the Constitution is going to guarantee the right to work, it ought to guarantee some place to work, and there is no such thing. A man can only work if there is a job; he can only work for a man who wants some man to work for him.

The workingman spends a good share of his waking moments in a shop. He does not need to invite a nonunion man into his house if he does not want to, and probably won't, and he is under no more obligation to work with him in a factory if he does not want to. If a Presbyterian does not want to work with a Catholic, he may be narrow and bigoted, but he does not have to. Of course, a union man has a direct reason for it; he believes and he understands and feels that the nonunion man is working against the interests of his class; that the only way a workingman can get anything is by collective bargaining, and by saying, "If you don't give us a raise, not only I will quit but we will all quit and tie up your business"; that is the only way he can do it. One man quitting out of 50,000 is nothing, or even 10 men or 100 men, but if they all quit, so they can do with the employer what the employer does with you, when he discharges you, then they can bargain and there is no other kind of bargaining but collective bargaining.

The nonunion man comes along and says, "I will take your place." He is not loyal to the union, and the union man regards him as a traitor to his class, and he won't work with him, and he has a perfect right to refuse to work with him.

There is no such thing as the open shop, really. There is a union shop and a nonunion shop. Everybody that believes in the open shop disbelieves in the union shop, whatever they say; and I do not say that unions are perfect, they are not. The people that work with them know that better than anybody else. They are just doing the best they can with the job they have, which is a hard one, and with the material they have, which is not perfect. In many instances they are brutal, and have to be, and it is generally like the law, and works individual hardship here and there, but it is one of the necessary things in the industrial world, and the fight is between those who believe in unions and those who disbelieve in them. Those who disbelieve in them say they believe in the open shop; but the open shop is simply a back door to put the union man out.

Commissioner O'CONNELL. You think, then, the employer is not sincere in the open-shop idea?

Mr. DARROW. No; I think he is not sincere.

Chairman WALSH. At this point we will adjourn until 2 o'clock.

(Whereupon at 12.30 p. m., Tuesday, May 18, 1915, an adjournment was taken until 2 o'clock p. m.)

#### AFTERNOON SESSION—2 P. M.

Chairman WALSH. Will you take the stand, please, Mr. Darrow. I think we can just proceed.

Commissioner O'CONNELL. Mr. Darrow, we were discussing when we took a recess the question of so-called and closed shops, from the employers' standpoint. The last question I asked you just before we adjourned was, if you believed the so-called open shop was a subterfuge?

Mr. DARROW. Yes.

Commissioner O'CONNELL. It is therefore a snare, in a term, to induce men to believe that the employer, on his theory of the so-called open shop, is behind it, the real right of the citizenship, workmen?

Mr. DARROW. Yes; I have more respect for the integrity of the fellow that says, "I don't believe in unions and will have nothing to do with them," than the fellow that says, "I do believe in them, but want an open shop."

Commissioner O'CONNELL. The practice of having contractual relations between employer and employee is only successfully possible where there is organization of workmen?

Mr. DARROW. You can not have a contract with any large number of employees only through organized labor, organizations. One man can not do anything. There are too many men in the world and too few jobs.

Commissioner O'CONNELL. The question of the right of the citizen to individually bargain for his own employment, in our present-day industrial affairs, is rather a joke, is it not?

Mr. DARROW. It doesn't mean anything. Under ideal life, which all of us fellows would like to see come, but which does not exist. I suppose there would be no unions, but that is so far ahead it is hardly worth speculating on.

Commissioner O'CONNELL. If we had not had the activity of the last 25 or 30 years of organized labor in this country, what position do you think the wage-workers of this country would be occupying at the present time?

Mr. DARROW. Unless it had taken some other form, they would have been like the wageworkers of China or any other country, where there is no organization, they would simply have gradually reduced the standard of living. Competition of workmen would have prevented better working conditions and lowered the standard of living.

