THE SURVEY

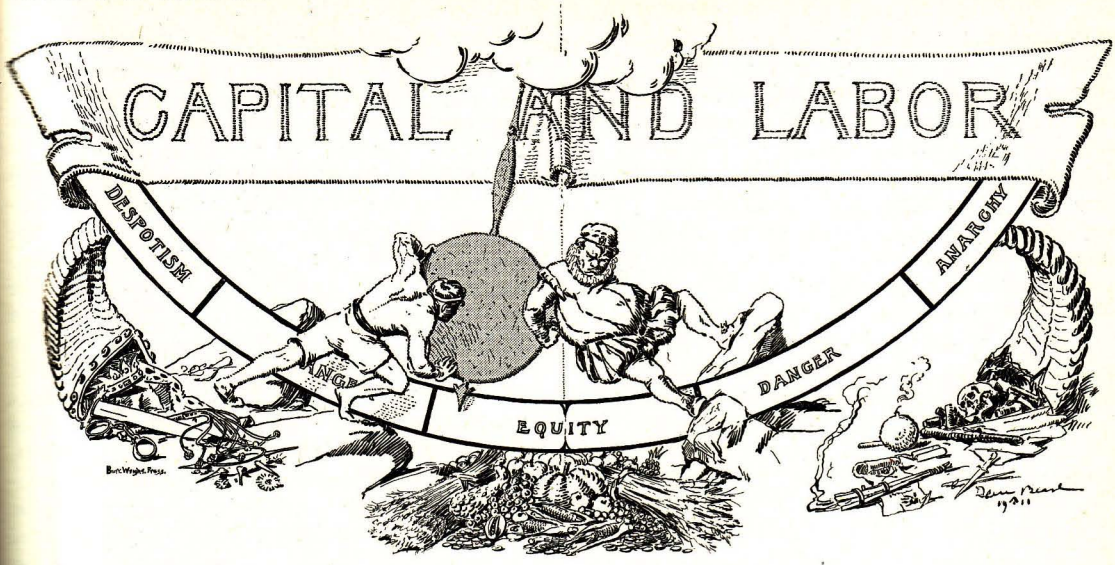
VOL. XXIX

OCTOBER, 1912—MARCH, 1913

WITH INDEX

NEW YORK
SURVEY ASSOCIATES, INC.
105 EAST 22D STREET

Courtesy of the Aldine Club



THE DYNAMITE CASE

JOHN A. FITCH
AUTHOR OF THE STEEL WORKERS

WHEN on December 28, the jury in the United States District Court of Indiana brought in a verdict of guilty with respect to thirty-eight out of forty defendants, it brought to a close one of the most amazing cases ever tried in an American court. In the past decade only three other labor trials have excited similar interest, those of Haywood, Moyer and Pettibone in Idaho in 1906, that of the McNamaras a year ago at Los Angeles and the recent one of Ettor and Giovannitti at Salem.

But those cases involved charges of murder.

The charge at Indianapolis was not murder nor the dynamiting of buildings; it was a charge of conspiracy to transport explosives on passenger trains from one state into another, and aiding and abetting in accomplishing that end.

If other facts were lacking it would seem strange that a trial on such charges should challenge the attention of the country. A violation of the law against such transportation of explosives would be complete if a man crossed a state border on a passenger train and carried with him a stick of dynamite which he intended to use for blowing up stumps.

Very evidently, the district attorney meant something besides the particular counts in the indictment when he called the offense for which the men were being tried the "crime of the century." More than one newspaper called for the maximum punishment for the defendants and a New York journal expressed regret that capital punishment could not be inflicted. In view of the fact that no reasonable person, even if ignorant of the law, could maintain that anyone should be punished by a court for a crime for which he was not on trial, this attitude is comprehensible only when the sinister facts in the background of the trial are taken into account—facts not to be palliated or gainsaid.

The whole story is more than that of a court trial. To get it in its proper setting, we must know what had happened prior to the indicting of fifty-four labor men. In 1905 the American Bridge Company had a closed shop agreement with the Bridge and Structural Iron Workers' Union. There was also an arbitration clause in the agreement, and a third clause of importance which said that "none of the definite articles of these rules shall be subject to arbitration." Some time in 1905 the American Bridge Company sublet a contract to the Boston Bridge Company, a concern that did not employ union labor. The union objected to this as a violation of the closed shop clause and when it was unable to induce the American Bridge Company either to abrogate its contract or to compel the Boston Bridge Company to unionize its work, a strike was ordered. The ordering of a strike without first submitting the matter in controversy to arbitration was, the company insisted, a violation of the arbitration agreement. The union replied that the strike was over a "definite article" of the rules, that is, the closed shop clause, which under the agreement was not subject to arbitration. From a local strike in New Haven the breach widened until a general strike against the work of the American Bridge Company all over the country was declared. The Bridge

Company retaliated by declaring for the "open shop."

Next the National Erectors' Association entered into the controversy. This association and its predecessors had been for several years in the habit of signing annual agreements with the Structural Iron Workers' Union. The last one was signed January 1, 1905, and expired one year later. On May 1, 1906, the Erectors' Association adopted what is known as the open shop policy, and joined its most important member, the American Bridge Company, in its conflict with the union. This brought into the fray the leading construction companies of the country, including, beside the American Bridge Company, the Fort Pitt Bridge Works, the Hinkle Iron Works, the McClintic-Marshall Construction Company, the Pennsylvania Steel Company, the Phoenix Bridge Company, the Pittsburgh Steel Construction Company, the Riter-Conley Manufacturing Company, the Wisconsin Bridge and Iron Company and many others. The American Bridge Company is a subsidiary of the United States Steel Corporation.

