64TH CONGRESS
1st Session

SENATE

DOCUMENT
No. 415

INDUSTRIAL RELATIONS

FINAL REPORT AND TESTIMONY

SUBMITTED TO CONGRESS BY THE

U. S. COMMISSION ON INDUSTRIAL RELATIONS

CREATED BY THE ACT OF
AUGUST 23, 1912

VOL. XI

WITH INDEX

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

Mr. SPELLING. I may exaggerate a little and put it too strong; but I think they have not only a lemon but dynamite in this act.

Commissioner WEINSTOCK. You are in accord with Mr. Davenport?

Mr. SPELLING. In matters pertaining to this act we don't disagree in any particular, except in regard to a part of section 6. He seems to think it leaves the unions about as they were before. I think it prejudiced them, because of the essential implication which covers a part of the act, and not being exempt, and matters which are not satisfactory in the language of the act. I can not make it any plainer. I think these lawyers know what I mean, and possibly the members of the commission.

Chairman WALSH. That is all, Mr. Spelling; thank you.

We will now stand adjourned until Monday morning at 10 o'clock.

(Thereupon, at 4.30 p. m. Saturday, May 15, 1915, the commission adjourned until the following Monday, May 17, 1915, at 10 a. m.)

WASHINGTON, D. C., *Monday, May 17, 1915—10 a. m.*

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

Chairman WALSH. We will please be in order.

Mr. Drew.

TESTIMONY OF MR. WALTER DREW.

Chairman WALSH. Will you please state your name?

Mr. DREW. Walter Drew.

Chairman WALSH. Please state your place of residence, Mr. Drew.

Mr. DREW. New York City.

Chairman WALSH. What is your profession?

Mr. DREW. Attorney at law.

Chairman WALSH. Please describe, Mr. Drew, concisely but as exhaustively as the facts warrant, your connection with what might be called industrial affairs as an attorney.

Mr. DREW. You mean a complete history, down to date?

Chairman WALSH. Yes; a complete history of what your profession has been or your connection in general with such matters?

Mr. DREW. Well, my former residence was Grand Rapids, Mich., and there I was a member of the law firm of Crane, Norris & Drew. We had some cases come into the office involving labor matters, and later I disconnected myself from that firm and practiced law by myself. During that time I became the attorney for the Citizens' Alliance of Grand Rapids, Mich., and the Employers' Association of Grand Rapids, Mich., both of which were organized chiefly for the purpose of taking part in industrial matters.

In the spring of 1906 I was asked by the National Association of Manufacturers to go to Washington to make an argument before the Judiciary Committee of the House of Representatives against the antiinjunction measures then being proposed by the American Federation of Labor—that is, the old Pearre bill that you have heard mentioned here. At that time, during that visit in Washington, I came in touch with the gentlemen who later composed the National Erectors' Association.

Chairman WALSH. Briefly, that is what—the National Erectors' Association?

Mr. DREW. An organization composed of people who fabricate and erect structural iron and steel. From that acquaintance I was asked to become counsel for the National Erectors' Association, when it was organized, and I have occupied that position as counsel and executive officer of that association from April, 1906, to the present time, and still occupy it. I was also called in, I think it was in 1907 or 1908, as counsel for the Employers' Association of the City of Washington. At that time there were some industrial troubles here, in the nature of a general strike, largely over the open-shop issue. I have been counsel for different associations at different times. At the present time I am counsel for a group of plate contractors organized under the name of the American Erectors' Association. In connection with the particular work of this commission, I am special counsel for the National Association of Manufacturers, National Founders' Association, the National Metal Trades Association, and the National Council for Industrial Defense.

Chairman WALSH. You became a member of the New York bar at what time?

Mr. DREW. I never have been a member of the New York bar; I never had a case in the New York courts.

Chairman WALSH. Is your time usually devoted now to those classes of cases—this class of work you have mentioned here?

Mr. DREW. I have had a few private matters, Mr. Walsh, which are remnants of my old law practice in Grand Rapids. Aside from that, all my time is taken up with the industrial questions.

Chairman WALSH. You were furnished with a general outline of the industrial matters undertaken by the commission last week, as to the application of the law to industrial matters?

Mr. DREW. Yes.

Chairman WALSH. And I believe you have been kind enough to prepare something in advance?

Mr. DREW. You were kind enough to furnish me the questions early enough so that I have prepared a reply in advance.

Chairman WALSH. All right, you may read it, and we will then ask you any further questions.

Mr. DREW (reading). "Mr. Chairman and gentlemen of the commissioin: The letter of Mr. Manly, the director, requesting me to apepar before your body, asks me to 'be prepared to discuss along broad lines the question of the law and the courts in relation to the development of what is generally known as the labor movement.' The three first specific subjects assigned me are (1) Attitude of the courts in labor cases; (2) attitude of labor toward the law; (3) protection of constitutionally guaranteed rights.

"These three questions are closely related to one another, and all of them are different parts or aspects of the original and general question. A union, legally speaking, is a voluntary, unincorporated association. There have been a few instances in this country where organizations of workmen have incorporated under local State laws. Such cases are rare, and I believe none of the unions affiliated with the American Federation of Labor or with the railroad brotherhoods have incorporated, although there are statutes permitting such incorporation in different States and also a Federal law which permits the incorporation of a trade-union national in scope.

"The first great legal fact in connection with the trade-union, because of its being a voluntary, unincorporated association, is that it is not legally responsible in a suit at law for injuries which it may unlawfully inflict upon others. A great national trade-union may develop the most compact form of organization and government. Its thousands of members and hundreds of locals scattered all over the country may be knit together by the most effective machinery for purposes of promoting the interests and purposes of its membership. It may collect vast sums and gather them into its treasury. This vast power of compact organization, aided by equally vast financial resources, may be used by its properly delegated officers in ways which are, under accepted principles of law, contrary to the rights of other members of society. It is the power of the organization, the money of the organization, the common purpose of the organization as distinct from the individual purposes of its members, and the directing intelligence of the organization which may inflict this unlawful injury upon some third person, and yet the injured person has no action at law against this same organization for the damages he may suffer. He is left, if he so choose, to seek out the hundreds or thousands of individual members of the organization and to begin action against them as individuals. The mere description of such a legal remedy indicates that for practical purposes it is no remedy at all.

"As an example, those contractors and owners whose work was destroyed by the hundred or more dynamite explosions, caused by the Structural Iron Workers' Union, can not recover a dollar in damages from that union. The evidence is full and clear that these explosions were planned by the executive officers of the union, that the moneys to carry them on were voted by the executive board of the union and drawn from the union treasury and expended under the direction of members of the same executive board. Yet that same treasury can not be reached by any known action at law to recover damages for the injury inflicted.

"In the famous Danbury hatters' case, so widely heralded as a new and unprecedented advance in trade-union liability, it seems not to be generally known that the original action was begun against hundreds of the individual members of the hatters' union. The judgment obtained is not against the union, but against individual members thereof, and unless the judgment is paid by the unions in order to protect these individual members, or is paid by Congress, in accordance with the request in that behalf made, it will devolve upon the plaintiff in the Danbury hatters' case to collect his judgment from these hundreds of individual defendants as best he may; and proceedings for that purpose have been recently instituted.

"While, therefore, the labor organization may develop an immense power for inflicting injury and ruin upon others, it occupies a unique position of possessing absolute legal immunity for the injury thus inflicted. Power without corresponding responsibility—this fact is, in my judgment, the one most important fundamental fact connected with the legal status of the union. What human institution can successfully endure possession of power without responsibility? What more dangerous millstone to be hung about the neck of a labor organization in its upward climb to its proper place in society and in industry? In recent history, what one thing has retarded the growth and development of trade-unionism along right and proper lines so much as the reckless and lawless conduct of those who have achieved its leadership, and why is not the possession of immense power without corresponding responsibility the direct cause of reckless leadership?

"Much has been said about the obsolete doctrines of the common law in their relation to the labor movement, and also about the failure of our courts to keep pace with the progressive development of modern social and industrial thought. Yet what principle of our industrial law can be considered as so unfitted to our present industrial system, so obsolete from every standpoint of social and industrial ethics at the present time, as this same ancient rule that a voluntary association, no matter what its power or its resources or its aims and purposes, or its actual invasion of the rights of the rest of society, shall be permitted to do what injury it pleases, lawfully or unlawfully, without any legal responsibility? In the old days the principles of the law of conspiracy were so strict and so rigidly enforced that any combination for trade purposes of either masters or workmen was held illegal and even criminal. No necessity, therefore, existed for the possession by third parties of any right of action against industrial associations. Now, with the old common law of conspiracy so modified as to permit the widest latitude in combination, and with the great increase in the power of industrial organizations, with consequent greater ability to inflict injury, distinctly new conditions have come about and a need has been created on the part of the rest of society for protection which did not before exist in such character or degree.

"The establishment of the trade-union upon a proper basis of legal responsibility is a simple matter. It could be accomplished either by incorporation of the union through its own initiative under the Federal or State acts permitting such incorporation, or it could be accomplished by the passage of laws permitting actions for damages for either tort or breach of contract to be brought against trade organizations in their own names, and making any judgment secured collectible out of the funds of the association. In a few States statutes permitting voluntary associations to sue and be sued in the association name have been enacted, but it is very questionable if under such statutes any action is possible except against an association domiciled in a particular State. Whether a national organization extending over many States could be held under such a local statute is exceedingly doubtful, and it is interesting to note that the headquarters of different national unions are located in States where no such statutes exist."

Chairman WALSH. Does that apply to all unions; are their headquarters generally in States where no such statutes exist?

Mr. DREW. I have not investigated that, but I know a great many of them are. [Reading:] "So far as present statute law is concerned, therefore, it remains the general fact that trade-unions are practically immune from civil responsibility in this country."

Right here I want to say that some question has been raised as to the application of the eighth section of the Sherman Antitrust Act. The eighth section of that act says that the term "person" as named in the act shall be held to include associations existing under or by the authority of any State or Federal law. And some of my good legal friends think that an action could be maintained against a labor union in its own name as an association under this Sherman Act; but no known cases of that kind have been brought or have been decided, so that it still remains true that the trade-unions are practically immune from civil responsibility. [Reading:]

"The other course open for placing the union upon the plane of legal responsibility—that of voluntary incorporation—does not seem from the attitude of the leaders of organized labor to be in any near prospect of accomplishment.

This fact of legal irresponsibility, which seems to be so little understood by the general public, is evidently keenly appreciated and understood by the union leaders, who have no intention of relinquishing its obvious advantages. The suggestion that the unions incorporate has been made at different times and indorsed by friends of organized labor. In this connection I refer to and offer in evidence the able article by Mr. Louis Brandeis entitled 'The incorporation of trades-unions,' in which he advocates union incorporation as a benefit to the unions. The article is published in Mr. Brandeis's book, Business a Profession.

"Of such suggestions, Mr. Gompers, in his report as president to the convention of the American Federation of Labor in November, 1904, says: 'We still frequently hear the proposition urged for the incorporation of trade-unions, the evident purpose of many advocates being honorable and sympathetic, notwithstanding how unwise and injurious the results would unquestionably be to labor. Others, again, who advocate and insist upon the incorporation of the trade-unions know full well the purpose they have in view and the schemes they could then hatch to harass organized labor still more with suits at law, regardless of the flimsiness of the cause or the pretext for civil suits. They would not only divert our attention from the effort at economic improvement to a defense against every species of civil suits brought by our opponents against any officer of organized labor, but they would make every effort 'under the forms of law' to mulct our unions in damages for supposed injurious results from trade-union action.

"Mr. Gompers then points out that the chief argument for union incorporation is that it would bring about equality of responsibility between the union and the employers in cases of breach of contract, and he insists that such a claim has no foundation, because, as a matter of fact, employers, in spite of their many violations of trade agreements, have not been held in damages for such violations. In the hearing before this commission at New York Mr. Gompers reaffirmed his opposition to any incorporation of the unions, his reason there being that legal responsibility on the part of the union would be made use of by the employer to harass and to oppress with unfounded suits.

"Such reasons for preserving a condition of legal irresponsibility are, of course, no reasons at all. Equally well might it be said that no action for damages should exist against any of us because, forsooth, our enemies may subject us to unwarranted litigation. Neither is it true that the chief reason for trade-union responsibility is to secure equality with the employer in the making of contracts. That, of course, is one reason, and a most important one, and it would seem that no one more than the unions themselves should be interested in taking every step possible to put organized labor in the position of being able to make a business contract to which there should be two responsible contracting parties and the basis of which should be mutual interest, mutual respect, and mutual responsibility. Such condition would do more than any other one thing I can think of to extend collective bargaining and to place it upon a stable and firm foundation.

"But aside from all questions of contract, why, in all fairness, should not a labor organization be responsible in damages to others whose rights it unlawfully invades? It has been suggested during the hearing of this commission that civil responsibility on the part of unions would interfere with their democratic development, the inference being that the working out of the democratic principle in a trade-union is too important to be jeopardized by any such harsh principle as legal responsibility to the other members of society. The application of such a principle to an industrial organization, the basic essentials of which should be economic and not political, is scarcely deserving discussion; yet even from the standpoint and in the spirit such suggestion is advanced it falls before the first commonplace observation. Our cities are organized and administered on a democratic basis. In them society at large is working out the experiment of democracy, yet for that reason no immunity is granted the city from liability on its bonds or its contracts; and if a city unlawfully infringes your rights or mine, we can maintain an action at law and recover damages therefor. Why, then, should not a labor organization, which is organized for the primary purpose of promoting the interests of its members as opposed to the interests of other classes of society, be legally responsible for its conduct, and is not such absence of responsibility one of the most retarding influences in the growth and development of the union toward its true and proper place as a permanent industrial institution?