Commissioner O'CONNELL. In a debate at Boston some years ago between President Eliot, then president of Harvard University, and Frank K. Foster, a union man, now dead, the question under debate was the following: "Has the nonunionist a moral right to work how, when, and where he pleases?" Mr. Foster had the negative side of this debate with President Eliot. Do you believe that the nonunionist has the right to work how, when, and where he pleases?

Mr. DARROW. No; I do not. I don't think anybody has that right.

Commissioner O'CONNELL. If he exercised that right in what is expressed by the open shop, I take it that that is what it expresses; at least, that is what they intend to express to the workman?

Mr. DARROW. Yes.

Commissioner O'CONNELL. If that expresses the opinion of the advocates of the so-called open shop, but is not practiced by them, what is to be the inevitable result if the wageworkers are led to believe they have this moral right under the so-called open shop, and in actuality it does not exist? Where will they be led to?

Mr. DARROW. They will be led gradually back to taking whatever they can get, reducing the standard of living, being the subject of charity, etc. That whole idea comes from the thought that a man has a right to work. He has not a right to anything unless he can get it, that is the only way you can determine rights, whether a fellow can get it or not. He has a right to work if he can get a job, is all there is to it.

Commissioner O'CONNELL. In your observation of the affairs of organized society, in its present form, what I mean is to say of people that come together in the form of organization, for instance, laboring people and their organizations of employers, as a rule from your general observation and legal point of view, which form of organization gives the greatest obedience to the law, as such?

Mr. DARROW. Well, I don't know; I might disagree with you somewhat on that. The rich have no trouble obeying the law, because they make it. They would be fools to break it; they simply need to change it the way they want it. It rests on the poor and the weaker class of society, who sometimes have to break it. I don't think obedience to law is necessarily one of the prime virtues. It may show servility rather than heroism or nobility.

Commissioner O'CONNELL. Commissioner Weinstock asked you this morning regarding the compensation received by you in various labor cases. He stated that he would not have asked the question had not other commissioners asked similar questions of others that had been on the stand, and I said the one whom I had asked at least had declined to answer it. The impression prevails that the American Federation of Labor employed you and others to defend the McNamara brothers. Is that true?

Mr. DARROW. No; not as an organization. Certain members of it were instrumental in enlisting me, and in raising money.

Commissioner O'CONNELL. Do you know whether the funds that were raised were the funds of union men or funds from other sources?

Mr. DARROW. They were taken from anybody that wanted to give. I think probably the majority came from union men, I assume it did, but I don't know; but they were taken from anybody that wanted to contribute.



Commissioner O'CONNELL. And there were undoubtedly other contributions?

Mr. DARROW. I know there were.

Commissioner O'CONNELL. I have here a complete statement of the receipts and expenditures in the McNamara defense fund, and these receipts show that a large volume of money was contributed from various sources, even the now popular moving-picture show was used?

Mr. DARROW. Yes, sir.

Commissioner O'CONNELL. And of one donation I see about \$25 was from one picture house in Indianapolis, and a number of other large contributions are here that indicate that it came from the public indiscriminately. That the defense fund was not raised entirely by the trade-unionists, but that they were intensely interested to the extent of contributing some finance toward this defense. I want to put this in the record, because of what I believe to be a misconceived idea on the part of the public, probably on the part of some of our commissioners, that you were employed by the American Federation of Labor to defend the McNamara brothers, and the American Federation of Labor raised the funds to carry on that defense. This will show that that is not true, with which I think you will agree.

Mr. DARROW. Yes, sir; as an organization they did not do it. Some members were instrumental in doing it.

(The document referred to by the witness, entitled "Financial Report of the McNamara Defense Fund," dated Aug. 9, 1912, was submitted in printed form.)

Commissioner O'CONNELL. In addition to the question as to whether the non-unionist has a moral right to work how and when and where they please, to which I think you said you agreed, I want to file for the benefit of the record this part of the debate, taken by Mr. Foster, who is well known in trade-union matters, and a speaker of great force and a writer of force on subjects with which the trade-unionists are thoroughly familiar and are in accord.

Mr. DARROW. He is dead now?