Then began and continued from 1905 to 1911, a struggle surpassed in violence in the labor history of this country only by the Molly Maguires. Assaults on individuals became a commonplace; bridges, buildings and structural material in all parts of the country were damaged or destroyed by explosions of dynamite and nitroglycerine, and human life was placed in jeopardy in countless ways. The whole country finally became aroused by the blowing up on October 1, 1910, of the building occupied by the Los Angeles *Times,* when twenty-one men at work in the building were killed.

The National Erectors' Association has published a list of ninety-six assaults on "non union foremen and men in the employ of open shop contractors of iron and steel erection work" occurring from December 2, 1905 to June 13, 1912, and a list of "depredations, dynamitings, attempts, etc." to the number of 102, extending over the period from the summer of 1905 to October 16, 1911. While no connection has been shown to exist between all of these assaults and depredations and any activity on the part of the Iron Workers' Union, the McNamara case proved that union officials were responsible for some of the worst of them, and the Indianapolis trial demonstrated their responsibility for many more.

It is the last chapter to date in a book of staggering revelations. Walter Drew, counsel for the National Erectors' Association, had testified last summer before the Judiciary Committee of the United States Senate, that there were in 1905 two attempts to dynamite open shop erection work. He testified that in 1906 there were three explosions and four attempts; in 1907, six explosions; in 1908, nineteen explosions and four attempts; in 1909, twenty-two explosions and two attempts; in 1910, twenty-five explosions, and in 1911 up to the arrest of J. B. McNamara and Ortie McManigal on April 12, there were ten explosions. One of the questions that perhaps never will be answered is how a dynamiting campaign of such magnitude could have been carried on for six years, involving in its scope the width of the continent, and having for its victims the greatest steel construction companies in the United States, including the United States Steel Corporation itself, before one important arrest was made or one dynamiter convicted of crime.

However that may be, the McNamara arrests brought into the hands of the officials of Los Angeles County and of Marion County, Indiana, evidence of great importance which was ultimately turned over to the federal authorities. On the basis of this evidence a grand jury, convened in Indianapolis, returned indictments against fifty-four men, charging them as has been stated with conspiracy and with aiding and abetting in the transportation of dynamite and nitroglycerine on passenger trains from one state into another. Forty of these men had their cases considered by the trial jury. The fourteen who were eliminated included the two McNamaras now serving sentences in California, McManigal and Ed Clark who had pleaded guilty, one man who was never found and one who had a broken leg and so was prevented from appearing. Three men were discharged at the beginning of the trial on the motion of the district attorney, who announced that he could not make a case against them, and four more were discharged on the motion of the district attorney at the end of the submission of the government's evidence. Later one more defendant, Clarence E. Dowd, was discharged on the motion of his own attorney.

Of the forty who stood before the court at the close of the trial all were members of the Structural Iron Workers' Union except Hiram Kline, a carpenter, and Olaf A. Tveitmoe, a cement worker and secretary of the San Francisco Building Trades Council. It was practically the labor officials of one trade and of that trade only, who were at the bar of the federal court, or who were involved in the far-flung skeins of evidence which were unraveled day after day. The reckless efforts which the California unionists were making to break into open-shop Los Angeles and the bitter hostility of the editor of the *Times* was what led to the transfer of these tactics to an outside field and ultimately led to exposure.

The United States District Court room in Indianapolis is divided nearly in two by a rail. Behind the rail are seats for onlookers and in front is the judge's raised desk, the jury box, tables and seats for counsel and seats for defendants. It was never anticipated by the archi-

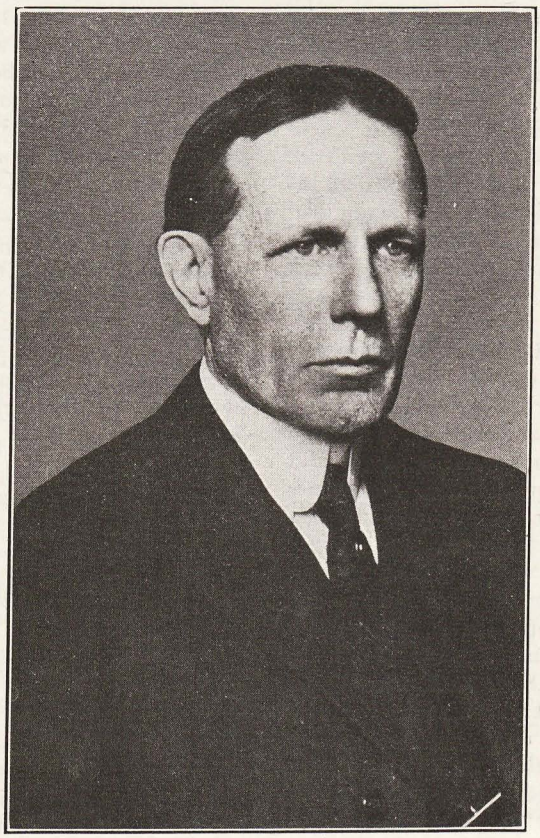
tect that forty men should be on trial at one time inside that rail. They were ranged along, in front of the rail, three rows deep, nearly the entire width of the room. When a table for the newspaper men, and seats for especially privileged visitors were added, scant space remained.

As I sat in the court room studying the faces of the defendants, I thought of what I have often heard about character showing in a man's face. They didn't look like criminals, those men. One was sitting erect, twirling his hat on the top of his cane. He looked for all the world like a professional man with, you would probably have added, a taste for music. I learned that this was Tveitmoe, whom the district attorney denounced as a murderer. Another reminded me strongly of a certain social worker who is a terror to evil doers. Some looked to be exactly what they are, strong muscled men who have worked with their hands for a living; others seemed more like prosperous business people. But one I fixed upon as evil, through and through. That man, I said to myself more than once, is a criminal if ever I saw one. But he turned out to be one of those against whom the evidence was scanty and largely circumstantial, and was not classed even by the prosecution as one of the ringleaders. He received one of the lighter sentences.