"In passing from the remedies, or lack of remedies, afforded by courts of law in connection with trade-union activity to the remedies afforded by courts

of equity, it may be well to consider for a moment such of the aims and purposes of the present-day union as most frequently bring it into conflict with the rest of society. That the individual by himself or in combination with others should use every legitimate effort to increase the rewards for his service is recognized as just and proper. The advantages of combination of workers for this general purpose are obvious. Under the early statutes and common-law rules affecting combinations, whether of masters or men, there was little that the guild or labor union could lawfully do, except to assist its members to develop skill and craftsmanship. The use of the power of combination for any purpose of changing conditions of labor was in that early day unlawful and even criminal.

"But these old restrictions upon the right to act in combination have long passed. In this country the right of workmen to act in combination in matters affecting conditions of labor was recognized by our courts long before such rights were admitted in England. As early as 1842 Mr. Chief Justice Shaw, of Massachusetts, in a leading case of Commonwealth *v.* Hunt (4 Metcalf, 111), held that it was neither illegal nor criminal for a union of workmen to bind themselves under their by-laws not to work for any person who should employ nonmembers of the union after he had been given notice to discharge such nonmembers. In reference to the by-law, he says: 'It is simply an averment of an agreement amongst themselves not to work for any person who should employ any person not a member of a certain association. It sets forth no illegal or criminal purpose to be accomplished, nor any illegal or criminal means to be adopted for the accomplishment of any purpose. It was an agreement as to the manner in which they would exercise an acknowledged right to contract with others for their labor.'

"This same principle of law was announced in almost exactly the same terms in the case of Coppage *v.* Kansas, of which you have heard here.

"This was in 1842, and this interpretation of the rights of unions at common law has been a leading case in American jurisprudence since that time. In England, however, in 1858, in the case of Hilton *v.* Eckersley (88 E. C. L., 47) the agreement of a manufacturers' association that each member would abide by the will of the majority as to whether he should carry on or suspend the work in his establishment was held to be unlawful and the bond to enforce such agreement was held void. Justice Crompton said: 'I am of the opinion that the bond is void as against public policy. I think that combinations like that disclosed in the pleadings in this case were illegal and indictable at common law as tending directly to impede and interfere with the free course of trade and manufacture. Combinations of this nature, whether on the part of the workmen to increase or of the masters to lower wages were equally illegal.'

"In the later English case of Hornby *v.* Close (2 Q. B., 153), decided in 1867, a trade-union was held an illegal combination with no standing in court, even to sue one of its own members for unlawfully withholding its moneys."

Chairman WALSH. What is the date of that?

Mr. DREW. 1867. [Continues reading:] "Chief Justice Cockburn said: 'Here we find the very purposes of the existence of the society not merely those of a friendly society, but to carry out the objects of a trades-union. Under that term may be included every combination by which men bind themselves not to work except under certain conditions, and to support one another in the event of being thrown out of employment in carrying out the views of the majority. I am very far from saying that the members of a trades-union constituted for such purposes would bring themselves within the criminal law; but the rules of such a society would certainly operate in restraint of trade, and would, therefore, in that sense be unlawful.'

"The right to organize, in England, for offensive and defensive purposes and to strike was later conferred by acts of Parliament in the trade-union act of 1871, as amended by the later acts of 1875 and 1906. The right to act in combination in industrial matters is, therefore, seen to have been recognized by our courts without the compulsion of any statute long before such right was obtained in England by acts of Parliament, and it is also clear that the restrictive principles of the law of conspiracy as affecting industrial combinations applied as well to combinations of masters as to combinations of workmen. Now, no legal restriction or disability attends the acts of industrial combinations that does not affect the acts of any other kind of combinations.

"This increased freedom of action has resulted not only in greater extension of trade-unionism, but also in a radical change in its policies and methods. Now, the power of the combination, rather than the merit or skill of the indi-

vidual, is relied upon to secure the advancement of the interest of the members. Everywhere emphasis is laid upon the development of the power of the union as an aggressive and militant institution. The individual is taught to rely upon the strong arm of his organization. The law of supply and demand as a determining factor in wages is recognized, but in much different fashion. The union policy now is not to increase the quality of the service and so increase the demand, but by use of the power of combination to limit the supply.

"Here, then, is the genesis of the closed-shop idea—the arbitrary control of the law of supply and demand, through a monopoly of the supply secured and maintained by the strong arm of combination. So important in the minds of the union leaders is the establishment of the artificial monopoly known as the closed shop, that it has become its one most vital and important principle. The chief, primary aim of all the great national unions affiliated with the American Federation of Labor is the establishment of the closed shop, and the question of the closed shop is the one question that these unions will refuse to arbitrate or to have brought in issue. A closed shop, wherever it can be obtained, is the one fundamental prerequisite to collective bargaining with these unions. Many of the most costly and bitter strikes of recent years have been waged for the chief purpose of compelling the acceptance of the closed shop, and many great industries of this country to-day are either partially or wholly under closed-shop control. And the closed shop as a purpose leads naturally to force as a method, for it is an artificial, not a natural, monopoly of labor, and rests upon the ability of the union to check the free working of the law of supply and demand.

"The strike—that is, the organized refusal of men to work—is the universal and natural weapon of the union. In its simplest form it is not an appeal to force, but to the law of supply and demand. If the labor market does not contain a supply of suitable labor outside the ranks of the strikers, which the employer can secure on the desired terms, then he must do what he can toward coming to an agreement with the strikers. To the strike in its simple form, the modern union with its ideal of closed-shop monopoly, its militant spirit, and its tremendous increase in power and wealth, has added a greater and increasing use of the power of the combination in different forms of force and coercion.

"Force is brought to bear upon the outside supply of labor through the intimidation and violence of the picket line to keep it from filling the places of those on strike. Sympathetic strikes are called by other unions against the employer or against those with whom he has business relations. Through the boycott, pressure to the point of ruin is brought to bear against those who sell the employer his material, or who handle or buy his product, or who deal with him in any way, in order to compel them to cease all business relations with him until he accedes to the demand of the combination.

"And let it not be supposed that the attack of the union upon others always grows out of the effort to secure from the employers better terms and conditions for its members. The closed shop in operation develops naturally into the conspiracy between the closed-shop union on the one hand, and a combination of employers upon the other, whereby they work together to prevent outside competition in the particular locality or industry, to fix such wages and prices as they choose, and to assess the cost of their common monopoly upon the general public. Many such combinations exist in this country. Certain trades in some of our great cities are absolutely controlled by them. Their power rests upon the closed shop of the union which is in a position to prevent any outsider who attempts to break into the prohibited field from securing labor to fulfill his contracts or to produce or handle his product. To perfect and maintain such combinations, many bitter labor wars have been carried on and the rights of innocent third parties ignored and invaded. The conspiracy itself, when perfected, is, of course, a legal and moral wrong as against the rest of society."

I would like to quote from the pamphlet issued in the Johns Hopkins University Study on History and Political Science, by Dr. Frank B. Stockton, at page 61, where he speaks of these combinations as "exclusive agreements," which he calls "An agreement under which a union does not allow its members to work for any employer who is not a member of the employers' association with which the agreement is made." That is what I call the combination between the closed-shop unions and the employers' organization. At page 174, Dr. Stockton says:

"Neither employers nor unions have much to say concerning the advantages of exclusive agreements. This is explained by the fact that such agreements

are generally condemned as being in restraint of trade, and therefore against public policy. Employers who are parties to them obtain a great advantage over competitors in localities where the unions are strong, since they secure virtually a monopoly of labor supplied. Consequently the employer outside of the association is nearly always desirous to enter. He complains of the losses that come from having to employ nonunion men, and is eager to hire union men exclusively. But while the closed shop, under such conditions may be an advantage to those employers with whom unions agree to deal exclusively, the public interests suffer, inasmuch as competition is effectively stifled."

Again, in the wars over questions of jurisdiction, the unions violate every legal and moral obligation to innocent outsiders. The closed-shop union controlling all the labor in its own trade, but desiring to increase its power and monopoly, arbitrarily extends its jurisdiction to cover work claimed by some other union. New tools and new methods may develop new classes of work, which may be claimed by several different unions in jurisdictional quarrels. Each of the contending unions is usually supported by allies among the other unions, with the result that the work of the owner or contractor is completely tied up by strike and counterstrike on the part of the warring unions, and over questions in which the employer has no control and in the settlement of which he has no voice.

The following extracts are quoted from the report of Mr. Gompers, president of the American Federation of Labor, to its convention in 1902:

"Beyond doubt the greatest problem, the danger, which above all others most threatens not only the success but the very existence of the American Federation of Labor is the question of jurisdiction. Unless our affiliated national and international unions radically and soon change their course, we shall at no distant day be in the midst of an internecine contest unparalleled in any era of the industrial world, aye, not even when workmen of different trades were arrayed against each other behind barricades in the streets over the question of trade against trade. They mutually regarded each other with hatred and treated each others as mortal enemies.

"There is scarcely an affiliated organization which is not engaged in a dispute with another organization (and in some cases with several organizations) upon the question of jurisdiction. It is not an uncommon occurrence for an organization, and several have done so quite recently, to so change their laws and claims to jurisdiction as to cover trades never contemplated by the organization's officers or members; never comprehended by their title; trades of which there is already in existence a national union. And this without a word of advice, counsel, or warning.

"I submit that it is untenable and intolerable for an organization to attempt to ride roughshod over and trample under foot the rights and jurisdiction of a trade, the jurisdiction of which is already covered by an existing organization. This contention for jurisdiction has grown into such proportions and is fought with such intensity as to arouse the most bitter feuds and trade wars. In many instances employers fairly inclined toward organized labor have been made innocently to suffer from causes entirely beyond their control."

Mr. Gompers said all that.

Mr. Commissioner Lennon said in his report, as treasurer, to the federation convention in 1903: "One question in particular has been forced strikingly upon my attention during the past year in connection with our trade-union movement. The subject is the one involving jurisdiction of different organizations and the claims made by different unions for jurisdiction over the same people. To me the danger to our movement lies in the divisions existing in the trade-unions themselves, and those divisions are very largely over the question of jurisdiction."

[Continues reading:] "Dr. Nathaniel Whitney, of Johns Hopkins University, has published a pamphlet entitled 'Jurisdiction in American Building Trades-Unions.' The following is quoted: 'In spite of the exhortations of President Gompers and the warnings of the executive council, disputes continued to arise with unabated frequency. In 1908, during the 11 days in which the convention of the federation was in session, there were 19 cases of jurisdictional disputes under consideration. To each of these disputes there were at least two parties. This makes the number of unions involved at least 38, and when one further thinks of the number of members in these 38 unions some idea will be afforded of the extent to which the labor world is disrupted and agitated by such disputes. In addition, it should be kept in mind that the jurisdiction disputes considered by the convention or by the executive council

of the American Federation of Labor do not represent more than a fractional part of such difficulties, for only those disputes which have attained the dignity of national importance—that is, of being discussed by the national officials of the two contending unions—are considered by federation. Besides these there are almost countless controversies over jurisdiction. Each national union has from a dozen to several hundred local unions under its authority; each one of these thousands of subordinate unions is likely at some time to have its trade infringed upon by a branch of another national union, and these disputes may be and frequently are settled locally, and so do not become an issue between the national unions. Moreover, there are many jurisdictional disputes between branches of the same national union which are settled without recourse to the American Federation of Labor.'

"Said the secretary of the bricklayers' union in 1910: 'Our disputes with the operative plasterers' union during the past year have taken thousands of dollars out of our international treasury for the purpose of protecting our interests. The loss in wages to our own members has amounted to at least $300,000. The losses to our employers have been up in the thousands also. In several instances the writ of injunction has been brought into play for the purpose of restraining unions involved in trade disputes, and unless the unions provide some means of eliminating jurisdictional warfare it is only a question of time when the legislatures of our country will be called upon to pass laws that will penalize labor unionists who indulge in such struggles.'

"Secretary Duffy, of the Brotherhood of Carpenters, said, in 1911: 'It is a shame when we have good friendly owners, builders, and architects, who are willing to place in their contracts a provision that union labor only must be employed, and when the building is only half completed have the workers go out and strike. The public does not understand it, and it seems nobody understands it but ourselves.'

"Speaking of an agreement over jurisdictional matters between the bricklayers and plasterers, the editor of the Bricklayers and Masons' Journal, November, 1906, said: 'The agreement removes from the trade-union movement a jurisdictional dispute that has involved the building industry for over 30 years, and which has not only been a source of great loss to the journeymen financially, but has caused most vexatious delays in building operations, and consequent financial loss to employers and to the building public, the latter being innocent parties to the trouble and perfectly helpless in providing a remedy for its correction.'

"Prof. Commons, in a study of the New York building industry, has this to say: 'Building construction was continually interrupted, not on account of lockouts, low wages, or even employment of nonunion men, but on account of fights between the unions. The friendly employer who hired only union men, along with the unfriendly employer, was used as a club to hit the opposing union.'

"In 1911, in the city of Chicago, the grim prophecy of President Gompers was actually fulfilled in the bitter jurisdictional wars fought by rival unions in that city, in which paid thugs and gunmen turned the streets of Chicago into a condition of anarchy, and in which, as a mere incident from the union standpoint, millions of dollars of construction work remained idle, with a resultant loss to owners, contractors, and the business interests of the city beyond possibility of measurement.