Commissioner O'CONNELL. He is dead.

(The document referred to, entitled "Has the Non-Unionist a Moral Right to Work, How, When, and Where he Pleases," by Frank K. Foster, issued by the American Federation of Labor, and dated Washington, D. C., 1912, was submitted in printed form.)

Commissioner O'CONNELL. The position of the American Federation of Labor in connection with the McNamara case is fully set forth in a pamphlet prepared by President Gompers, which shows that the American Federation of Labor, as such, took no part in the defense of the so-called McNamara case, and that the means to carry on that defense was raised by a committee of gentlemen that came together without any particular person calling them together, but being interested in seeing that the McNamara brothers got what they believed they were not getting, a fair trial, and that they would take it upon themselves to raise sufficient funds to guarantee what they believed to be a fair trial for the McNamara brothers and those involved with them. These gentlemen proceeded by different ways and activities to appeal to the trade-unionists and their sympathizers to raise the funds, and the expenditure of the funds in connection with the conduct of the case was left entirely in the hands of those who were engaged to look after it legally, were they not?

Mr. DARROW. I think so. Mainly, anyway.

Commissioner O'CONNELL. There was no direction on the part of the men that raised the funds to the counsel how they should conduct the case?

Mr. DARROW. Not to me.

Commissioner O'CONNELL. And you were recognized as chief counsel in the case?

Mr. DARROW. So far as the Los Angeles end of it was concerned, I was. There were other people in Indianapolis.

Commissioner O'CONNELL. But the American Federation of Labor, or the gentlemen who raised the funds to carry on the defense, in no way indicated to you what you should or should not do, or those that were associated with you, in the direction of the case?

Mr. DARROW. It was left to us to manage.

Commissioner O'CONNELL. The funds were sent to you without question as to how they should be used or suggesting any method as to how they should be used?

Mr. DARROW. Yes, sir.

Commissioner O'CONNELL. The American Federation of Labor, therefore, and the trade-unionists of the country took no part in the direction of how the case

should proceed other than raising what they believed to be sufficient funds to conduct the case and see that the McNamara brothers got what they wanted them to have, a fair trial?

Mr. DARROW. Naturally, over 3,000 miles away, they could not and did not.

Commissioner O'CONNELL. So that impression that prevails among some that the American Federation of Labor or the trade-unionists of this country, whether affiliated or nonaffiliated with the American Federation of Labor, because the record shows that many organizations not affiliated with the American Federation of Labor contributed very largely toward this defense fund—that organization did not indicate to you or to those associated with you in conducting the case how this case should be tried, or intimate whether these men were innocent or guilty, but looked upon you to see, as the leading counsel, that they would receive, so far as you could bring it about, a fair and impartial trial?

Mr. DARROW. None of them ever told me whether they were guilty or innocent.

Commissioner O'CONNELL. And that when the McNamaras confessed to the guilt, which I understand you to say was not the case on which they had been originally indicted—

Mr. DARROW. J. B. was the case; J. J. was not.

Commissioner O'CONNELL. When they did confess and acknowledge to their guilt along certain lines, that then the people who were interested in raising these funds ceased raising further funds in connection with that case and directed you accordingly, or notified you accordingly?

Mr. DARROW. There were no funds raised after that time that I know of. They did not confess; they pleaded guilty.

Commissioner O'CONNELL. But when they pleaded guilty the gentlemen that were interested in raising the funds for the purpose of having these men get a fair trial, believing, as they had some reason to believe, that in the first instance they were kidnaped from the State of Indiana, and were not receiving fair treatment in accordance with the law of that State, and had not received fair treatment, that after this confession took place, or whatever it was, these men ceased their efforts in raising further funds?

Mr. DARROW. The case was over at that time.

Commissioner O'CONNELL. But so far as the McNamara case was concerned, in itself, the American Federation of Labor, as such, had nothing to do with the raising of funds, and had nothing to do with the McNamara case?