What had happened to bring to the hither side of that dividing rail these men who, so far as the eye could tell, might have been ordinary onlookers?

When on October 1, two years to a day after the Los Angeles explosion, the government opened its case it based it largely on the testimony of Ortie E. McManigal. McManigal had been arrested on April 12, 1911, by Burns detectives, along with James B. McNamara, charged with complicity in blowing up the *Times* building. He turned state's evidence at Los Angeles and confessed that he had carried dynamite and blown up buildings under the direction of J. J. McNamara, then secretary-treasurer of the Structural Iron Workers' Union. The government brought him to Indianapolis to tell in detail of his dynamiting exploits.

For days this man sat in the witness chair and told how he had gone about the country on his mission of destruction. He declared that he had set the bombs for some twenty-three of the explosions shown by the prosecution to have taken place.



JUDGE ALBERT B. ANDERSON

"A great public service was performed by prosecution and court. When state and local authorities weakly and shamefully neglected to interfere in a campaign of violence which led inevitably to bloodshed, the United States authorities, through the halting medium of a law designed only to protect the traveling public from ignorant carelessness, uncovered the conspiracy and punished the conspirators."

Only corroborative evidence and the almost unbelievable acts of other defendants, proven to have taken place, would avail to convince one of the truth of his story which, had it been written out instead of lived, would have been too lacking in plausibility to find a publisher. Think of checking a suit case full of dynamite in a railroad station! McManigal testified that he not only did that but that he took dynamite to his home in Chicago, piled it on the radiator to thaw out, and then went out to look over a "job"! When he returned he found his little girl playing with the sticks of dynamite on the floor.

It is according to the book to expect that a man even partially in his senses, if about to commit a crime, will try to conceal his identity, to cover up his tracks, and in every way to make it difficult for anyone to recognize him or to trace the course of his journeys. McManigal did use several aliases. One of them, said to have been used also by Hockin, was the particularly unobtrusive one of "Ping." But he always took scrupulous pains, apparently, that some one of his various names should appear on a hotel register, wherever he went to set off an explosion.

He got acquainted with night watchmen, guarding property that he intended to destroy. He even tried on one occasion to get the watch-

man to go to a theatre with him, so that he would not be injured when the bomb exploded. Failing in that because the watchman "got suspicious," McManigal went away and prepared a second bomb. He risked a return to the building guarded by the now "suspicious" watchman, set this second bomb at a point remote from the first, timed to go off five minutes before the other, so as to draw the watchman to that point in time to save his life from the initial bomb. Having taken these precautions, this careful dynamiter boarded a train.

McManigal had his picture taken at one place where he had gone in his professional capacity and finally, as if fearful that sufficient clues were still lacking, he formed the habit of sending to his wife souvenir spoons of the towns where he caused explosions.

For all that, there was no lack of evidence of many different sorts in substantiation of his story. Hotel registers showed his signature; hotel clerks identified him. Attorneys for the defense on cross examination failed to break down his testimony.

McManigal's story must have left a strong impression on the jury, for he told how again and again he met different officers and business agents of the Iron Workers' Union—not the McNamaras alone, but many others—and conferred with them regarding proposed explosions. But the strongest of all the corroborative evidence—showing direct connection between leading officials of the union and the dynamiting campaign, and indicating that there was conniving at and participation in other forms of violence—appeared in the hundreds of letters written by officials, business agents and others, which were taken from the files of the Structural Iron Workers' Union, and which were read into the evidence.

And here appears another thing to wonder over in this most amazing of trials. If McManigal acted with incredible nonchalence as playactor with the steel industry as his property man, what can be said of the precaution of the score of other men involved, most of whom wrote, not once but again and again, letters so incriminating that McNamara, replying to one of them, protested against putting such things on paper: "The Lord only knows who sees these letters!" he said.

And then McNamara *kept the letters on file!* It is a common practice in business offices to destroy letters, except those of especial importance, after a few years. Some of these "dynamite letters" were kept in the union headquarters five years, and only then taken away when the place was raided by officers of the law!

Day after day District Attorney Miller read these letters into the record. They dealt with all sorts of matters from finances to "repair work." Not many of them perhaps referred in plain and obvious terms to dynamiting and other forms of violence, but taken in connection with the dynamiting campaign that was on, many have a very plain and incriminating significance.

It had been brought out in evidence that for a long time, John J. McNamara used funds to the amount of a thousand dollars a month without giving any account of them. The stubs of the checks so drawn were usually marked "set aside for organizing purposes by the executive board." The first thousand dollar check was drawn in December, 1909. On August 7, 1908, J. J. McNamara had written to Frank C. Webb of New York, a member of the executive board, that he thought the board should set aside from a thousand to three thousand dollars for emergency purposes to be drawn on by himself.

McNamara wrote:

"I believe it will be up to the executive board to arrange so that things can be charged so that no official can be charged with the expenditure of a large amount of money."

The letter further mentioned that the expenditures of large sums of money by any individual officer led to investigations and kicks.

On July 1, 1908, Ed Clark who, along with McManigal, pleaded guilty to the charge of transporting dynamite, and confessed that he had caused at least one explosion, wrote to McNamara regarding some structural work that was about to be started in Cincinnati. Clark wrote,

"If you think it would help any, it would be easy to put their hoisting engine on the bum now."

McNamara replied that Hockin (who succeeded McNamara as secretary and treasurer, when the latter was convicted), would be in Cincinnati and

"he can take up with you the matters mentioned in your communication."