"It remains to say that in spite of the efforts of union leaders jurisdictional disputes have increased rather than diminished. Twenty-two disputes, involving great international unions with their thousands of locals, came before the executive committee of the American Federation of Labor in 1914, as against the 19 mentioned by Dr. Whitney in 1908. Perhaps it is not too much to say that the chief concern of the labor leader in this matter has been over the danger to the organization itself, rather than the injury and damage done to others. However this may be, it remains true that these wars among the unions, in the carrying on of which every obligation to outside parties is ignored and violated, have increased with the increase in the extension and power of the closed shop. It is the desire of the particular union to increase its spoils under the closed shop, which furnishes the reason for the dispute, and it is the power of the union under the closed shop which enables it to thus ignore the rights of the rest of society with so little fear of reprisal or punishment."

I quote again from Dr. Stockton's pamphlet.

Chairman WALSH. I won't ask you to do it now, but have you some of Dr. Stockton's conclusions drawn?

Mr. DREW. They are here, and I will submit the whole pamphlet in evidence, if you wish.

Chairman WALSH. I have not read them; I tried to quickly, and could not do it and listen to you at the same time, but at the end please epitomize them, but not now.

Mr. DREW (continues reading). "Dr. Stockton says: 'More than the closed shop is involved—employers in wasteful jurisdictional disputes in which they have no concern. Where there are no closed shops such disputes would be robbed of all their bitterness.'

"The closed shop, when established, also leads to arbitrary and reckless conduct on the part of labor leaders, and disregard for the rights of others.

"I quote from a pamphlet in the same Johns Hopkins University series, Dr. F. E. Wolfe, entitled 'Admission to American Trades Unions,' on page 173: 'When a trade-union by a thorough organization obtains complete control of the workmen within its jurisdiction, its position may become dangerously powerful. Such a union would be enabled, through the enforcement of the closed shop and prohibitive requirements for admission, to restrict the freedom of labor and capital in the industry. The wisdom of intrusting such great power to unregulated private associations is questioned because of the liability of its abuse by short-sighted leaders.'

"If the necessity for some protection on the part of the rest of society against the aggression of powerful industrial combinations pursuing these militant practices and policies has been made clear, and if the courts of law afford no adequate remedy, we come to the point of inquiry as to what courts and what rules of law furnish any such protection. Such courts we find to be the courts of equity, and the principles of law in which are found the limits and restrictions upon the conduct of men acting in combination are found to have their basis in the common law of conspiracy.

"It is the primary function of a court of equity to take cognizance of cases in which there is no adequate remedy in a court of law. The court of equity looks forward rather than backward. When unlawful injury is threatened, for which, if inflicted, the injured party would have no remedy at law which would compensate him properly, the court of equity will interfere by its writ of injunction to prevent the infliction of that injury. Another most vital distinction between law and equity practice is that the court of equity deals with the individual rather than his property. Its decrees are in the form of mandates directed to the individual persons and directing them to do or to refrain from doing certain specific things; while the judgment of a court of law on the other hand calls for the payment of money and is enforced by levy upon property. It is the natural and proper function, therefore, of the court of equity, in accordance with the purpose of its creation, to interpose its protecting arm between men who combine to unlawfully injure others and those who are threatened with such injury. No new function or authority needed to be claimed by the court for this purpose.

"It is also clear that a greater and increasing use on the part of courts of equity of this power of protection would indicate, not the development of any new functions, but rather the increase in the need for such protection. Still further is it clear that the entire power and authority of courts of equity rest upon their ability to secure obedience from the persons to whom their decrees are directed. If such obedience can not be secured or enforced, the decrees of a court of equity become so much waste paper, and its power and jurisdiction are meaningless terms.

"The law of conspiracy, by which the acts of combinations are limited, is exceedingly simple. A conspiracy is a combination having an unlawful purpose or using unlawful means. A combination whose purposes or conduct comes within either branch of this definition comes under the ban of the law. Outside of this simple formula there is practically no limit to what men in combination may do.

"So far as the methods or means employed are concerned, any conduct on the part of a combination which would be unlawful for an individual would likewise be unlawful for the combination, even though it were pursuing a lawful and even laudable purpose. In general, also, it may be said that what would be an unlawful purpose on the part of an individual would likewise be an unlawful purpose on the part of a combination. The law, however, goes

further than this and makes unlawful on the part of combinations purposes which would not be unlawful on the part of an individual, and it may be noted that herein lies the basis of all the objections of organized labor to the law as it affects its activities.

"In the eye of the law a combination is a separate and distinct thing from the individual. It has purposes that are not those of any one individual but the common purposes of the combination. Its individual members in carrying out the common purpose do not act on their individual judgment and initiative, but in accordance with a common plan—the plan of the combination. The combination has much greater power than is represented even by the sum total of the powers of the individuals that compose it. For instance, the 11 members of a football team, each acting individually and all filled with the common purpose of advancing the ball, would not accomplish much, but when they act together as a trained football team, obeying certain signals and following certain formations, they gain irresistible power. And this simple rule applies equally well to industrial combinations or to any other group of men acting together for a common purpose.

"This immense increase of power which comes with combined action brings with it greater responsibilities and in law is the basis of the principle that men may not do in combination all the things they may do as individuals.

"Said the Anthracite Coal Strike Commission in its report: 'Combinations are more than mere aggregations of the rights and powers of the individuals composing them. They become new and powerful entities and factors for good or ill.'

"Said Mr. Chief Justice Harlan, in the case of Arthur *v.* Oakes: 'An intent on the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in the execution of the unlawful intent. But a combination of two or more persons with such an intent and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting jointly has always been recognized as in itself wrongful and illegal.'

"It follows naturally from the fact that the action of men in combination is in accordance with the plan and purpose of the combination that their conduct as individuals becomes colored and impressed with the character of the common purpose. If the purpose of the combination be unlawful, the action of the individuals in carrying out that purpose becomes unlawful, even though ordinarily the things each one may do, if done for an individual purpose, would be innocent. Much fallacy of reasoning comes from the refusal to recognize this principle. It is a common defense on the part of a combination, when called to account, to point to the single, isolated acts of its individual members and to say, 'These things are lawful.' It is the familiar complaint of organized labor that the writ of injunction is used to deprive workmen of the right of free speech, free press, and other constitutionally guaranteed rights. They complain that men are prohibited from walking the streets, from accosting others, and from doing other ordinarily legal and innocent acts. All such claims in actions against combinations are, of course, based on the refusal to recognize the principle we have noted, namely, that what a man does in carrying out the plan and purpose of a combination is judged by the character of that plan and purpose. The effort, of course, is to free men acting in combination from the responsibility that comes with combined as distinct from individual action.

"Of such an argument Mr. Justice Holmes, in the case of Aiken *v.* Wisconsin (195 U. S., 194), said: 'No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot; and if it is a step in a plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.'

"In the famous Danbury Hatters' case Mr. Justice Holmes said of this same argument urged in defense of a national boycott: 'It is suggested that the several acts charged are lawful and that intent can make no difference, but they are bound together as parts of a single plan. The plan may make the parts unlawful.'

"Such an argument was likewise urged in the Northern Securities case—the case of a combination of capital rather than of labor. The Northern Securities Co. was lawfully organized under the laws of New Jersey. It began the purchase of stock in the Great Northern and Northern Pacific Railway Cos., buying the stock in the open market and in accordance with all the forms of law. In proceedings begun under the Sherman Act this company, the Northern Securities Co., was dissolved by injunction. The injunction prohibited the company from acquiring any more stock in the Great Northern and Northern Pacific Cos. and from voting the stock it already owned in those companies. It prohibited the Great Northern and the Northern Pacific Cos. from paying any dividends on their stock held by the Northern Securities Co.; but, as stated by counsel, each one of these things prohibited by the injunction was in itself absolutely innocent and lawful, and for that reason counsel urged that the combination was lawful and that such acts could not be enjoined.

"Said Mr. Justice Harlan: 'If there was a combination or conspiracy in violation of the act of Congress between the stockholders of the Great Northern and the Northern Pacific Co., whereby the Northern Securities Co. was formed as a holding corporation, and whereby interstate commerce over the lines of the constituent companies was retstrained, it must follow that the court, in execution of that act, and to defeat the efforts to evade it, could prohibit the parties to the combination from doing the specific things which, being done, would affect the result denounced by the act. To say that the court could not go so far is to say that it is powerless to enforce the act or to suppress the illegal combination.'

"Said Mr. Justice Brewer: 'The prohibition of such a combination is not at all inconsistent with the right of an individual to purchase stock. The transfer of the stock to the Securities Co. was a mere incident, the manner in which the combination to destroy competition and thus unlawfully restrain trade was carried out.'

"It is thus clear that the acts of an individual in carrying out the unlawful purposes of a combination can not be judged as standing alone, but must be considered in relation to the common plan and must become colored with the purpose of the combination. It is likewise clear that this principle of law has not been called into being for the special purpose of restricting or oppressing combinations of labor in their activities, but that it applies equally to all combinations, whether of workmen or capitalists. The mere statement of the rule in the strong and clear terms above quoted should be sufficient to answer any questions as to its propriety, its fairness, and its absolute necessity.

"In further consideration of the standard applied by law to the purposes of combinations we come to the distinction drawn by the courts between the combination and the individual so far as the lawfulness of purpose is concerned. As a general rule, the purpose of an individual does not affect the legal quality of his act. He may inflict malicious injury upon others without incurring any legal liability so long as he carefully stays upon his own side of the legal fence. The greater power of the combination for injury and evil over that possessed by the individual is the basis for a distinction between them, and it is a fundamental principle that malice on the part of a combination constitutes an unlawful purpose, and that a combination inflicting malicious injury upon others is unlawful and a conspiracy. The conduct of a combination which results in damage to others must have some proper motive, some legal excuse or justification, else it is deemed malicious and unlawful.

"Said Mr. Justice Holmes, as a member of the Massachusetts Supreme Court, in the case of Vegelahn *v.* Gunther: 'I agree, whatever may be the law in the case of a single defendant, that when a plaintiff proves that several persons have combined and conspired to injure his business, and have done acts producing that effect, he shows temporal damage and a cause of action, unless the facts disclose or the defendants prove some ground of excuse or justification. And I take it to be settled, and rightfully settled, that doing that damage by combined persuasion is actionable, as well as doing it by falsehood or by force.'

"In other words, Mr. Justice Holmes holds that a combination using even the innocent methods of persuasion may be unlawful, if its conduct is without some legal excuse or justification."

And I might say at this point that Mr. Gregory, in his testimony the other day, rather ignored this particular principle in speaking of the boycott. Of course, "boycott" is just a name or a descriptive term. If the boycott is a combination to injure in a particular case, then it comes within this principle of the law that has been so clearly set forth—if it is a combination to injure. If the boycott in some other case is not a combination to injure, the mere fact of its being a boycott would not make it illegal. [Continues reading:] "On the same point Mr. Judge Taft, in the famous"——

Commissioner O'Connell. Have you something in mind where a boycott would not injure anyone?

Mr. DREW. I do not think, Mr. O'Connell, that simply withdrawing patronage, although it is clearly a boycott, is unlawfully a boycott. I think I have a right not to trade with anyone. I think all the people in this room could have some cause of grievances against a storekeeper and agree not to trade with him; and I do not think there would be the slightest legal wrong.

Commissioner O'CONNELL. Would it not have a tendency to injure the storekeeper?

Mr. DREW. Of course. Lots of things all of us do every day in pursuance of our personal aims injure others, though they do not give rise to causes of action. [Reading:]

"On the same point Mr. Judge Taft, in the famous Toledo and Ann Arbor case, said: 'Ordinarily when such a combination of persons does not use violence, actual or threatened, to accomplish their purpose, it is difficult to point out with clearness the illegal means or end which makes the combination an unlawful conspiracy, for it is generally lawful for the combiners to withdraw their intercourse and its benefits from any person'"—

That covers the point you just raised, Mr. O'Connell. [Continues reading:]

"'for it is generally lawful for the combiners to withdraw their intercourse and its benefits from any person, and to announce their intention of doing so; and it is generally lawful for the others, of their own motion, to do that which the combiners seek to compel them to do. Such combinations are said to be unlawful conspiracies, though the acts in themselves and considered singly are innocent when the acts are done with malice, i. e., with the intention to injure another without lawful excuse.'

"What constitutes lawful excuse or justification for the infliction of injury by a combination of men? The courts, under different phraseology, have one general answer, and that is legitimate self-interest. So long as the acts of a combination are prompted by a desire to secure benefits for its members and not merely to injure others, they are held lawful, even though incidentally such acts may cause great injury to others. When, however, the infliction of injury is a direct and primary purpose, such purpose is held in the law to be malicious and the conduct of the combination to be unlawful. To afford justification there must be a reasonable connection between the means adopted and the benefits to result. A remote or intangible benefit sought for the combination will not justify the infliction of great and immediate injury upon others.

"The boycott is the chief weapon of modern unionism and also characteristic generally of its spirit and methods. The discussion of the boycott as a mere withdrawal of patronage is idle and academic. When that is the extent of the boycott in any particular case, the patronage is simply withdrawn and nothing more is heard about it. From such simple procedure the modern boycott has been developed into a very different thing. Said Judge Taft, in an early case (1893): 'The boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse from threats that unless those others do so the many will cause serious loss to them.'