Mr. DARROW. I think various unions contributed of their funds, and I have no doubt that the bulk of the money received was by the unions, and I think the purpose, they thought their men were attacked, and they felt it their duty to defend them, but the organization did not undertake to do it.

Commissioner O'CONNELL. None of the organizations, as organizations, undertook to raise this money?

Mr. DARROW. No.

Commissioner O'CONNELL. All the money that you received in defense of the McNamaras came through committees self appointed for the purpose of raising these funds?

Mr. DARROW. I think they were self appointed.

Commissioner O'CONNELL. I happen to know, because I was one of the members of that committee.

Mr. DARROW. I know you were.

Commissioner O'CONNELL. And I know of every method and means that was put forth to raise money in that case. I wish to put this pamphlet in evidence.

(The document referred to, entitled "The McNamara Case," by Samuel Gompers, issued by the American Federation of Labor in 1911, was submitted in printed form.)

Chairman WALSH. Commissioner Weinstock says he has some questions.

Commissioner WEINSTOCK. You were discussing the question of public opinion this morning, and the value of public opinion to organized labor, Mr. Darrow, and you expressed your views freely on what you thought public opinion amounted to, and how it was to be gotten. I want to make sure, in my mind, that I got your point of view correctly. I gather from the opinion that you expressed the fact that right or wrong did not enter into the capture of public opinion, but that public opinion was largely a question of capturing the imagination of the people, no matter what the objects in the case were. In that you seemingly differ from Abraham Lincoln, who said, as I recall the statement, "You can fool all of the people some of the time, and some of the people all the time, but you can not fool all the people all the time."

Mr. DARROW. Well, I want to say we pretty much agree on that.

Commissioner WEINSTOCK. Well, if that is true, then public opinion can not be retained unless the basis for such retention is along the lines of right doing.

Mr. DARROW. You can not retain it, then.

Commissioner WEINSTOCK. You can not retain it?

Mr. DARROW. No, no. The righteous man suffers the same as the unrighteous. The good is crucified as often as the evil, and evil triumphs as often as the good. There is no moral purpose in the universe that we can see.

Commissioner WEINSTOCK. Then, you do not believe that in the end righteousness prevails?

Mr. DARROW. Not at all. There is no end, and nothing that prevails. The preacher is just as apt to get a cancer as a labor agitator.

Commissioner WEINSTOCK. That is in the physical world, and you believe the same holds in the moral or ethical world?

Mr. DARROW. Well, the moral world is a question of opinions of the people who make up the world at the present time, and is constantly changing. The physical world is all we know anything about.

Commissioner WEINSTOCK. Mrs. Commissioner Harriman asked you this morning whether, in your opinion, you thought that arbitration was of value and importance. And will you be good enough to refresh my memory with your answer?

Mr. DARROW. I said I thought in many instances it was, and I believed in it, but did not believe in compulsory arbitration.

Commissioner WEINSTOCK. I see. You do believe, then, in arbitration?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. Well, then, evidently, I take it, that your views must have undergone a change in the last three or four years on the question of arbitration?

Mr. DARROW. Well, that is entirely possible. However, I do not recall that I said otherwise, but I may have. I have said a lot of things, and a lot of foolish things.

Commissioner WEINSTOCK. May I refresh your memory on the point?

Mr. DARROW. Certainly.

Commissioner WEINSTOCK. You probably have forgotten the incident, though I have not. Several years ago, I think it was either the fall of 1910 or the spring of 1911—

Mr. DARROW. Oh, yes; I think—

Commissioner WEINSTOCK (interrupting). When you were in San Francisco.

Mr. DARROW. I think I remember the circumstance.