On July 23, Clark informed McNamara that Hockin had been in Cincinnati and on August 7 Clark wrote,

"I may as well tell you that there was an explosion on the Grainger job last night."

July 30, 1908, Philip Cooley of New Orleans, a member of the executive board, wrote to McNamara that there were two scab jobs under way there, adding:

"Now, Joe, it will take about $250 to do any work. There is a few good fellows in this local at this time who can do the trick and get away with it."

McNamara replied that Ryan would be in New Orleans shortly and Cooley had better take

the matter up with him. "You can arrange matters much better that way than you can by mail," he said.[1]

On December 29, 1909, Cooley wrote to McNamara:

"I was able to secure the proper stuff for that proposition I mentioned to you in a former communication, and I would like to know just what this kind of a job is worth, as I would not like to offer something and not be able to go through with it."

On February 5, 1910, Hockin wrote to Cooley:

"In answer to your favor of February 2, I have just sent you a wire ordering you to cancel the repair work on derrick, also the yard work you speak of, as the price is altogether too high. I might say that our expenses for the last month have been rather high and we have not got the money at present to make repairs at such a high price. We have been doing considerable organizing work throughout the country, so for some time we will have to keep our expenses down. You say you have considerable idle men down there. Under them conditions, the repair work ought to be done very cheaply."

M. J. Hannan of Scranton, Pa., a business agent, wrote to J. J. McNamara on September 7, 1907:

"I wish to say that it is a shame to let this bunch of snakes leave here without trimming them. . . . Now I think you should send some money here on the quiet and I promise the goods will be delivered. If No. 23 [23 was the number of the Scranton local] had a million, I would not do a job for them, as they don't know how to keep their mouth shut and I don't feel prepared to serve time. . . . I am prepared to do anything, but you know how careful a man should be in a case of this kind."

It was in regard to this letter that Frank A. Ryan, president of the union, admitted under cross examination on the stand that it had "looked a little suspicious" to him.

William C. Bernhardt of Cincinnati wrote to McNamara on October 22, 1907, about an accident that had happened on some work that a non-union contracting company was doing there in which some of the union members were accused of being responsible, and some had been arrested. Bernhardt said that he had footed some of the bills himself, because the matter was of such a nature that "it could not be brought up." The same letter refers to a police judge who was friendly to the iron workers, and who said, "For God's sake, don't bring that bunch around here any more or I'll have to do something."

An unusually frank letter was written on February 25, 1908, by Ed Clark, in which he said:

"We're going to do something to the Grainger Company that will be of benefit to the whole membership in general. . . . We have made up our minds to go after them in the right way. . . . Joe, being so well known here, I do not think it advisable for me to buy any explosive. Could there be such a thing as you sending me from Indianapolis what I need?"

A letter written by Ryan on April 27, 1910, figured prominenly in the trial. It was in this letter that Ryan apportioned "jobs" among the various members of the executive board. Ryan wrote:

"Let Legleitner attend to the jobs in his district. Let Butler attend to the jobs at Rochester and Buffalo. Hockin can attend to Detroit, Cleveland, Cincinnati, Davenport, Kansas and Peoria jobs."

The district attorney attempted to show that the reference in each case was to the dynamiting of non-union construction work in each district. It was also shown that within a few months after this letter a number of explosions took place in several of the districts where the "jobs" were to be looked after.

Some of the most interesting letter writing was done by J. E. Munsey, business agent of the union in Salt Lake City. On June 13, 1909, Munsey wrote to J. J. McNamara about a conference that he had had with the president of the Minneapolis Steel Company. He said that the president had left Salt Lake City for Minneapolis, but "he left his lap dog, Holstrom, here. We have tried to get him, but he won't venture out in the night time. He packs a big gun all the time."

A new hotel was being built in Salt Lake City, and on September 29, 1909, Munsey wrote to McNamara:

"They are going to run open shop on this Utah Hotel. There is no question. But just wait until they try it and you watch me."

On December 13, 1909, Munsey wrote:

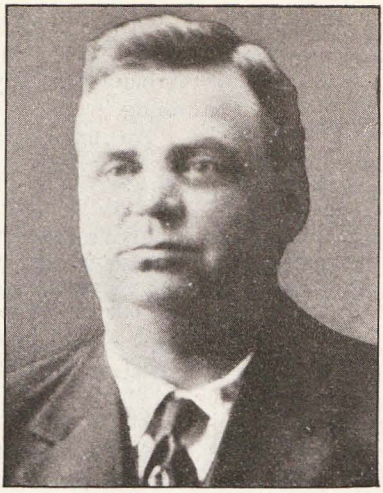
"There is a fellow by the name of Delaney working on the job, and he sent after me the other night. He gave me the address of John Smith, Cardiff, Alabama, and said if I wrote him about him I could find out what kind of a man he was. I asked him what his motive was in working there, and he told me he followed that kind of business up, and if I wanted to put the job on the bum, he would do it. He said he

[1] Cooley also wrote to McNamara at one time that he had met a scab in a saloon and struck him on the jaw. He said that the blow made the man pretty sick because he hit his head on something as he went down and he heard afterward that he had had to have a silver plate put in. Cooley was afraid that he might get into trouble at first, but he wrote that he had hired two witnesses to testify that the scab had hit him first. Then he had a friend of his see the judge so he was hoping to get off easily.

Courtesy of the Literary Digest

OLAF A. TVEITMOE

Secretary of the San Francisco Building Trades Council. Influential Pacific coast labor leader. Six years' imprisonment.



JOHN T. BUTLER

Vice-president of the Structural Iron Workers' Union. Sentenced to six years' imprisonment.