"Said the Anthracite Coal Strike Commission in its report: 'What is popularly known as the boycott (a word of evil omen and unhappy origin) is a form of coercion by which a combination of many persons seeks to work their will upon a single person or upon a few persons by compelling others to abstain from social or beneficial business intercourse with such person or persons. Carried to the extent sometimes practiced in aid of a strike, and as was in some instances practiced in connection with the late antharcite strike, it is a cruel weapon of aggression, and its use immoral and antisocial.'

"It is clear, then, that the boycott is a war measure; that its plain and avowed purpose is to injure and destroy.

"From the standpoint of purpose what is its excuse or justification? A number of defenses in this connection have been urged. I am speaking of legal defenses and not economic. It has been said that the business competition between the union and the employer was sufficient to justify the boycott as a competitive measure. It has also been urged that a larger competition between labor and capital in general existed, each striving for a greater share of the product of industry; that between them there is a natural conflict of interest; and that the union, in promoting the interests of its members in this larger class competition, is justified in using such weapons as the boycott. It is said that by the use of the boycott the union gains greater power and instills fear and respect for itself in the community, so that it is put in a position where it can better assert and maintain its demands for its own members as against the interests of the rest of society. Since, therefore, the ultimate purpose is to benefit the union, the injury inflicted by the boycott is claimed to be justified.

"Said Judge Taft of this claim, in the case of Moore *v.* the Bricklayers' Union of this point: 'The right of the plaintiffs to sell their material was not one which, in its exercise, brought them into legitimate conflict with the rights of the defendants to dispose of their labor as they chose. The conflict was brought about by the effort of defendants to use plaintiffs' right of trade to injure Parker Bros., and upon failure of this, to use plaintiffs' customers' rights of trade to injure plaintiffs. Such effort can not be in the bona fide exercise of trade, is without just cause, and is therefore malicious. The immediate motive of defendants here was to show to the building world what punishment and disaster necessarily followed a defiance of their demands. The remote motive of wishing to better their condition by the power so acquired will not, as we think we have shown, make any legal justification for defendants' acts. We are of the opinion that even if acts of this character and with the intent shown in this case are not actionable when done by individuals, they become so when they are the result of combination, because it is clear that the terrorizing of a community by threats of exclusive dealing in order to deprive one obnoxious member of means of sustenance will become both dangerous and oppressive.'

"Said the Anthracite Coal Strike Commission, in its report: 'It was attempted to defend the boycott by calling the contest between employers and employees a war between capital and labor and pursuing the analogies of the word, to justify thereby the cruelty and illegality of conduct on the part of those conducting a strike. The analogy is not apt, and the argument founded upon it is fallacious. There is only one war-making power recognized by our institutions, and that is the Government of the United States and of the States in subordination thereto when repelling invasion or suppressing domestic violence. War between citizens is not to be tolerated, and can not, in the proper sense, exist. If attempted, it is unlawful, and is to be put down by the sovereign power of the State and Nation. The practices which we are condemning would be outside the pale of civilized war. In civilized warfare women and children and the defenseless are safe from attack, and a code of honor controls the parties to such warfare which cries out against the boycott we have in view. "Cruel" and "cowardly" are terms not too severe by which to characterize it.'

"In accordance with the broad principles noted, courts of equity have interposed the protection of the writ of injunction against the boycott and its twin, the sympathetic strike, and also against the organized intimidation and violence of the picket line and other familiar forms of coercion common to union warfare when used in particular cases for unjustified attack upon others. With the growth in the power of the militant union and with the increasing use of these war measures has naturally come a greater need for the exercise of this power of protection. There has come also a determined and systematic effort on the part of closed-shop unionism to break down this protective power of the courts of equity.

"This effort has taken two general forms: An attack upon the courts of equity and a political campaign to secure by statute immunity of labor combinations from the operation of the principles of the law of conspiracy. The attack upon the courts has been bitter and personal, alleging discrimination, partisanship, venality, and usurpation of legislative authority. The obvious design of the attack is to arouse general contempt and distrust for the dignity and authority of courts of equity, and it has been accompanied not only by every form of vituperation and abuse, but by open defiance.

"Said Mr. Spelling, then general counsel of the American Federation of Labor, speaking before the House Judiciary Committee of Congress, upon an anti-injunction measure urged by the federation: 'Now, I might recount to you at great length the abuses of Federal courts in the matter of sending forth what may be properly called special legislation—that is, they usurp the legislative power and make an ex post facto law and crush and destroy one side in a labor dispute. They turn over the judicial power that the Constitution and Congress has given for other purposes. They turn that over to one side in a trade dispute where vital and far-reaching interests are involved, and that side employs it as an unfair, a crushing, and overwhelming advantage against what, despite its numbers, is the weaker adversary.'

"Said Mr. John Mitchell, at an annual meeting of the National Civil Federation: 'It has been the proud boast of the people of our country, at least that no

citizen might be deprived of his liberty except upon the verdict of a jury of his peers. As the result of the indiscriminate issuance of injunctions, this feeling of security has lately been dissipated, and the American workmen now feel that their security has been jeopardized. * * * I wish to say for myself, and I yield to no one living in loyalty to this country, that if a judge were to enjoin me from doing something that I had a legal, a constitutional, and a moral right to do, that I would violate the injunction. I shall, as one American, preserve my liberty and the liberties of my people, even against the usurpation of the Federal judiciary, and in doing this I shall feel that I am best serving the interests of my country.'

"Said Mr. Mitchell in his book called 'Organized Labor,' published in 1903: 'Moreover, when an injunction, whether temporary or permanent, forbids the doing of a thing which is lawful, I believe that it is the duty of all patriotic and law-abiding citizens to resist, or at least to disregard the injunction. It is better that half the workingmen of the country remain constantly in jail than that trial by jury and other inalienable and essential rights of the citizens of the United States be abridged, impaired, or nullified by injunctions of the courts.'

"Mr. Mitchell says practically the same thing in his book on organized labor.

"Mr. Samuel Gompers, president of the American Federation of Labor, in connection with the injunction sought in the Buck's Stove & Range case, in a Labor Day speech at the Jamestown Exposition, said: 'An injunction is now being sought from the Supreme Court of the District of Columbia against myself and my colleagues of the executive council of the American Federation of Labor. It seeks to enjoin us from doing perfectly lawful acts; to deprive us of our lawful and constitutional rights. So far as I am concerned, let me say that never have I, nor never will I, violate a law. I desire to be clearly understood, that when any court undertakes, without warrant of law, by the injunction process, to deprive me of my personal rights and my personal liberty guaranteed by the Constitution, I shall have no hesitancy in asserting and exercising those rights.'

"This personal defiance, issued even before there had been any action of the court, was repeated by Mr. Gompers in a public interview, in which he said: 'When it comes to a choice between the surrender of my rights as a free American citizen and violating the injunctions of the courts, I do not hesitate to say that I shall exercise my right as between the two.'

"After the injunction was issued, Mr. Gompers, writing officially as president of the Federationist, the official organ of the American Federation of Labor, said as to the rights of laboring men: 'They have a lawful right to do as they wish, all the Van Cleaves, all the injunctions, all the fool or vicious opponents to the contrary notwithstanding. * * * Until a law is passed making it compulsory upon labor men to buy Van Cleave's stoves we need not buy them, we won't buy them, and we will persuade other fair-minded, sympathetic friends to cooperate with us, and leave the blamed things alone. Go to —— with your injunctions!'".

This sounds a great deal like the statement of Mr. Anton Johannsen, organizer for the unions affiliated with the American Federation of Labor, made upon the stand here a few days ago. In fact, you can not distinguish between the two. Mr. Johannsen frankly stated that if he was enjoined from doing what he thought he had a legal right to do, he would violate the injunction.

As far as Mr. Johannsen is concerned, I consider the chief significance of what he had to say lies in the fact that he spoke as representative of organized labor, occupying an official position with the unions affiliated with the American Federation of Labor, and sent out by their authority as their official spokesman, speaking to different bodies of workmen in this country, as an organizer affiliated with the American Federation of Labor, and part of his official duties is to organize other unions into the unions affiliated with the American Federation of Labor. In other words, Mr. Johannsen spoke as the official spokesman of the American Federattion of Labor.

Commissioner O'CONNELL. Before this commission?

Mr. DREW. Yes, sir.

Commissioner O'CONNELL. Sent here to do so?

Mr. DREW. I suppose he was subpœnaed, but at the present time he is an organizer for unions affiliated with the American Federation of Labor. Do you want to repudiate that?

Chairman WALSH. You must not ask questions of the commissioners.

Mr. DREW. Then I will withdraw that question.

Chairman WALSH. I will say here that Mr. Johannsen was subpœnaed as a witness, covering the general phase that you are subpœnaed on. You are a member of the American Bar Association, and we do not ask you to speak for them. We don't want any false impression created here.

Mr. DREW (continues reading). "The character and tendency of these utterances of these leaders of organized labor require no comment in a community which rests upon a democratic government and in which the rights and liberties of each of us are vouchsafed to us only by the correlative observance of the rights and liberties of others. Such a community, of course, can not continue to exist as a democracy when one group of its members can successfully defy the rules and obligations common to all. It may be observed, however, that when such a group has reached a position of such power that its spokesmen and leaders feel able to defy and refuse obedience to the courts charged with the common defense of our rights and liberties, there is indicated not a diminished but an increased need on the part of the rest of us for protection. It is to be also observed that these men are the responsible leaders and teachers of millions of organized workmen, that their defiance and abuse of our courts has been systematically continued for years, and that if the 'attitude of labor toward the law' is at the moment charged with hostility, distrust, and contempt, there is no need to seek further afield for the reason therefor.

"The entrance of the American Federation of Labor into politics had for its chief cause this desire to break down and remove the protection of the rest of society against the acts of industrial combinations. The unions, of course, have asked for sanitary laws, child-labor laws, and other measures in the category of social and remedial legislation, but no measure of this kind was important enough to bring about a concerted labor movement in politics. The desire, however, to free labor combinations from any restrictions upon the unlimited use of their power was considered vital and important enough to warrant the systematic development of the political power of organized labor in city, State, and Nation.

"The changes asked have taken many different forms, but all of them upon analysis disclose the one fundamental purpose of freeing labor combinations from the operation of legal rules and principles by which the conduct of other men in combination is measured. The chief effort has been to destroy or cripple the use of the writ of injunction in labor cases. The demand for jury trial in cases of contempt of court has this underlying purpose, for if a court of equity may not punish for disobedience of its decrees except after jury trial, its whole power and authority is made dependent upon the action of a jury, and 1 juryman out of 12 would be in a position to nullify the decree of the court. The demand that in labor cases any conduct on the part of combination shall not be unlawful unless the same conduct on the part of an iddividual would be unlawful, is readily seen in the light of our previous discussion to destroy the foundation principle of the law of conspiracy.

"The Sherman Act, of which so much has been heard, added the attempt to restrain interstate commerce to the things it was unlawful for a combination of men to do, and it is this provision which brought the union into conflict with this law. The Sherman Act gave no injunctive remedy to the employer against the union; it gave him no action at law against the union itself. Under it, however, such damages as he could recover against the individual members of the union for injury suffered through its violation were trebled. The effort to take labor combinations from under the operation of the Sherman Act is a natural part of the plan to secure their immunity from all the legal rules which apply to other men.

"The many legislative proposals designed to secure privilege and immunity for labor combinations need not be further gone into. The recent Clayton law seems of doubtful meaning, although it was supposed and intended to realize to some extent the demands of organized labor. Should it prove disappointing, we are already advised that a more determined campaign than ever will be carried on to secure laws which will accomplish the ends sought.

"One legislative victory, however, has been gained of clear and unequivocal import, namely, the provision in the sundry civil appropriation bill that none of the moneys appropriated shall be used in the prosecution of labor and farmer unions. This victory was the greater inasmuch as such a provision in previous measures called forth the exercise of the power of veto by President Taft and a statement by President Wilson condemning the provision in principle. Such provision is significant in that it defines unmistakably the political purpose of

organized labor to be the securing of special legal immunity and a license to do things which other men can not lawfully do. It is significant also as an acceptance by our national administration of the principle of arbitrary class legislation.

"And it is important to remember in any discussion of this demand for special legal immunity that those who make it speak in behalf not only of such unions as may be orderly in conduct and wise in leadership—and which, by the way, have no need for license to do what other men may not do—but they speak also in behalf of such organizations as the Structural Iron Workers' Union, which retains its national officers in power even after their conviction of the greatest criminal conspiracy of the age, and in whose different locals at the present time may be found thugs and ex-convicts as duly elected officers. They speak in behalf of those unions which waged civil war in the streets of Chicago without regard to the rights of others, and in behalf of that final conspiracy between the closed-shop union and the employers' organization against the rights and interest of the general public. The Structural Iron Workers' Union, the unions chiefly engaged in jurisdictional warfare, and the unions generally to be found as parties to these combinations with employers, are members of the American Federation of Labor, and the representatives of that organization in demanding this legislation speak not only in behalf of these unions but in behalf of an extension of their power to do the things they are doing.