Commissioner WEINSTOCK. May I refresh your memory on your attitude at that time?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. I was invited to appear before the labor council in San Francisco and explain to them a plan of mediation and conciliation that I had advocated—a plan that called for the chamber of commerce appointing 12 representing employers as a panel and the labor council a panel of 12 labor representatives, making a joint panel of 24, out of which, in the event of a labor dispute arising in the community, an equal number could be chosen from each panel to sit as conciliators and mediators; and I was invited, being the father of the idea, to appear before the labor council and explain the plan with a view of getting the council to approve it and to appoint 12 representatives to act on that panel. I did appear before the council and did explain it. By a coincidence you happened to be present that evening, and you were called upon to make some remarks immediately upon my having finished. As nearly as I can now recall your attitude, you said, "I have been sitting here for half an hour listening to one of your local lawyers." You paid me the honor of assuming I was a lawyer. "And he has been making an appeal to you in behalf of arbitration." I can not quote you literally now, Mr. Darrow. I can give you only the substance as I recall it. You said, "You have nothing to gain from arbitration. Arbitration is a delusion and a snare from the workers' point of view. You have tried arbitration all over the country, and what have you gotten out of it? Always the small end. Your remedy does not lie along the lines of arbitration. Your remedy lies in getting possession of the machinery for production and distribution, and getting into your own hands political machinery of the country. Don't waste your ideas in striving for arbitration. Get at the fundamentals and control those, and you will get what is coming to you." Now, I am not quoting you literally.

Mr. DARROW. No.

Commissioner WEINSTOCK. But giving the substance as near as I recall it.

Mr. DARROW. Probably you have given it about right, as I have said.

Commissioner WEINSTOCK. Now, taking the position you take to-day, it would indicate your mind had become modified on the question of arbitration, and that you have a higher regard for its merit and value to-day than you had at that time.

Mr. DARROW. Well, it is possible that I have. It is also possible that I might not have agreed with some special things you said and made statements too general. I do believe, however, that arbitration is not a solution of the labor question at all, and I do believe that the employer gets the best end of it, although the working man often improves his condition, and I think I may say generally; but it is small, and I do believe that the other things are the big things. If I left the inference that I thought it was of no value, why I have either changed my mind, or else you were entirely right, and I was entirely wrong in that matter, because I do think it is of value—some. I think it ought to be tried in many instances, and I have in many instances had to do with it. I have acted as an arbitrator in industrial cases, and I have represented the railroad unions of the United States in that way and the coal miners and many large organizations and some small ones; and I think sometimes they have done some good; and I think everything does good if it is nothing but agitation.

Commissioner WEINSTOCK. You believe, then, from your position as it comes to my mind, then, Mr. Darrow, that it is thoroughly worth the while of this commission to do what it can in aiding the spirit of mediation, conciliation, and arbitration?

Mr. DARROW. I feel that; I think this National Commission—I don't mean your commission, but the Arbitration Commission—

Commissioner WEINSTOCK. The United States Mediation Board?

Mr. DARROW. Has in many instances done some good; but I do not believe that you ought to carry with it the recommendation of compulsory arbitration.

Commissioner WEINSTOCK. Well, I don't think there is any such thought in the mind of any member of the commission.

Mr. DARROW. Well, then, that would be about my view of it; about as you seem to hold.

Commissioner WEINSTOCK. Among other things, in your statement this morning, Mr. Darrow, you said that—I don't know as I can frame it just exactly—but in substance I think you said that there are many men who commit acts of violence in connection with labor disputes who do not do it for selfish purposes, but do it in the interest of the common good—do it for a cause—and therefore ought to be treated accordingly?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. Well, now, that, I take it, would apply to a case such as the McNamaras, for example?

Mr. DARROW. I said that.

Commissioner WEINSTOCK. Would you regard the McNamaras then as criminals, or martyrs to a cause?

Mr. DARROW. I said they did it in what they regarded as the interest of the public good; and I am glad to answer that.

Commissioner WEINSTOCK. Well, then, how would you look upon them? How would you regard them? As criminals deserving punishment for their crimes, or would you look upon them as martyrs?