MICHAEL J. YOUNG

Business agent of the Structural Iron Workers' Union in Boston. Sentenced to six years' imprisonment.

worked for this John Smith during a strike in Alabama and for me to write in regard to it. Smith, he claims, is president of a local there. So I wrote Smith, but I was careful not to say anything in the letter that could be used against me or against the local. . . . I wish you would try to find out if you can; they might be trying to double cross me. Now I don't know anything about this Delaney; never heard of him before. Of course, I am pretty wise, and I am not going to let him lead me into anything on me. Now he wants me to wait until I hear from this Smith, then he says he will be ready to do business. Of course, I didn't mention that I wanted to do anything or say anything pertaining to it, so I think it would be advisable to write Lewis and see if there is such a man as Smith or if Delaney did do this work."

McNamara replied to this letter on December 20:

"I note your statement relative to this fellow Delaney. Do not frame up with any of those fellows. Some of our people done it at New York and to their sorrow. If I am not greatly mistaken, he wants to lead you into a trap. If I were you, I would feel this Delaney out again, and then tell him that you had taken the matter up with some of the officials of the local union, and that they turned the proposition down and gave you to understand that they were not doing business along that line. If he is crooked, and everything indicates that he is, he will, of course, take this information back to the people he is working for."

Later on there were explosions on the Salt Lake City work. February 24, 1910, Munsey wrote to McNamara:

"I am positive it would pay to send an organizer to this particular part of the country. . . . The Kearns and Utah Hotel buildings are coming along very slowly. But I still think there is a possible chance to square the Kearns Building."

On March 2 he wrote:

"The Utah Hotel is practically at a standstill. They can't cut the mustard, and I think there will be something doing there pretty soon."

On March 3 he wrote:

"Jones is practically up against it, and if he don't do any more in the next three months, he will never finish the job."

Writing again on March 7, he said:

"I think I have Jones on the hip in regard to the Kearns building, and we will then attend to the Utah Hotel."

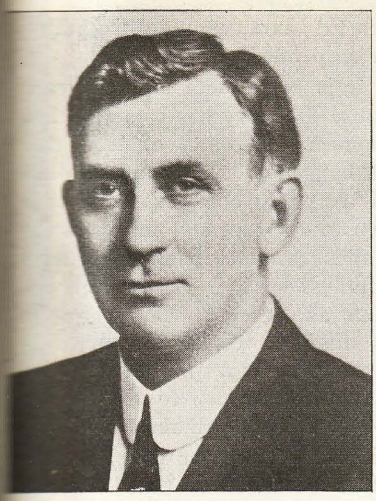
On March 29 McNamara replied:

"I wish you are able to run Jones not only out of Salt Lake City, but also out of the state of Utah. I presume he told you what I have in mind, and if it can be gone into in a safe way, I will be on the job."

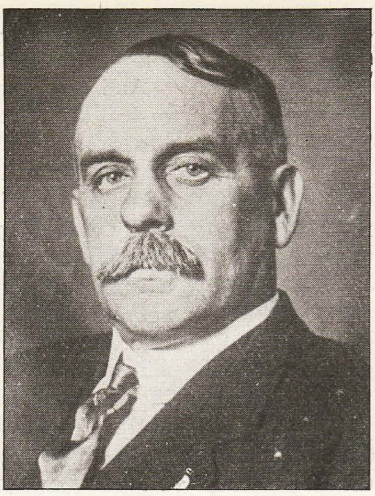
On April 18 the Utah Hotel was dynamited a second time.

I have quoted all these letters because it is important that the readers of THE SURVEY should know something of the evidence that was introduced in the trial. No one could read these letters, see the various exhibits introduced by the government, and consider corroborative evidence of a dozen different kinds, including the manner of some of the defendants on the witness stand, without being convinced that many of them were personally responsible for much of the violence and destruction of property which had taken place for half a dozen years past. That impres-

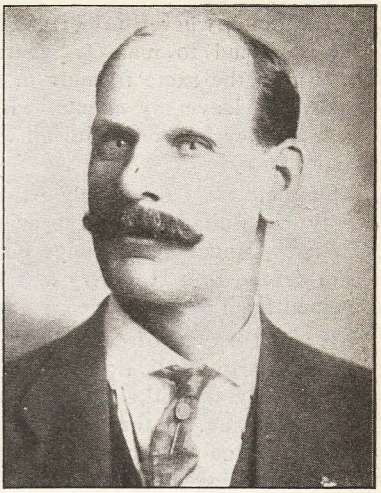
Courtesy of the Literary Digest



HERBERT S. HOCKIN
Succeeded J. J. McNamara as secretary-treasurer of the Iron Workers'. Six years' imprisonment.



FRANK M. RYAN
President Bridge and Structural Iron Workers' Union. Sentenced to seven years' imprisonment.



JOHN E. MUNSEY
Iron Workers' agent in Salt Lake City. Accused of hiding J. B. McNamara after Times explosion. Six years' imprisonment.

sion was strengthened in my mind as I sat and listened to the attorneys for the defense making their final arguments to the jury.

The defendants had an imposing array of counsel. At the head was W. N. Harding, a prominent attorney of Indianapolis, and associated with him as co-leader of the band of fifteen attorneys was John W. Kern, formerly special assistant United States district attorney, Democratic nominee for the vice-presidency in 1908, and now United States Senator from Indiana. Among the defendants' attorneys were a former assistant district attorney in Philadelphia and a former United States attorney in Missouri. They came from a half-dozen different states, from cities as far apart as Minneapolis and Philadelphia. Some represented one defendant, some two or more, and all were represented by Harding and Kern.