"What guaranties are offered that such legal immunity and special privilege will be well and wisely used? The recent history of the activities of the militant closed-shop union under the present status of the law affords no comfort on this score. Mr. Gompers has testified before this commission that the American Federation of Labor has no power of control over its affiliated unions. We have noted the inability of the federation to adjust or control jurisdictional wars. Mr. Gompers's own great personal influence has been brought to bear in many such cases without results. Even the power of expulsion from the federation is not used in cases where unions exceed all rules of legal conduct, for after the conviction of the executive board of the ironworkers' union, Mr. Gompers announced that that union would be retained as a member of the federation and would be sustained and strengthened. Forgetting some of the unwise utterances of the national labor leaders who seek this legislation and granting them possessed of wisdom and prudence and respect for law, still under the loose character of the organization of the federation, and with its lack of control over affiliated unions an accepted fact, what is the conclusion? Simply that reckless and lawless organizations, under reckless and lawless leaders, will, through the legislation demanded, be given greatly increased ability to use the immense power of their combinations for purposes of oppression, selfish ambition, civil war, and plunder of the public. Should not increased rather than diminished legal responsibility be sought by the labor leader who is really wise and far-seeing?

"The first of the special topics assigned to me under the general heading is 'The attitude of the courts in labor cases.' It has been placed at this point in discussion because all that has been said on the other topics seems logically to be preliminary to its proper consideration. The principle and remedies which apply to labor combinations and their conduct and the functions of the courts in their administration are found to be precisely the same with respect to combinations of labor as to combinations of other classes of men. In the administration of the law, it is the fundamental duty of the court to look with impartial eye upon the litigants before it. It has, properly speaking, no attitude, for the very term 'attitude' implies discrimination. It is a tribute to the success of the organized attack upon our courts which we have noted that such a phrase as 'attitude of the courts in labor cases' could have been formed, or such a topic be considered of enough seriousness to warrant its being embodied in the official program of this commission.

"The charge that our courts have unfairly and in a partisan manner administered the laws of the country in labor cases rests only upon the constant statement and restatement of those whose effort is to avoid the equal enforcement of law. Such statements have been challenged time and time again in the halls of Congress and elsewhere, and never has anything in the nature of substantial evidence been offered to sustain them. To enter upon a defense of our courts against such reckless, vague, and unsubstantiated charges is belittling to the courts themselves. That the thousands of our judges, Federal and State, scattered over this country from one end to the other, unknown to one another personally, should by some hidden and occult process arrive at a

mutual understanding and purpose to discriminate against organized labor in the administration of law is a self-evident absurdity, and yet the great bulk of our decisions, both National and State, show a general uniformity in the interpretation and application of the principles of the law of conspiracy as applied to all combinations, whether of labor or of capital. The fearless enforcement of law and the denial of special and unequal consideration to labor combinations as compared with other combinations constitutes the 'attitude of the courts,' which is the real basis of complaint.

"A brief study of that much-used union term 'unfair' will be illuminating in this connection. Any person or company or political party or legislative body which refuses to grant any demand of organized labor is called 'unfair,' no matter what the nature or character of the demand. My first experience with this phase of unionism was as counsel for an undertaker who refused the demand of the teamsters' union to cease from patronizing a certain team owner, who, by the way, happened to be a widow. In order to compel the undertaker to cease from securing carriages from the widow for his funerals he was subjected to a bitter boycott and his funerals were stoned and in some instances stopped by union pickets. The local president of the teamsters' union assured me that the undertaker had been put upon the 'unfair list,' and that the war against him would continue until he ceased to deal with the objectionable widow. So, also, the storekeepers who furnished provisions to families who were under the ban of the union in the coal fields during the anthracite strike were placed upon the unfair list of the union and themselves subjected to a boycott described by the coal strike commission as 'antisocial, cruel, and cowardly.' In the city of San Francisco, the bricklayers' union has a rule providing that contractors shall pay into the union treasury one-half of 1 per cent of the contract price of work where brick is used. The contractor who refuses payment becomes unfair and subjected to all the coercion of strikes and boycotts until the payment is made. I have in mind the case of a man who was expelled from one of the great national unions because his wife unknowingly took in as boarders some open-shop workmen. His miserable and abject letter to the national executive board of the union asking for reinstatement on the ground that he could not get employment and was in desperate circumstances was rejected. The man was 'unfair' to organized labor.

"The legislator who refuses to pledge himself in advance of election to the legislative program of organized labor is unfair; the alderman or supervisor who refuses to assist in the giving of all public work to establishments favored by the union is unfair. The word 'unfair' in union parlance has gained a new meaning. The closed-shop union knows no neutrals. It classes as unfair and as enemies all who refuse unquestioning obedience to its demands without regard to how vicious, unreasonable, unsocial, or uneconomic those demands may be. If a business man having no dealings or dispute with organized labor becomes unfair because he will not at its demand engage in a boycott of some one who has come under its ban, and if a public officer or legislator becomes unfair when he will not violate his oath of office by administering that office in the special interest of organized labor, it can readily be seen what is the real meaning of the charge of unfairness as applied to our courts. It is obvious that a fearless court in labor cases would almost inevitably be called unfair, for the even holding of the scales of justice is 'unfair' in the opinion of litigants who cherish such views and conceptions.

"In the discussion thus far civil courts and civil remedies have been the only ones considered, but much that has been said as to the attitude of organized labor toward the rest of society and toward the law finds equal application in the administration of the criminal laws in cases growing out of labor matters. Here, also, in cases of convictions for crimes committed in the interests of organized labor we find the same charges of unfairness against the prosecuting officers and the courts. The fact that the trials of such cases are always jury trials and that one of the insistent objections by organized labor to courts of equity has been the lack of jury trial seems to make no difference. A result unsatisfactory to organized labor in any court appears to be all that is necessary to bring forth the claim of discrimination, unfairness, and persecution.

"It is natural that the minor courts and local police and prosecuting officials should be more or less sensitive to this attitude of organized labor, especially in view of its political activities. Such local officials and courts, generally with short tenure of office and desiring reelection, would, even with the best of intentions, be careful not to incur the displeasure of a strongly organized po-

litical group of the community. When such local officials, however, are not governed by the best of intentions, as sometimes happens, cases may be found of an actual breakdown in the administration of the criminal law, so far as cases involving labor matters are concerned. A union business agent, writing in to the national headquarters of his union during a period of strenuous picketing on the part of the union, says: 'Some of our members had been arrested once or twice for a little skirmish, which we succeeded in getting them out of. * * * The police court judge said, "For God's sake, don't come around again with the bunch, or I will have to do something," but at the same time he is in our favor.'

"A member of the national executive board of one of the national unions affiliated with the American Federation of Labor writes to a brother member as follows: 'I met this Miller on the street last night and had some words with him, which brought it to blows, and I hit him, knocked him down, and his head hit a post. I was arrested and charged with assault and battery.'

"In a later letter he says: 'I have hired a couple of witnesses to testify that Miller struck me first. Trusting I will be able to get out of it without a jail sentence, and with kind personal regards,' and so forth. He again writes: 'I arrived here this morning and went to court. A friend of mine had already seen the judge in the case, and the judge told my friend to have me plead guilty to simple assault and he would defer the sentence until Monday, as this Miller and Wilson leave here Saturday, and they won't know what the judge sentences me. It is all fixed so I will not receive a jail sentence.' And finally he writes: 'I was sentenced yesterday for the sum of $25 or 30 days. This was the best my friend could do in the case. I had very near the whole city hall behind me, as this Wilson was certainly trying to get me the limit. Miller had a silver plate put in his head. I don't think he will scab for a while.'

"Cases, too, may be cited where the regular strong-arm men of certain unions, in spite of criminal records and after a long series of assaults, have been let off on conviction by local magistrates with either a suspended sentence or a small fine. After the arrest of the McNamaras at Indianapolis there fell into the hands of the local State prosecuting attorney a mass of documentary and other evidence involving the other national officers of the union, as well as being of great importance in the trial of the McNamara cases at Los Angeles."

I would like to state to the commission at this point that that evidence was found in a vault of the ironworkers' union in the basement of the American Life Building, which vault was opened under search warrant primarily issued for the purpose of searching for dynamite. It was not seized from the officers, but taken under due process of law upon search warrant. That is in answer to a statement Mr. Johannsen made. [Continues reading:]

"This State prosecutor, however, not only neglected and refused to take any action toward the prosecution in the State courts of the parties involved, but successfully opposed the request of the Los Angeles court that important evidence be turned over to that court for use in the McNamara trials. He even went so far as to announce publicly that the letters and records of the iron workers' union would be returned, and only the intervention of the Federal court prevented this disposition of this mass of criminal evidence which later formed the basis of the Federal prosecution and trials. This prosecutor's 'fairness' to organized labor resulted in his return to office at the next election. In cities where the closed-shop union is powerful, the frequent breakdown of criminal law in labor cases is notorious and of common knowledge. It is part of the accepted industrial conditions of the locality, for the inability to punish lawlessness committed in labor disturbances becomes a fact of serious importance in the consideration of labor questions, and so is properly termed 'an industrial condition.'

"If the basic elements and influences in the general question of the relation of organized labor to our laws, civil and criminal, have been made at all clear, little more need be said in the discussion of the next subject assigned to me; that is, 'Protection of life and property during industrial disputes.' That life and property will be endangered either by organized effort or by the individual acts of men in the heat and frenzy of industrial conflict goes without saying. That it is the primary duty of Government to preserve the peace under such conditions, without respect to any other or further consideration, also goes without saying. That local officials charged with that duty under the influences we have noted will often evade or willfully refuse its performance is also clear.

"Said a business agent, writing to the officers of his national union: 'There are 9 scabs working and 21 deputies watching them all the time, sworn in by the marshal. * * * Sheriff Carey * * * refused to give them any support, and told them he was a card man himself (which he is). I was up to see him to-day and he told me to tell the fellows if they got into any trouble to have their buttons on and he'd pinch the other fellow.'

"Aside from the influence of political pressure and fear, there are a surprising number of policemen, sheriffs, and even chiefs of police in this country who are members of unions and who have a direct personal sympathy in such cases. It is fair to state, however, that there are chiefs of police holding union cards who have been fair and fearless in the enforcement of law and order in troubles growing out of labor disputes.

"When the employer in time of labor trouble is unable to secure adequate protection from the regular authorities, it becomes not only a necessity but a duty for him to take such measures as may be at hand for such protection. Such necessary course is to be deeply regretted, but the responsibility for it rests solely upon those who fail in the performance of their duties as public officers. The employer in such cases must rely upon such hired mercenaries as he can find in the market for such men, and with the greatest of care there may become included among these hired agents vicious and even criminal types of men. The successful opposition of organized labor to such State bodies as the Pennsylvania State Constabulary and to the State Militia generally, and to the use of the police authorities of our cities for protection in time of labor trouble, will, of course, directly tend to increase the evils which have grown out of the hiring of the armed guard by the employer.

"The attitude of the plumbers used is shown by this quotation from Mr. Wolfe's pamphlet, at page 147: 'Since 1903 the plumbers have forbidden any members to enlist in any military organization under penalty of expulsion.'

"The whole interest of the employer lies in the maintenance of peace and not in the provoking of violence. So far as he can, he will put men in charge of his property upon whose character and discretion he can rely."

That is a matter of common sense. Perhaps you will remember that Mr. Johannsen said that a man who would hire a gunman, or criminal type of man, for the purpose of inciting violence or doing any other criminal act, was a "chump," as he expressed it; in other words, he was foolish to put himself in the power of such an individual. [Continues reading:]

"From every point of view, the logic of the situation as well as the history of actual fact must acquit the employer for the chief responsibility for such unfortunate results as come in some cases from the use of private guards.

"The last of the special topics assigned me is 'State and Federal action in labor disputes.' I shall not attempt to go extensively into the wide field opened up by this question, but will confine myself to one or two matters which have come within the range of my personal experience and observation. The action or nonaction of the State authorities at Indianapolis in the dynamite cases, so-called, has already been mentioned. It must be said of the Department of Justice at Washington that at different times and under different administrations it has also shown exceeding reluctance to institute action against labor combinations charged with the violation of Federal law. In the writer's personal experience several requests for the institution of such action, based upon evidence which later proved sufficient to secure decrees in actions instituted by private litigants, have been refused. Likewise a formal request to the Department of Justice, made long before the arrest of the McNamara brothers, and asking that the investigating machinery of the Government be employed to secure evidence for the prosecution of the criminal conspiracy against the companies whose work was being constantly dynamited, was refused, although even at that time there was ample evidence that the activities of the officers of the ironworkers' union were such as to make that organization an unlawful combination under the Sherman Act. In all fairness, however, it must be added that the Department of Justice under Mr. Wickersham, although at first reluctant to take action in the dynamite cases on the ground that State action in those cases had already been instituted, still when convinced by the evidence produced that Federal crimes had been committed and further convinced that the action of no single State, even if undertaken and prosecuted in good faith, would be able to deal effectively with all the ramifications of a great national conspiracy, moved promptly and effectively. From that time there can be nothing but the highest praise for the thorough, able, and unpartisan action of the

Government authorities in these cases, both under Mr. Wickersham's direction and under the direction of his successors in office.