Mr. DARROW. There was no element that goes to make up what the world calls a criminal act, which is an act coupled with a selfish criminal motive. J. B. McNamara, an obscure printer, in a great labor fight in Los Angeles, took 16 sticks of dynamite, I think it was—about a quarter of a pound each—and went in the nighttime and deposited them in an archway of the Times Building, of course, without any intention of killing anybody, as he did not by that. It was done in the nighttime. Unfortunately it was deposited close to some barrels of ink, and they exploded. The barrels of ink became vapor and scattered through the building and set the building on fire, and there were no facilities for escape and they died. Now, let's look at it from his standpoint. That is the only way you can get at it.

If he succeeded and escaped he could get neither money nor glory; he could tell nobody he did it. If he failed, it meant a long term of imprisonment and perhaps death; what did he do it for? He did not do it for money; he did not do it for malice. He was a union man in a great industrial struggle run-

ning over the years. He believed in it, and believed it was necessary to the welfare of his class; he was thinking of the structural iron workers, of the men, women, and children living in poverty and want, and of the wonderful riches on the other hand, and in his mind he thought he was serving his class, and taking his life in his hands without reward. Now, if anyone can condemn him for it, they reason differently from myself, and they feel differently from what I do; I can not.

Commissioner WEINSTOCK. Would you say, then, Mr. Darrow, that under those circumstances, he was a criminal or a martyr?

Mr. DARROW. A criminal, as we understand the word, is one who does a thing for a low personal purpose, and he did not, and could not properly be classified that way. Under some other definitions a criminal is one who violates the law; under that definition he was like John Brown; under that definition he was a criminal; John Brown was a criminal. They were likewise martyrs; very likely Socrates had a fair trial, possibly Christ had a fair trial. Nobody disputes their motives, because they were so far away in point of time. Nobody much disputes John Brown's motives now. Some time they will not dispute the motives of any man who may unselfishly move, whether misguided or not. Everybody has not got the same brain that you have or I have; they do not see things the same way; they are more impetuous and enthusiastic and feel deeper, and you have to put yourself in another man's place, in order to judge him, and when you do that you judge him the way you judge yourself, and you excuse everything. You might say, for the safety of society, that such and such a man ought to be confined, because of the harm he might possibly do his fellow man, but to punish him for the sake of causing him suffering, no.

Commissioner WEINSTOCK. Then, from your point of view, you don't regard him as a criminal?

Mr. DARROW. No.

Commissioner WEINSTOCK. You would then regard him as a martyr?

Mr. DARROW. Well, he was risking his life in a case he believed in; I would not have done it; I would not have advised it; but looking at it from his standpoint, he was a martyr.

Commissioner WEINSTOCK. Do you so regard it?

Mr. DARROW. I can only judge from his standpoint. If I had done it I would not have been, because I would think it would be futile, and I might consider that the evil that might be accomplished would be equal to the good that might be accomplished, or would be.

Commissioner WEINSTOCK. If you had the power, would you or would you not punish him for what he did?

Mr. DARROW. I would not punish anybody for anything.

Commissioner WEINSTOCK. You would permit him to go free, then?

Mr. DARROW. I did not say that. I explained very carefully that I might believe in the confinement and restraint of all kinds of people, but not that I would punish them.

Commissioner WEINSTOCK. But if the power was vested in you, what would you do with a man like McNamara, living as we are in our present conditions?

Mr. DARROW. I do not know what I would do at this time. I want to see him pardoned some of these days, and I think it is pretty near time.

Commissioner WEINSTOCK. You doubtless are more familiar with all of the details of the method of procedure on the part of the structural iron workers than I. Will you tell us what was the fee paid by the structural iron workers to these dynamiters; how much did they get for every case of dynamiting in which they were engaged?

Mr. DARROW. I never saw any schedule; I did not know that there was any.

Commissioner WEINSTOCK. I can not say this authoritatively, but my impression is, from what I heard of the testimony, that they were to receive \$200 for every successful case of dynamiting.

Mr. DARROW. I do not remember about that. I do not believe there was anybody, or almost nobody, that did it for money; I have no idea there was. They were all intense, fanatical union men, and everyone is a fanatic if he believes a thing strongly enough, whether he be a Christian or a union man, or whatever he may be; and they did not need anything, except they had to live, I suppose. I do not know, however, Mr. Weinstock.