For the prosecution there were three men—District Attorney Charles W. Miller and Assistant District Attorneys Noel and Nichols. Miller was appointed by President Taft in 1909. He was attorney general of Indiana from 1903 to 1907, and has held various other positions of importance both in politics and in business. For more than a year these men had concentrated on this one case. They are deserving of great credit for their tenacity and industry in going through the appalling mass of evidence, for mastering it as they did, and drawing out into the open this conspiracy which had eaten at the heart of a great labor group. Attorneys for the defense repeatedly complimented the prosecution for their able presentation of the case, and it was no mere flattery. It was not only in having the weight of evidence in their favor, but in their intellectual grasp of that evidence that the prosecution was stronger.

On the bench sat Judge Albert B. Anderson, who was appointed to that position by President Roosevelt in 1902. It was, incidentally, Judge Anderson who afterward decided against the president who had appointed him in the famous Indianapolis *News* libel case, and who was the hero of Mr. Roosevelt's remark that the judge was "either a fool or a knave."

The jury was made up mostly of Indiana farmers—dyed-in-the-wool Hoosiers, as the eye could see. In the final arguments before the jury each side was allotted four days. Assistant District Attorney Noel opened for the prosecution, and when the defense had had their four days, District Attorney Miller took two and a half days for closing.

As I have intimated, the arguments of the defense did not for the most part impress me favorably. It seemed fitting and proper that the attention of the jury should be directed, as Senator Kern did most effectively, to the solemn responsibility of having in their hands the liberty of a fellow man. I am no lawyer, but it seemed to me only right that the jury should be reminded of the seriousness of its duty, dulled as their sense of it might have become after three wearying months of hearing evidence.

But I did not feel an equal measure of fitness and scrupulous propriety as lawyer after lawyer stood before the jury and made pleas for sympathy, reminding the jury of the homes where these men were "loved as those in your homes love you." Some of them quoted poetry. One read Abou Ben Adhem to the jury. Another read the poem entitled The House by the Side

of the Road, where the poet wished to dwell and "be a friend to man." Several of the attorneys used the same formula in closing their appeals. "I leave my clients, with all they have, with all they love and with all who love them, in your hands."

Of them all, I think only Attorney William A. Gray of Philadelphia, appearing in behalf of Michael Cunnane, and Judge Krum of St. Louis, who defended J. H. Barry and P. J. Morrin, refrained from making that kind of appeal.

It was the duty of defendants' counsel to make the best arguments they could for their clients consistently with the truth. But when I found them devoting, in the aggregate, hours of their precious time to such appeals as these, instead of marshalling the evidence, I could not help concluding that their cases were weak and that they knew it.

So far as the prosecution was concerned, I could not help thinking of another trial recently the feature of the newspapers—that of Police Lieutenant Becker in New York for the murder of Herman Rosenthal. In that trial the newspapers reported that Assistant District Attorney Moss not only did not interrupt the defendant's counsel when he was making his final argument before the jury, but that he retired from sight of the jury in order to give the defendant's counsel opportunity to speak for his client unhampered by any counter influence which even the presence of the prosecuting attorney might exercise.

At Indianapolis, District Attorney Miller sat directly in front of the jury all the time that the attorneys for the defense were making their closing arguments. He not only interrupted from time to time, but he did so in a manner that frequently surprised me, with such remarks as these: "Counsel knows that every word that he is saying is untrue," or "I wish counsel would try to tell the truth at least part of the time."

And then his speech to the jury surprised me in its bitter attack upon counsel for the defense. He taunted them with being there to defend a bunch of criminals "at so much per day." He intimated that Senator Kern had abandoned his duties at Washington, which the people were paying him to perform, to defend men guilty of murder. Such things, he declared with bitter scorn, "will men do for money." I gathered that he thought the defendants should not be represented by counsel.

The trial ended; the jury convicted thirty-eight men; acquitted two. Judge Anderson sentenced one man to serve seven years in prison; eight men to serve six years; two men four years; twelve men three years; four men two years; six men one year and one day; and five men, together with Ed Clark, who pleaded guilty, he released under suspended sentences.

And now that it is over there is a tendency to feel relief because the story has come out and justice has triumphed. The pity of it is that neither thing has happened. The matters dealt with in the trial were too complex to be thus easily made known to all men, and justice is too complex a thing thus easily to triumph. And I am not sure that unless, or even if, we limit our definition of justice as the court was obliged to do, can we say that it triumphed here. It will help if we first consider an important phase of the trial itself, and then turn to a more important question—what was it all really about?

The old doctrine on which our criminal procedure continues to be based is that it is the crime, and not the man, that comes before the court for judgment. Given this procedure, if justice even in a limited sense is to prevail, two things among others are extremely important. One is that if a man is suspected of having committed a crime, he should be placed on trial in a court that has jurisdiction. The other is that, having been placed on trial in any court, he should be tried on the charge named in the indictment, and not on some other charge.

District Attorney Miller is not to blame because the men convicted at Indianapolis were not tried on the direct charge of dynamiting buildings. That is not a matter for the federal courts. The fact that they were not so tried by state and county courts, and that long since, is a national scandal. Perhaps the magistrate who said, "For God's sake, don't bring that bunch here again or I'll have to do something," could tell why they escaped local prosecution. Judge Anderson took occasion to remark in the course of the trial that had the local authorities done their duty, the matter never need have come to his court.

Mr. Miller's strict responsibility was to present the evidence against the defendants on the several counts of the indictment, all of which had to do with the transporting of dynamite across state lines. Yet this was not the burden of his attack upon the defendants. He called them dynamiters and murderers. Tveitmoe he singled out for especial condemnation, and seldom if ever referred to him without an epithet. "Contemptible" and "infamous" were the adjectives most commonly attached to his name. "If I were district attorney of Los Angeles County," he said, "Clancy and Tveitmoe would have been tried for murder, and if an honest jury were in the box they would have gone to San Quentin prison to join the McNamaras."