"The action of another arm of the Government—the Department of Labor—in the case of a recent strike of the boiler makers' union in Oklahoma, hardly measures up to this standard. A group of companies engaged in the erection of oil and gas tanks were conducting their work under a closed-shop agreement with the boiler makers' union. In the Oklahoma field the question of work was such that the union could not supply sufficient workmen. Recognizing the value of its closed-shop monopoly, it refused to admit new members to the union, but instead adopted a permit system by which permits to work were issued to nonunion men on condition that the man receiving such permit should pay 10 per cent of his wages into the union treasury, and payment of this 10 per cent was enforced by the simple method of compelling the contractor to deduct it from the wages of the permit men and to turn it over to the union. This tax did not even secure the permit man in his job, for if a union man at any time became out of work, the rules of the union provided that a permit man must be discharged to make a place for him. In other sections, also, the individual members of this group of contractors were subjected to strikes and all sorts of high-handed and arbitrary conduct on the part of the union agents, in violation of the trade agreement. As a result of all this a number of these contractors allied themselves together and formed the American Erectors' Association, and placed their work in the Oklahoma field and elsewhere upon an open-shop basis, making no change in wages or hours or other conditions, but simply refusing to acquiesce longer in the closed-shop control of the union. The permit men were employed direct and paid their full wages, without any 10 per cent deduction, and there were so many of them that the work of the contractors was well manned from the beginning. The union called a strike, resorting to picketing and violence, and when in a few weeks it was apparent that the strike was a failure, recourse was had to the Department of Labor.

"Mr. John Moffitt, former president of the hatters' union, as the representative of Secretary Wilson, met with the members of the American Erectors' Association at Pittsburgh on March 9, 1915. He stated that as a representative of the Department of Labor he had investigated the situation and found that the charge of the contractors of breach of contract, the unfair action of the union agents, and the maintenance of the vicious permit system were all correct. He said that the union itself had admitted these things. The remedy which, as a representative of the Department of Labor, he suggested to the contractors for this condition of affairs, was that instead of individual agreements between the contractors and the union, the American Erectors' Association should enter into a closed-shop agreement with the union, involving, of course, the placing of the union back in the same position of power and control as it previously occupied and involving also the discharge of such of the employees of the contractors as could not or would not secure membership in the union.

"No question of wages or hours was involved in this matter; no grievances presented for adjustment. The only question at issue was whether the contractors should renew their closed-shop agreement with the boiler makers' union after that union had admittedly made a most unfair and vicious use of such an agreement and had shown disregard of it by frequent violations. I believe it to be a fair subject of inquiry on the part of this commission whether it is a proper function of the Department of Labor to exert its power and its influence in the assistance of trade unions to secure closed-shop contracts, especially under such circumstances. The permit men who, under the open shop, were relieved of the extortion of 10 per cent of their earnings for the benefit of the union, were eager and willing to go to work directly for the employer. What moral, or legal, or economic justification is there for the interposition of any of the machinery of a democratic government to prevent their doing this? Are not they, as well as the members of the unions, entitled to the protection of every department of the Government? Should not the Department of Labor in the proper exercise of its functions seek out such instances as this in behalf of men oppressed by such vicious misuse of union power and relieve them therefrom, rather than to take the part of the oppressors when relief has been obtained by force of other circumstances? This case has been cited because there is and can be no dispute as to the facts, and it is to be regretted that it is typical of the general conduct of the Department of Labor in its attitude in labor controversies."

Commissioner O'CONNELL. May I have that last page, please?

Mr. DREW. I have a stenographic report of Mr. Moffitt's remarks to the American Erectors' Association, if you wish it offered in evidence.

(The matter referred to above will be found among the exhibits at the end of this subject as Drew Exhibit No. 1.)

[Continues reading:] "In conclusion and with special reference to the demand of organized labor that it shall be the beneficiary of special legislation exempting its conduct from the limitations of legal rules which apply to the actions of other men, may I briefly refer to the attitude of organized labor toward unorganized labor? This question becomes material because underlying all other justifications urged by organized labor for special consideration is its more or less tangible claim that it is charged with the divine mission of uplifting the laboring class as a whole, whether within or without its ranks, and that in what it does it is endeavoring to realize the high ideals involved in the performance of this mission. It is the credit extended to this claim by the public which secures for organized labor a large measure of sympathy for its efforts and pardon for its mistakes and offenses. It is the spirit of our age that large social and ethical considerations shall overrule oftentimes the strict application of legal limitations and restrictions.

"But aside from all rhetoric, all pretentions, and all romantic conceptions, what is the real and actual attitude of the closed-shop union man to the outsider?"

Let us call Mr. Johannsen as a witness. He was at least frank and without hypocrisy. He said that the attitude of organized labor was uncompromisingly hostile and bitter toward unorganized labor. [Continues reading:]

"We have also noted the attitude of the boiler makers' union in Oklahoma to be that of plain, every-day plunder. Not only might the nonunion man work only by the payment of a tax to the union, but he might not work at all if some union man wanted the job. There is much evidence before this commission showing a similar use of the permit system in other trades and other localities. More than this, the closed-shop union not only prevents the nonunion man from working at his trade, but through its limitation of apprentices it prevents him from learning the trade at all in the first instance, thus practically sentencing him for life to the ranks of common, unskilled, unorganized, and unorganizable labor.

"These things the union man does, but one final fact is necessary to crown his attitude toward his brother workers. He reserves the right to compete with the outsider in the field of common labor, while denying the outsider the like right to compete with him in his trade.

"If the closed-shop man finds himself out of work in his trade for any reason, does he, in return for the prohibition he has placed against the outsider, consider himself morally bound to wait until he can secure work at his own trade? Not at all. He promptly takes other work where he can get it and thereby enters into competition with the common laborer. Here, then, we have the worker who is really exploited—the common laborer. Every one of us is his potential competitor, for if the lawyer, or the doctor, or the merchant fail in his particular calling, he finds the ranks of common labor always open to him. In turn, however, we find all avenues of progress to higher callings open to the common laborer except those barred by the closed-shop union. It remained for organized labor, asserting the guardianship and protection of the common laborer as a reason for special privilege and license, to be the one institution in modern society which closes the door to its progress and at the same time retains for itself the right to remain in active competition with him in his own field.

"Let us look at these questions sanely without pretense or hypocrisy. Workers have a right to organize for their selfish interests just as any other group of society has such right. They have the right to push those selfish interests as agains the interests of the rest of society, but by legitimate and lawful means. It is no reason for condemnation of a union that it seeks the advancement of its members as against the interest of outside workers. In considering, however, the application of principles of law to organized labor let it be frankly admitted that combinations of labor, combinations of capital and business, and industrial combinations generally are actuated fundamentally by self-interest and may be expected always to do the things dictated by self-interest even though that self-interest may conflict with the interest of other classes of society. Labor combinations, with the great power and wealth they have achieved and under clever and able leaders, have no need and no justification in the pursuit of their special and selfish aims and purposes for a special privilege or dispensation not accorded to other combinations of men."

Chairman WALSH. Commissioner O'Connell has some questions he would like to ask you.

Commissioner O'CONNELL. If you had to say, Mr. Drew, whether organized labor in its present capacity, with all the faults that you have alleged against it, with all its weaknesses and ramifications, would you have it wiped out of existence?

Mr. DREW. Not at all, Mr. O'Connell; I think that would be a very foolish thing to do. You may plant a tree out in your back yard, and because of its location or the lack of proper training it may grow to be crooked. That don't mean that you have got to tear the tree up and throw it away.

Commissioner O'CONNELL. I take it that the general thought you have given to bring your mind to its general criticism of organized labor that you must have given some thought as to what organized labor might be and how it should conduct itself and how it should be organized. I am sure this commission would and I would be intensely interested to have your opinion, because of the specialty you apparently have made of one side of the question, as to whether you have given thought to the other side.

Mr. DREW. Mr. O'Connell, I am a firm believer in the organization of workers. I am a firm believer in collective bargaining. I think that nothing more effective could be done in the direction of realizing both of those things than to get the union movement of to-day back to bedrock—a sound economic foundation; to think a little more of the plowshare and perhaps a little less of the sword. There isn't any fair argument against a laboring man using this power, even in militant methods, using your people when they are organized with all the discipline of soldiers in war. But the trouble with that is that you develop class consciousness, according to my mind, along the line of organization; you emphasize the strong arm of the organization so much that the man forgets his own duties and responsibilities and strength as a productive factor in industry.

Now, I have read through the different trade magazines of the country, including the Federationist, and I do not find a word from cover to cover advising the workingmen to increase their efficiency or capacity or to cooperate with the employer in securing as great an output as possible for the common result of his capital and their labor.

Commissioner O'CONNELL. Probably the laborer believes there are now enough engaged in that work——

Mr. DREW (interrupting). Well, I don't know; labor is the one great essential to production; and if the laborer limits production or takes a stand that limits production there is just that much less in the pot for him to fight for a share of.

Commissioner O'CONNELL. I understand you to say, Mr. Drew, that you are a firm believer in organization, and with that in the right of bargaining?

Mr. DREW. No sane, sensible person nowadays objects to those conceptions.

Commissioner O'CONNELL. And you agree that we can not have collective bargaining without organization?

Mr. DREW. Exactly; exactly. Therefore, I think it is a greater pity that the ability of organized labor to realize its proper functions as a party to collective agreements should be so handicapped by a lot of these things that they do.

Commissioner O'CONNELL. Well, first, how are we going to have organization with the opposition of employers, who employ the workmen, against organization? How, then, can we have collective bargaining?

Mr. DREW. Mr. O'Connell, if you will go through the great national industries of to-day that are upon the open-shop basis, you will find that they were once upon a closed-shop basis. Organized labor has collective agreements; had collective agreements with our people; they had collective agreements with the metal trades and founders. They developed the strength to secure them and to have them in actual operation. Why have they lost them? I think that is a very pertinent inquiry. Why are industries that were once closed shop to-day open shop?

Commissioner O'CONNELL. I think the answer is that employers have combined for the purpose of declaring for what they called the open shop.

Mr. DREW. But why did they do that if the agreement with oragnized labor was desirable, was right, was good for the industry, brought about an increase of output, brought about peace in the trade? There were no questions of competition among these men, because the great mass of employers in these industries were parties to those agreements, so that each manufacturer was competing on the same basis with others. Why did they get together to throw off the control of the closed shop? I can tell you why they did it with the structural-iron workers.

Commissioner O'CONNELL. I think you were with us in Los Angeles during our hearing?

Mr. DREW. Yes, sir.

Commissioner O'CONNELL. And heard the witnesses of the manufacturers of that city who came before our commission?

Mr. DREW. I did.

Commissioner WEINSTOCK. And who declared they were running open shops?

Mr. DREW. Yes, sir.

Commissioner O'CONNELL. And that they had agreed not to employ union men?

Mr. DREW. Yes. I want to say to you right now, and I want to say it publicly, as I have said it privately, that I am not at all proud of the particular use which has been made of the open shop in Los Angeles. It is simply evidence that we are all human; that no class can stand power without some responsibility. The excesses that we complain of on the part of the closed shop when it gets control, we find exemplified there in the open shops when our employers got control. It all goes to show that no one of us, being human, can stand too much power without responsibility.

Commissioner O'CONNELL. You heard Mr. Davenport, I think, Saturday, in his opinion as to whether it would be beneficial either to the employee or to the employer for organizations of labor to incorporate, and his statement that he was unalterably opposed—those are not his words, but the intent, I think—that if he was in the position of a legislator to do it, he would not vote in favor of it, nor if he was in a position to say so, would he say to them to incorporate?

Mr. DREW. We do not present a united front on that.

Commissioner O'CONNELL. Lawyers are not all agreed?

Mr. DREW. No, in the first place; and in the second place, Mr. Davenport happened to bring an action up in Connecticut where the Connecticut laws permit an attachment before suit, and also against a union where there was a large number of individual members owning their own homes and some of this world's goods. That made his action against the individual members of the union a good and valuable asset. Generally speaking, that does not hold. Certainly it does not hold with the structural-iron workers, many of whom are a roving class, and do not own their homes and are scattered all over the country.

Commissioner O'CONNELL. Then you do not agree with Mr. Davenport's opinion on the matter of incorporation?

Mr. DREW. No, sir; not at all.

Commissioner O'CONNELL. Mr. Davenport expressed a new view to me in regard to the legality of strikes, or the illegality of them; whether you heard it or not, I don't know, but it struck me as a rather peculiar construction—as to strikes that might be considered coercive, that would be illegal; and I can not bring myself to an understanding of what strike would not be coercive. Have you given that any thought?

Mr. DREW. Well, I touched upon that in my statement by saying that a strike—a simple strike—just the withdrawal of the members from employment was just an appeal to the law of supply and demand and not an appeal to force and coercion.

Commissioner O'CONNELL. Well, that would not be a strike in the sense of a strike—just the withdrawal from employment?

Mr. DREW. Oh, yes; that is a strike. If the men in my employ come to me and say, "We want $5 a day instead of $4," and I say, "I will not pay it," and they say, "Well, all of us will quit," and they do quit, that is a strike.

Now, if that is all they do, just to go away and cease employment, and I can not fill their places, I have to go back to them and dicker with them and give them $5 a day if I can afford it. That is a strike in its simplest terms; and in the light of what we mean legally by "coercion," there is no coercion in it. If you come to me and say, "I want to buy your house," and I say, "I want $10,000 for it," and you say, "I can only give you $5,000," and I say, "You can not have it until you come to my terms," just so 100 men may collectively bargain with an employer, and the law of supply and demand, if there is no coercion, determines the final terms of the bargain; but if men quit, and in addition to quitting they say to others who come to take their places, "You can not work there," and intimidate them from working, then the strike takes another step forward; and the law even permits the use of fair argument with the outsider. But when they go still further and say to the

outsider, "Here, this injury will happen to you if you take our places," social ostracism or violence, or whatever it may be, then there is the further step that takes them over the line of the law.