Mr. WEINSTOCK. The testimony, as I recall it—I am open for correction, because I did not study it carefully—is that McManigal and every one of the men engaged in dynamiting received somewhere around \$200 a case?

Mr. DARROW. I do not know that, because I do not remember to have heard any such thing.

Commissioner WEINSTOCK. If that testimony is true, and these men did receive at the rate of \$200 a case, who were engaged in work where they were only able to earn \$3 or \$4 or \$5 a day as mechanics, it would indicate there was a profit for them?

Mr. DARROW. No; it did not indicate that they made any more money than they would in their own business, and they incurred very much more danger. Of course, the number of cases was comparatively limited as compared with their daily work. I do not think that even McManigal or any of the rest of them was in the business for profit. I think they were fighting the United States Steel Co., and had to do it.

Commissioner WEINSTOCK. The fight, as I understand it, was for the union shop, was it not?

Mr. DARROW. I think so.

Commissioner WEINSTOCK. That is, the employers refused to confine themselves to union men—

Mr. DARROW (interrupting). As I recall it—I don't know whether there was any question of wages or hours involved, or in how many cases they called strikes for the purpose of enforcing the law to put up the floors of buildings as the scaffold went up, so that they would not have quite so far to fall.

Commissioner WEINSTOCK. But the circumstances in this case—the fight was for the union shop; the employers had refused to recognize or deal with the unions, and the unions were making every effort at their command to have unionism recognized and dealt with, and to have the shops unionized, and that seemed to be the issue?

Mr. DARROW. That is my impression.

Commissioner WEINSTOCK. Now, under those circumstances, do you believe that the structural iron workers were justified in resulting to violence? In dynamiting properties and imperiling human life and destroying human life in order to establish the union shop?

Mr. DARROW. Well, I do not know; I think the other side did much worse. I would have to be a structural-iron worker and know the dangers and the surroundings and the fight to pass judgment on it. I would want, before I took any responsibility, to know; I would have to know. I know that everybody on both sides regards it as industrial strife, and a man who would not think of committing violence in the daily walks of life will do it; employers who would go out of their way to feed women and babies, will starve women and babies for the sake of winning their point, and no rules govern. You ask me about a theory; I do not know; that is, I do not know just what provocation it would take if I were in their place.

Commissioner WEINSTOCK. So you are not in a position to say clearly and definitely that you think they were not justified?

Mr. DARROW. No; I am not; I am not in a position to say that either side were not justified or that they were.

Commissioner WEINSTOCK. You just made the statement a few moments ago, Mr. Darrow, I have forgotten the initial, whether it was Joe or Jim McNamara, was the principal?

Mr. DARROW. J. B. McNamara.

Commissioner WEINSTOCK. Is that Joe or Jim?

Mr. DARROW. Jim.

Commissioner WEINSTOCK. He was the one who put the dynamite under the Times Building?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. You said he did not mean to kill anybody?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. He was a printer, was he not?

Mr. DARROW. Yes.

Commissioner WEINSTOCK. And he knew that the Times was a morning paper and the printers worked all night?

Mr. DARROW. No doubt.

Commissioner WEINSTOCK. Then, how could he be ignorant of the fact that the explosion of that building would, in all likelihood, mean the death of the inmates of the building?

Mr. DARROW. There was not a chance in a thousand of it killing anybody; the explosion did kill nobody; it did not stop the machinery. Unfortunately, in setting it down, it was set down in an open alley where there was not a

chance in a thousand that it would do any damage beyond scaring some one; but that day there had been a number of barrels of ink rolled in there, and, of course, the violence of the explosion made vapor of the ink and scattered it throughout the building, and it caught fire and burned. He might have thought it possible that such a thing might happen, but the chances are that he never contemplated that, and it certainly did not happen from this. There is no question about that, Mr. Weinstock; nobody, I think, disputes that.

Commissioner WEINSTOCK. And, therefore, from your point of view, then, he was not guilty of murder.