So it was that some of those who heard the

testimony said: "These men are guilty of dynamiting buildings"— which was true of most of them—"so I hope the judge will send them to prison for life"—which would have been wholly contrary to the law, since the men were being tried for something else. Even Judge Anderson, when sentencing the convicted men, admitted that he would have to exercise some will power not to sentence them for murder and destruction instead of the crime of which they had been found guilty. Yet this incessant, reiterated picturing of the defendants as guilty of the worst crimes, even up to murder, the presenting of evidence to show that such crimes had occurred, could not have failed to rouse in the minds of the jury a righteous indignation against the defendants. Not being lawyers they would naturally lose sight to some extent of the real charge, and vote the men guilty just because they ought to be in jail. I do not know whether that was what they did, but if it was hard for the judge to keep his mind on the issue before the court, how much harder it must have been for the jury.

Moreover the burden of admitted testimony exposed the dynamitings as a motive for carrying explosives, but threw no light on either hardship or provocation as a possible motive for the explosions. If the court was right in admitting the one, was it consistent or just in failing to bring out the other? The prosecution was permitted to bring in as germane all the evidence it could gather regarding explosions and deeds of violence. The strictness with which on the other hand economic facts were excluded was illustrated when the defense tried to introduce evidence tending to show that the deaths in the union numbered twenty a month, that 80 per cent of these deaths are due to accidents occurring while at work, and that the average age of the iron worker is 34 years, and they were ruled out. Neither was evidence introduced showing possible reasons for the bitterness of the fight as carried on by the workers. Nothing was said of the employers' way of fighting.

This leads to a more fundamental question than whether personal injustice was done these men: What was the trial really about, not legally or technically, but actually? What was the meaning of the facts disclosed? That it amounted to more than the mere charge of carrying dynamite needs no affirming. The record of the trial proved, if legal proof were necessary, that dynamite and nitro-glycerine had been used by labor men in a struggle with anti-union employers. It is idle to suppose that the Structural Iron Workers' Union got into the hands of a set of leaders all of whom were natural-born safe blowers and who found that the easiest way to make the world give them a living.

I asked an experienced reporter, who had covered the trial from the first day, what he thought of the defendants. He answered, without a moment's hesitation:

"There are some bad men here, I think—some of the worst criminals in the United States. But only a few are like that. Most of them are the product of their environment. The danger of their work calls for red-blooded men—men of recklessness and courage. In their fight for union recognition they found themselves up against a bitter struggle with the Steel Corporation, and they actually believed, many of them, that the only way to avoid a loss of the eight-hour day and complete subjugation was through the use of dynamite."

This view may seem more than ordinarily puzzling if we note that it was the structural iron workers, with their eight-hour day and their $5 wage, who came to believe they must embark upon a career of dynamiting, instead of some sweated, underpaid group of workers. Yet it is common psychology that men will go to greater lengths to hold what they have than to gain more. A $3 man strikes harder against a wage cut than a $2 man will strike for a raise. It is significant that nearly all discussion of this matter in labor circles turns sooner or later to the condition of the other workers in the steel industry—their twelve-hour day and seven-day week, their low wages and their unorganized helplessness.

In an address delivered in New York last fall, Anton Johannsen, one of the men under indictment in California for transporting dynamite, expressed this point of view. The following is taken from a stenographic report of his speech:

"About a year and a half ago the United States Congress appointed a committee to investigate the steel trust. . . . That committee—not a labor union committee or a Socialist committee, but a committee from the United States Congress, that very seldom does anything, but they did this time—found that . . . the steel trust employed 260,000 men and boys. They found that they worked them for twelve hours a day for an average wage of $409 a year, not a month. What else did they find? They found that in that industry every single labor union had been completely destroyed and annihilated with but one exception—the Bridge and Structural Iron Workers' Union. You can draw your own inference, but every union was destroyed by the steel trust, and all those men who had lost their organization worked twelve hours a day for $409 a year as the average wage. We have a Congressional report to back us up as to the facts. What are the facts in connection with the Iron Workers' International Union? In seven years, during the administration of John

J. McNamara, the union increased its membership from 5,000 to nearly 14,000 members. They established an eight-hour day from the Atlantic to the Pacific, from Texas to the Canadian line, and they established a wage scale of $4.30 as compared with $2.20. . . . I do not know, but I suppose that the McNamaras became convinced that no amount of pleading, no amount of argument, no amount of logic, no amount of Christianity, no amount of politics, would convince the steel trust that they could give eight hours and give them living wages. Labor would have to organize.

"The steel trust had what they called the National Erectors' Association, one of the tributaries of the steel trust, and the National Erectors' Association had what they called the American Bridge Company, another tributary of the steel trust. . . . How long do they expect those 260,000 men and boys to work in the steel industry for $409 a year, twelve hours a day, without becoming imbued with animosity and despair? How do they expect it? If a man says to me, McNamara should be condemned, my reply is, all right, we will condemn the McNamaras; we will also condemn the Carnegies. If a man says to me that the Iron Workers' Union should be condemned, I say, all right; we will also condemn the steel trust. If they say we want light, we want justice; all right, light up the iron workers and light up the steel trust—light up labor and light up capital. Put on the searchlight for both parties, and we are willing that our sins shall be compared with their sins."

In spite of Johannsen's inaccuracy—for, while there is a large element of truth in his statement, his figures are wrong—he brings out how in the minds of the iron workers there was the fear of the loss of their eight-hour day and of the good wages now prevailing, fear of the helplessness that they have seen is the lot of the unorganized steel workers.