Commissioner O'CONNELL. I am yet in doubt as to the course; if you say to a man, "You have got to pay me $5," and he can not get anyone for less, and you still demand $5, you would not be coercing him into paying you $5 a day?

Mr. DREW. Not legally coercing. When you come to terms that apply from a legal point of view it would not be coercion.

Commissioner O'CONNELL. And then I combine myself with others and do the same thing?

Mr. DREW. You had a perfect right to do it so long as you don't combine to do injury. A strike can become unlawful if it becomes a combination to injure. A business agent goes to an employer and says, "I want $100," and the employer says, "I won't pay it; it is graft," and the business agent says, "I will call your men out," and he does it. That is a strike for the purpose of injuring that employer until he pays $100 in graft to the business agent, and such a strike is illegal. It has no legitimate purpose or excuse, but it is a combination to injure, pure and simple.

Commissioner O'CONNELL. I would agree with you upon that.

Now, supposing the men are working 10 hours a day and the business agent comes along and says, "Unless you reduce your hours to 8 I will call your men out and won't let you get other men if I can prevent"?

Mr. DREW. There is nothing unlawful about that.

Commissioner O'CONNELL. In the paper you read you discussed the question of jurisdictional disputes, and quoted from a number of persons, President Gompers and others, as to this being one of the greatest causes of friction between employers and employees, and friction between employees themselves in their organizations; that the federation itself was unable to cope with this jurisdictional question; that instead of being able to reduce the number of them they showed an increase; I think that is the sense of what you said. I think I can speak rather intelligently on this subject. For more than 15 years I have been chairman of the committee during that time that has had to do with jurisdictional disputes; all of them have come before me as chairman of the committee, and other committees of which I was a member, I think for at least 15 years, and maybe a few years longer. At the last convention held in Philadelphia, held last November, I think there were somewhere around 25 cases before this committee; I think you said 24.

Mr. DREW. Twenty-two, I said.

Commissioner O'CONNELL. I think probably it was greater than that.

Mr. DREW. One or two I was not certain of; I did not count them.

Commissioner O'CONNELL. But here is the situation: Two or three organizations maybe have a dozen of these cases interwound in various ways among themselves, as, for instance, the stationary engineers' organization, I think was involved in six or seven of them. Now, there is not at the present time before the American Federation of Labor or in the labor movement but one case of undecided jurisdiction, or unsettled jurisdiction of any great import, and that is a dispute between the carpenters and sheet-metal workers; the others are minor. And in the years gone by some of the greatest difficulties have been to straighten out by the federation in convention and by its committees and mediation, methods for the adjustment of these disputes. But here is the difficulty: Over night the industry changes sometimes; the entire method of manufacture, or of material used in the construction of something, is changed in its form, and we have never discovered—it has never been my experience in all these years that the employer attempts ever to give this changed method of work to a trade that is receiving a higher wage than the trade that was formerly doing it, but always trying to pass the new method of performing the work, or new work, to a trade receiving the lower wage, and this causes the great friction between the organizations and the fight that has, as we all recognize, been most disastrous to all parties concerned, but in numbers and numbers of cases the employers themselves are wholly responsible for it.

Mr. DREW. That is true in some cases, Mr. O'Connell, but not in all, and that is the reason why I cited the whole question of jurisdictional disputes, and there is nothing that will justify in law or morals two unions in making war upon each other, and thereby doing injury, not to the immediate employer perhaps, but to the owner and the general public and to third parties generally who have no voice or interest in the disputes. If organized labor can prevent a united front for the purpose of carrying on an offensive warfare and enforcing its

agreements, it certainly has a right to do so, but it ought to settle its own quarrels within its own ranks and not invade the rights of the innocent public in this settlement; there is no question about that.

Commissioner O'CONNELL. But the public, in as far as the employer is concerned, is not always the innocent party. We have discovered in a great many instances that he is the guilty party, and that some judgment on his part or cooperation on his part with that, the dispute might have been avoided and the jurisdiction adjusted. Now, you cited a case in San Francisco where the bricklayers entered into an agreement with the brick employers' association whereby the brick employers' association were contributing a certain per cent of the profits of their business to the bricklayers' union. I think one-half of 1 per cent, something like that. Now, the fact is in that case that the brick manufacturers entered into an arrangement with the union to prevent the terra-cotta manufacturers from getting their material in to displace the brick manufacturers' material?

Mr. DREW. It was part of the combination to control the whole market.

Commissioner O'CONNELL. And they did contribute some money to the bricklayers' union, and I believe when our hearing was there, there was testimony that they were still doing it to prevent the terra-cotta manufacturers' from getting in.

Mr. DREW. The way the bricklayers' union did was to pass a rule and make it a part of their rules that every brick contractor should, whether he wished to or not, pay one-half of 1 per cent to the bricklayers' union, and there was placed in evidence before your commission a number of receipts where such payment was enforced by strike.

Commissioner O'CONNELL. The receipts that I saw were receipts through the secretary of the brick manufacturers' association.

Mr. DREW. No, sir; the bricklayers' union.

Commissioner O'CONNELL. The receipt from the bricklayers' union to the manufacturer?

Mr. DREW. No, sir; I have in mind a receipt from the bricklayers' union for $40 from Brandt & Stevens, contractors, after strike had been called to enforce payment.

Commissioner O'CONNELL. But the fact is there was no strike, no coercion shown, that the bricklayers compelled the brick manufacturers to pay them this money?

Mr. DREW. If brick manufacturers were a part of this illegal combination, they are as much to blame as the unions.

Commissioner O'CONNELL. But the paper that you read before us, there was nothing to indicate that the bricklayers were compelling the brick manufacturers to pay to them a certain per cent every month, without any qualification.

Mr. DREW. They were compelling the men that erected the brick in the buildings. This was forced from the brick contractor, who didn't care about it, but was willing to buy his brick anywhere he could get it, and if it was an attempt between the unions and the manufacturers to control the market in San Francisco it makes it all the more reprehensible.

Commissioner O'CONNELL. It was a fight between the brick manufacturers and the terra-cotta people as to whose material would go into the buildings.

Commissioner WEINSTOCK. Terra cotta or the concrete people?

Commissioner O'CONNELL. Both.

Mr. DREW. I say for the bricklayers' union to lend themselves to such a thing is all the more reprehensible.

Commissioner O'CONNELL. It doesn't relieve the employer?

Mr. DREW. Bless your heart, the employers are the worst part of the combination. They oftentimes are the ones that get them together. They use the closed shop of the union to swindle the general public. The bricklaying industry in New York is practically closed—in New York and San Francisco and Chicago—by deals between the employers and the unions, and the power of that rests upon the closed shop as the power of the union and the ability of the union to prevent any outsider from getting labor in that particular market. I say that is a misuse of the closed-shop power of the union against the rights of the general public.

Commissioner O'CONNELL. Do we see any general criticism offered or published against the employers in their associations for entering into these illegal combinations?

Mr. DREW. You will find our people criticizing them wherever they come together, and there are two court proceedings to dissolve such combinations now pending. We don't approve of it. We say that is the ultimate crime of the closed shop, and it is the logical development of the closed shop.

Commissioner O'CONNELL. You cited or read from a communication that apparently had come to you, and I take it during the ironworkers' case the business agents, writing to their officers——

Mr. DREW. I have photographic copies of those letters if you want them.

Commissioner O'CONNELL. No; I don't want them. I just want to bring it to your attention. Did you hear the ex-mayor of Altoona's testimony before this commission last week?

Mr. DREW. No, sir; I did not.

Commissioner O'CONNELL. In the case of detectives or police officers—I think it was a constable he was called in Pennsylvania—beating up a business agent of the organization in Altoona very severely, and he was sent to the hospital, and after he got out of the hospital he went home and died. A man by the name of Gallagher; the gentleman that appeared was mayor of the city of Altoona at that time; during some strike of the shopmen on the Pennsylvania Railroad. This man went away, and warrant was issued, but they never caught him; and after the strike was over it was all settled, and an official of the Pennsylvania Railroad, the master mechanic at the Altoona shops—I don't recall his name just now—called upon the mayor, with others present, and said he wanted to have him come off of any further attempt to punish this man who had run away from the court; and said that they had fixed the judge, fixed the district attorney, and fixed somebody else. Everybody was fixed but the mayor, and if he would come off the man could come back there, as his home was in Altoona, or in the country there some place, and everything would be all right; and the mayor said, "Very well; if everybody else is agreeable, I am." And the man immediately showed up; he was there the next morning on the street. Does that not show that others have influence, or try to have, with the courts?

Mr. DREW. There is no question about that at all. I would not attempt to defend the acts of all the employers of this country, because they are human just as the rest of us, and are going to fight their fights under the circumstances in which they find themselves at the particular times. And I would like to see some of the labor unions' funds to back up, if they have evidence, such a charge of fixing courts; I would like to see some of your funds used in prosecution of cases of that kind.

Furthermore, I would like to say now that I have been counsel before this commission, as you all know, for nearly a year for the open-shop employer, and I have never offered before this commission a line of evidence on the subject of violence. I am not particularly concerned with the features and incidents of war after war starts. War is brutual business; you must expect that you will have brutality and hatred and bitterness. My chief concern is with the cause that leads up to war before it begins, and not with the way they carry it on after it starts.

Commissioner O'CONNELL. In that direction, I don't think you were with us when—in some of the western places, like Lead and Butte. However, the question that came up before us was in various ways and is quoted, that men should not be deprived of their liberty without due process of law and all that. It is alleged here before this commission every place we have been that citizens are deprived of their liberty without due process of law and where courts are in operation ready to perform the functions of the courts and in disregard for the courts men are deprived of their liberty. Now, what is your opinion, Mr. Drew, of that sort of conduct?

Mr. DREW. There is no excuse for either party to an industrial dispute violating the laws of the land, of course. There are no two ways about that.

Commissioner O'CONNELL. Now, where is the equity in the proposition? That is what I want to get at. Where is the poor man's equity?

Mr. DREW. I don't think it concerns the genesis of our discussion if we can not find equity in every case. Some people are born to the world cripples. What compensation can there be for that? Some are feeble-minded. What compensation can there be for that?

Commissioner O'CONNELL. In the case of men born into the world cripples we train or educate; great surgeons grow up, and thousands of cases have been successful.

Mr. DREW. Sometimes the law of compensation seems to operate, does it not?

Commissioner O'CONNELL. It cures these ills in nature; but there does not seem to be a unanimous opinion of the legal minds in our times. There don't seem to be any unanimity of construction. I asked Mr. Davenport the other day what he would suggest as a remedy for all these things that he was talking about, and he seemed to be a standpatter; he said nothing.

Mr. DREW. Here is the general proposition: The minute you have a law of universal application you will have individual instances where what appears to be injustice comes from the application of that law. The minute you try, however, to make a law to apply to each individual case as it arises you have need of all the functions of a court of equity. Furthermore, if you try to apply that law outside of some judicial action you have chaos. You have each man a law to himself. Now, you have to take your choice between the two. It is one of the prices we pay for not being perfect people and living in a perfect age, that the minute we make rules to govern ourselves of universal and general application there will be individual instances in which they seem to work out unfairly. That applies to the shopkeeper, the real estate dealer, the laboring man, and all the others.

Commissioner O'CONNELL. The laboring man seems to be the most helpless of all. The shopman, he has his shop and his goods in his shop; they stand as a sort of guaranty for him—guaranty that his attorney's fees will be paid—but the laboring man, he has nothing. He seems to be helpless.

Mr. DREW. You show a regard for the laboring man outside of the ranks of organized labor that Mr. Johannsen does not seem to feel; and as to the laboring man inside of the ranks of organized labor, he has ample protection.

Commissioner O'CONNELL. I am not speaking of that man, because I think we have heard you say that there are millions of men outside of organized labor?

Mr. DREW. Yes. What are we going to do with them? That is our problem.

Commissioner O'CONNELL. I am asking you now. What would you suggest?

Mr. DREW. You people keep them from learning trades and oppose them in different ways wherever your interest clashes with them. You don't go out maliciously and attack a man; but where your interests conflict with the outsider in any way you fight him. Where your interests don't conflict you are perfectly willing his conditions should be improved, the same as are all of the rest of us. But what are we going to do with him? Why should we fight or you fight for an increase in union power from the Government to get a man who may be getting 70 cents an hour, 75 cents an hour, and for an eight-hour day, when some of these poor fellows have not even got a job at a dollar and a quarter a day? There is the problem. The employers and leaders of labor organizations and social reformers—all of them should get together and do something for these masses of people, because, after all, the progress of society is to be measured by the upward lift of the masses below. You don't get any appreciable progress by giving a 70-cent bricklayer 75 or 80 cents an hour, but you do by getting the man at the bottom of the pile a little higher up.

Commissioner O'CONNELL. Suppose we all start out to get an increase in wages and decrease in hours——

Mr. DREW. One of the first things, Mr. O'Connell, that would make possible a reduction in the hours of labor would be a general teaching on the part of labor of increase in efficiency, so that they could do in 5 or 6 hours what they now do in 8, 10, or 12 hours.

Commissioner O'CONNELL. I think we have so many people teaching that they have got things all mixed up.

Mr. DREW. You people that reach the ear of the workers don't agree with them.

Commissioner O'CONNELL. There are so many taskmasters and teachers we can not agree; they are like lawyers somewhat. I want to ask you a few questions in regard to the erectors' association. What connection have the erectors' association with other associations, for instance, the National Manufacturers' Association?