Mr. DARROW. Are you talking about legal or moral guilt; or do you think they are the same?

Commissioner WEINSTOCK. I think they ought to be the same, whether they are or not.

Mr. DARROW. Well, if they are not, is it the fault of the moral or legal law? Legal and moral guilt are not the same, in my opinion, and that is all I have to go by. Under the law one who, in the commission of an offense, causes the death of another accidentally is guilty of murder. It has been carried so far that even a trifling misdemeanor that causes death, and the man has no idea of doing it; I disagree with the law utterly; but it is the law. One should be judged only by what he intends to do, but the law is that the criminal intent is made up from the result, whatever it is, and if a larger one holds the legal responsibility is there. So, legally, he was guilty of murder.

Commissioner WEINSTOCK. Let us see whether or no he was merely guilty of murder. The statement came to me yesterday from a man who knows; he was on the situation; that this bomb was placed directly under the desk of Mr. Chandler, the son-in-law of Gen. Otis, and that by a miracle Mr. Chandler was called away at the precise moment, and his secretary occupied that desk, and the bomb shot up through the desk and forced a typewriter into the chest of the secretary.

Mr. DARROW. I do not think he told the truth.

Commissioner WEINSTOCK. And that it was placed there with design?

Mr. DARROW. He did not tell the truth. No such thing happened, in my opinion. The bomb was placed in an alley; it did not go in the building at all, and if there was any office above it, it was certainly unknown, and the general offices were far away, and no such result followed, and nobody knows, because the whole building was in ruins after the fire. I do not think anyone honestly doubts what I have stated here as to the purpose. I know those who drew the indictment did not doubt it, and that was the statement accepted by the State's attorney on the plea.

Commissioner WEINSTOCK. That is all.

Commissioner O'CONNELL. I want to ask one question. Now, Commissioner Weinstock was asking about your agreeing to arbitration of industrial disputes, in which you agree with him; I take it, in your agreement with Mr. Weinstock on the question of arbitration, you have in mind that arbitration is only fair and can be successful only when the wage earners are organized on the one side?

Mr. DARROW. No one will bother to arbitrate with one man.

Commissioner O'CONNELL. I do not know what Mr. Weinstock had in mind. In speaking of railroad questions, the fact that it has been successful at all is because the railroad men have been organized; they have been able to gather and expend large sums of money in gathering statistics and to go into arbitration with the employers as an organization. As unorganized men they would be utterly unable to go into arbitration on an equal basis under those conditions.

Mr. DARROW. You can not arbitrate without organization.

Commissioner O'CONNELL. As, for instance, the brotherhoods. Mr. Garretson was a member of a commission that gave assent to the statement made by me the other day that the arbitration in the Eastern railroads, which occurred recently, and of which Seth Low was chairman, that it cost the brotherhoods in that case over a quarter of a million dollars to gather statistics and prepare to go into arbitration?

Mr. DARROW. Yes.

Commissioner O'CONNELL. And the Western case, just closed—in that matter it cost nearly a million dollars on the side of labor, and no one can tell what it cost the other side in preparing to go into arbitration. If arbitration is going to be as expensive as that, then in no manner could it be successful unless the men on the one side were organized and prepared to gather the proper statistics and information to go into arbitration successfully.

Mr. DARROW. You can not do without it.

Commissioner O'CONNELL. Therefore if we are going to recommend arbitration we must also recommend organization with it on both sides?

Mr. DARROW. I suppose that was assumed. There is no one to arbitrate with unless there is a union, and I suppose Mr. Weinstock assumes that.

Commissioner WEINSTOCK. Yes.

Commissioner O'CONNELL. There could not be successful arbitration without it?

Mr. DARROW. No.

Commissioner O'CONNELL. And when an employer suggests arbitration and connects it with the open shop, then there is no sincerity of purpose on his part, or he does not know what arbitration means?

Mr. DARROW. There must be organization to have it.

Commissioner O'CONNELL. That is all.

Chairman WALSH. That is all, Mr. Darrow; you will be excused.