That would not lead the public to tolerate their placing bombs under bridges; but it does show that this dynamite campaign has been part of a larger struggle. It is one of the most sinister manifestations of that struggle. Nevertheless it is a part of it, and we must not think that the matter is settled when we have the dynamiters in jail. The court can perform its necessary function, but after the men have been tried and sentenced what about the causes that make dynamiters?

The utter inability of a criminal court to deal with these larger aspects of the problem—the incapacity of the tribunal in this particular case to understand them and the danger lest its procedure of punishing reckless passengers should lend itself wholly to the uses of one party in the industrial conflict—was shown in one significant fact that came under my observation. In his closing remarks to the jury, Senator Kern charged the prosecution with having turned the letter files of the union over to Erectors' Association detectives. This angered District Attorney Miller. "I would like to see the man," he shouted to the jury as he began his closing argument, "who would declare that the letters and papers were put into the hands of or in charge of a detective of the Erectors' Association after they came into the custody of the district attorney."

If the district attorney had said "representative" instead of detective, his question might have been answered. I do not know whether J. A. G. Badorf considers himself a detective or not, but before I went to Indianapolis I learned from the headquarters of the National Erectors' Association in New York that that was the name of their representative in Indianapolis, and that his address was 202 Federal Building. When I arrived in Indianapolis I found that 202 Federal Building was the office of the United States district attorney. Only the day before this statement of Mr. Miller, Mr. Badorf had taken me into a carefully guarded room in the Federal Building. The guards smiled and made way for us, and he showed me in that room the various exhibits of the government, including hotel registers, infernal machines, the nitro-glycerine carrying case, the books of cancelled checks of the union, *and the files of letters taken from the Iron Workers' offices.* At another time, when I had a talk with Mr. Badorf, he came out of that room to see me and returned to it again when we were through with our conversation. In view of his easy access to the exhibits it seemed to me that whether or not he had charge of them was a mere quibble.

But if he had, what then? It must be remembered that the Erectors' Association has been active for years in another direction than that of apprehending criminals. It exists for the purpose of smashing a labor union. In the steel industry proper for men even to meet together means discharge. The structural trade has not swung that far toward domination by the employer. Men with union cards, who stay quiescent, work alongside the others in its open shop work. But the impropriety of permitting an agent of the Erectors' Association to have access to the 60,000 or so letters, of which evidently the vast majority had to do with the legitimate activities of the union, since only a few hundred were used in the trial, ought to be obvious to any one.

For it must be remembered that there are 12,000 members of the Structural Iron Workers' Union. There was no evidence brought out at the trial to show that the overwhelming majority of these workers had any more direct responsibility for the dynamiting than, say, the policyholders of the mutual insurance companies bore to the offi-

cial acts which were the subject of the Hughes investigation. And it is the association of these 12,000 men that the Erectors would destroy.

To permit this employers' organization to have free access to the records of the union showed either that the district attorney and the judge had no appreciation of the economic struggle that has been going on for ages, or that they did recognize it and desired to put ammunition in the employers' hands. I prefer to believe the former.

But, either way, what a light it throws on the machinery upon which we still rely for bringing justice into industrial as well as civil relations. As Judge Anderson said, the union was not on trial. Even if this unnecessary misuse of the union itself had been avoided, it was beyond the power of this criminal court to clear up the deeper problems of justice between employer and employe.

That is a larger problem than dynamiting, and it can never be settled by a court or any number of courts, or by any body other than all the people. The people must co-operate for justice all along the line. We must stop the lawbreakers. If necessary, we must put them in jail. But if we do no more than that, we shall have gone no farther toward stamping out wrong and injustice than the doctors would toward eradicating disease if they contented themselves with sending their patients to the pest-house.

The science of criminology aims to discover the causes of crime. It is a valuable and respected science. The average citizen has more in common with the criminologist than he has with the trial court judge. His mental jurisdiction is not limited. A civilized people cannot regard and treat all crimes as individual acts, and never seek to find the causes of crime committed through mass or group action. I have no patience to discuss the question with those who claim recently to have discovered that the causes of crimes of violence in labor disputes ought not to be studied or talked about. If the wrongdoing of capital has been a contributing cause it ought to be known; now, of all times, when the red herring of labor crime is being so assiduously applied to the trail.

We need to know more of the very things with regard to which the Indianapolis trial has left us so much in the dark—the terms between man and man in industry—between a democratic people and the corporations whose jobs mean livelihood. The Indianapolis trial shows us the failure of a criminal court to supply us with such information at a critical juncture.

My particular criticism of that tribunal is that through one ruling it permitted the prosecution to bring into the record its whole exhibit of the crimes of violence, for which the men were not on trial, while through other rulings it prevented the attorneys for the accused men from introducing such evidence as would have been admissible had they been on trial for those crimes of violence.

Even so, a great public service was performed by prosecution and court. For, when the state and local authorities weakly and shamefully neglected to interfere in a campaign of violence which led inevitably to bloodshed, the United States authorities, through the halting medium of a law designed only to protect the traveling public from ignorant carelessness, uncovered the conspiracy and punished the conspirators.

But the very competence of this criminal court to do this thing shows by contrast the ineffectiveness of any agency we now have to get at an understanding of the facts and forces of the economic struggle which lay back of that conspiracy. This very lack is what gave occasion to the movement for a Commission on Industrial Relations which would take up the larger aspects in ways commensurate with their importance and with their neglect. The Indianapolis trial has thrown this need into bolder relief.

For one other thing the trial accomplished. It showed unmistakably that there is a disease in the land. It did not fully reveal its nature, and it showed only one aspect of its ravages. There is another aspect. We shall not be free from its pestilential advance until we shall have found the source of it and made it clean. And that is the real lesson of the dynamite case.