Mr. DREW. Absolutely none. At the present time we are a member of this joint committee that was organized solely to work with this commission. We call it the Joint Committee of Associated Employers, and I am counsel of it. That was organized last June, and that is the only connection we have ever had.

Commissioner O'CONNELL. Is there a change or exchange of anything between your association and the National Manufacturers' Association that would be a record of the acts of organized labor?

Mr. DREW. Absolutely none, and here is the general conception about the National Association of Manufacturers that I would like to correct. The National Association of Manufacturers takes no part whatever in industrial disturbances. If one of its members is under strike, he does not even notify headquarters of it. He gets no assistance from the association; they furnish no men, no money, or assistance of any kind. Its general functions, so far as trade is concerned, are entirely along different lines.

Commissioner O'CONNELL. I know it, but it was originally organized——

Mr. DREW (interrupting). It speaks a great deal about the open shop, and its leaders make speeches about it, but it is not a fighting or defensive organization as ours is.

Commissioner O'CONNELL. How is it, then, that the legal talent representative of the National Manufacturers' Association can always be found in the State capitals and other places where legislation is going on, speaking for that association as against legislation sought by organized labor?

Mr. DREW. Mr. Emery, if he is the one you refer to, is not the counsel of the National Manufacturers' Association. He is counsel of the National Council for Industrial Defense, composed of about 250 employers' associations, including the National Association of Manufacturers and the National Erectors' Association and others. He has no official connection with the National Manufacturers' Association.

Commissioner O'CONNELL. But in that degree, and in that sense, speaks for the national manufacturers?

Mr. DREW. As a party to the National Council for Industrial Defense.

Commissioner O'CONNELL. And cites that as one of the organizations that don't believe this or that legislation in favor of organized labor should be passed?

Mr. DREW. The National Manufacturers' Association has overcome some of the criticism to the effect that they take no interest in these new social and remedial measures by taking a very important interest in such measures, chiefly such as workmen's compensation laws.

Commissioner LENNON. Did you read in yesterday's paper, I think it was, the statement of the president of the Pennsylvania State Manufacturers' Association, which, I take it, is associated with the National Manufacturers' Association, the same as other associations——

Mr. DREW. It is not.

Commissioner O'CONNELL. As to its position on the child-labor bill just passed?

Mr. DREW. No, sir.

Commissioner O'CONNELL. And its general criticism of everybody connected with it?

Mr. DREW. No; but we have no connection with it, or the National Association of Manufacturers.

Commissioner O'CONNELL. What number of members in the National Erectors' Association?

Mr. DREW. I would say about 40.

Commissioner O'CONNELL. What are the dues and expenses?

Mr. DREW. Our dues are based upon the number of tons that each concern erects. I think it is 3 cents a ton on material.

Commissioner O'CONNELL. Would you give us the names of some large concerns and cite what it would cost them?

Mr. DREW. Post-McCord, of New York, comes to my mind now; its dues are sometimes $25 a month, or sometimes $125 a month, depending upon the amount of material that they are handling at that particular time. At the present time I am frank to say that our dues are pretty slim.

Commissioner O'CONNELL. Is there a publication of any kind showing the receipts and expenditures of the association?

Mr. DREW. No; but our general income, if you want that, is about $2,500 a month—about $30,000 a year.

Commissioner O'CONNELL. Can you furnish this commission the documents, or have proper officers do it, showing the receipts and expenditures of the association for the past several years? I suppose they are published annually to the officers or members, or something, if not publicly; and the membership and the cost of membership?

Mr. DREW. Well, I will furnish you with the membership and the cost of membership, but I will have to consult our executive committee about our expenditures for the last several years, but I don't think there will be any question about that.

Chairman WALSH. Commissioner Weinstock has some questions he wants to ask you.

Commissioner WEINSTOCK. You went on in your statement, Mr. Drew, to point out that unions are not legally responsible. In view of that, will you explain how damages were collected against the Danbury hatters?

Mr. DREW. They were sued individually, as individual members of the hatters' union. The judgment lies against several hundred individual men.

Commissioner WEINSTOCK. Can that be done in the case of any union?

Mr. DREW. Yes, sir; if you can hunt up all of the men and they are financially responsible.

Commissioner WEINSTOCK. Do you now recall the other day, as we were walking out after adjournment, a conversation between yourself and Mr. Davenport on this very point?

Mr. DREW. Yes, sir.

Commissioner WEINSTOCK. And I was unable to remain to hear the discussion to the end, but I recall your saying to Mr. Davenport, What redress have you with a lot of union members who individually are financially irresponsible?

Mr. DREW. And badly scattered.

Commissioner WEINSTOCK. Yes, sir; despite the fact the union may have $100,000 in its funds. And if I remember rightly, I heard Mr. Davenport say as I walked along there is no difficulty about reaching that $100,000.

Mr. DREW. Mr. Davenport thinks, under the eighth section of the Sherman Act, that the association is a person, so it can be sued and damages recovered from its treasury. No case of that kind has ever been brought under that section, and it is a question whether that language of the Sherman Act makes a voluntary association a responsibile entity, so it can be sued as such. I doubt very much whether it does, but that is what he meant. We have had previous discussions on that.

Commissioner WEINSTOCK. Then you are not sure that Mr. Davenport is right?

Mr. DREW. I am not sure that I am right. If an association can be sued as a person under the Sherman Act, still all the action that we would have against the association as such would be for a violation of the Sherman Act, and a great mass of our boycotts over the country would still be untouched. Where you had a case violating the Sherman Act you might get it through, but the general fact of civil immunity of the labor organizations in the mass of cases would still remain unaffected.

Commissioner WEINSTOCK. If a boycott is levied against a concern doing interstate business, would that or not be a violation of the Sherman Act?

Mr. DREW. It depends entirely upon whether it restrains the interstate commerce of that concern. The mere fact that it did an interstate-commerce business would not be controlling, unless you can show that it took steps that actually restrained interstate commerce.

Commissioner WEINSTOCK. Take the breweries of Washington, D. C.; I notice at this time that they are almost on strike, and assuming that they do an interstate business, the unions are sending out bulletins to other organizations to refrain from buiying that kind of beer; would that be in restraint of trade?

Mr. DREW. I think under the Danbury hatters' case it probably would.

Commissioner WEINSTOCK. And that would be in violation of the antitrust act?

Mr. DREW. I think it would.

Commissioner WEINSTOCK. And would those unions, if they had funds, be liable, for that matter?

Mr. DREW. Yes; being located in the District, you would not have to restrain their interstate commerce; but the very fact of their being located in the District brings them under the Sherman Antitrust Act, because this is United States territory.

Commissioner WEINSTOCK. Well, if those unions have funds and are issuing bulletins or letters or communications to unions outside of the District, then the brewers would have an action, according to Mr. Davenport's view?

Mr. DREW. According to Mr. Davenport, they would.

Commissioner WEINSTOCK. Well, now, admitting that the unions are not held legally responsible, is that situation, then, any worse in the United States

than in Great Britain? As you doubtless are aware, in Great Britain the funds of a union are absolutely exempt from court judgments.

Mr. DREW. No; I think that by a law expressly passed, you can not sue a union, agent, or the union in Great Britain for any damages which grow out of their conduct in furtherance of a trade dispute; that if you sue a union or its agents, and it comes into court and pleads that what it did was in the furtherance of a trades dispute, then you may not maintain your suit. That, I think, is the law by an express act of Parliament.

Commissioner WEINSTOCK. Well, that being the law, and I happen to know that it is the law unless it has been recently changed, the employers of Great Britain are even worse off than the United States employers?

Mr. DREW. Of course, there is this, Mr. Weinstock: Parliament has also passed laws in England which specifically and in precise terms made criminal on the part of a union a great deal of the conduct that over here we can reach only through injunction—picketing, accosting, watching, and besetting. They are all criminal acts by express act of Parliament in Great Britain. I don't think the unions would accept in this country the conditions of the English law as it stands to-day, as regarding their activities. I don't think they would accept it for a moment—the whole English system of law on that. I am sure they would not.

Commissioner WEINSTOCK. Despite the exemption?

Mr. DREW. Despite the exemption; I don't think they would accept it.

Commissioner LENNON. We would, some of it?

Mr. DREW. Well, You would not accept it all.

Commissioner WEINSTOCK. In saying what you have said about your ideas on the questions of collective bargaining and organized labor, which, in brief, I gather in substance to be the following: That you believe that the worker not only has the legal and moral right to organize, but that he should organize for his own protection; that you are not opposed to the closed shop when it is established in the proper way. Now, in that are you simply speaking for yourself, or are you voicing the sentiments of the employers of the association which you represent?

Mr. DREW. Well, I am speaking for myself in the opinions which go beyond our activities, Mr. Weinstock; but I know that is the general feeling among intelligent employers.

Commissioner WEINSTOCK. That they are not opposed to collective bargaining?

Mr. DREW. Why, no. But the collective bargain is the same as any other bargain. It should have two contracting parties, both of whom should stand upon an equal footing and possess mutual respect for each other and mutual responsibilities. How can you have any bargains, collective or otherwise, without those factors and those elements? Now, if a closed union shop is so powerful that is absolutely controls the situation, you have no collective bargain. You have a demand and a surrender.

Chairman WALSH. At this point, will you please resume the stand at 2 o'clock?

We will adjourn until 2 o'clock.

(Thereupon, at 12.30 p. m., Monday, May 17, 1915, a recess was taken until 2 o'clock p. m.)

AFTER RECESS—2 P. M.

Acting Chairman LENNON. We will please be in order. Chairman Walsh can not be here for a few minutes.

Mr. Drew, will you take the stand, please?

TESTIMONY OF MR. WALTER DREW—Continued.

Acting Chairman LENNON. Mr. Weinstock desires to ask some further questions.

Commissioner WEINSTOCK. How long have you been connected with these labor questions, Mr. Drew?

Mr. DREW. Well, I suppose, since 1905.

Commissioner WEINSTOCK. For a period of about 10 years?

Mr. DREW. Yes.

Commissioner WEINSTOCK. During that time have you had opportunities of coming into personal touch with labor representatives and labor leaders?

Mr. DREW. Why, to a certain extent, yes, Mr. Weinstock.

Commissioner WEINSTOCK. Are you familiar—fairly familiar with the attitude of mind and the sentiment of labor representatives and labor leaders?

Mr. DREW. Well, so far as that attitude of mind has been expressed in their conduct, I think perhaps I am. I have been a student of industrial questions, more particularly as applied to my own activities.

Commissioner WEINSTOCK. I see. Well, it would seem to me, Mr. Drew, that in justice to Mother Jones, and in justice to Mr. Johannsen, and in justice also to organized labor we must assume that when Mother Jones spoke as she did, and when Mr. Johannsen spoke as he did, they were simply voicing their own sentiment, that they were not officially representing organized labor, and what they said should be permitted to carry only such weight as an individual's judgment would carry who did more or less official work for an organization. Now, this question I was to put to you in view of that situation is this: I want to read to you the expression of sentiment on the part of Mother Jones, and on the part of Mr. Johannsen, and to ask you whether, as the result of your broad experience in the study of these problems and in your personal contact with labor leaders and with labor representatives, whether you think they are voicing the sentiments of labor leaders and labor representatives, generally speaking.

Let me read to you the paragraphs I have in mind.

Mr. DREW. You mean their attitude toward violence?

Commissioner WEINSTOCK. Just a moment; let me read the precise language [reading]:

"Commissioner WEINSTOCK. From what you have explained, Mother Jones, it is evident that some explanation is needed. There appears in the record of the congressioial committee, a copy of which I have here, setting forth a hearing before a subcommittee of the House, on Mines and Mining, of the House of Representatives, a statement attributing to you, which evidently is a mistake, and does you a grave injustice, and I think you should be afforded an opportunty at this hearing for the purpose of correcting the record."

This was the statement attributed to Mother Jones said to have been made at a convention of labor unionists in Trinidad, Colo.; she goes on to say [continues reading]:

"When we adjourned the meeting and saw we were not going to get any help, I said, 'We will protect ourselves, and buy every gun in Charleston; there was not a gun left in Charleston. And we did it openly; no underhand business about it, for I don't believe in it at all. We simply got our guns and ammunition and walked down to the camp and the fight began.'"

(At this point Chairman Walsh takes the chair.)

Commissioner WEINSTOCK (reading): "There is no change to be made in that statement?

"Mother JONES. No; that can stay."

Now, in the examination of Mr. Johannsen, this appears; in questioning Mr. Johannsen I said:

"In looking over this testimony of yesterday I noticed you make some pretty sweeping statements here, and I felt it was only fair to you to give you an opportunity, if you care to exercise it, to amend or modify or correct the statements made. Let me read this one to you:

"Commissioner WEINSTOCK. I may have, for example, what I believe is a real grievance, but which may prove to be only fancied.

"Mr. JOHANNSEN. After you prove it to us we change our opinion. See.

"Commissioner WEINSTOCK. Let us limit it to real grievances; would you say that any man, or group of men, that have any real grievance, is justified in taking the law into his own hands, or ignoring it?

"Mr. JOHANNSEN. My advice to labor would be, if I was asked for my advice—I am not sure I would take the stump—if you are sure you are right, if you are convinced of judicial invasion of your rights, stand for your rights and take the consequences.

"Of course, in plain language this seems to defy the authorities. Now, I think you ought to be afforded an opportunity to modify or change this, if you care to do so.

"Mr. JOHANNSEN. That is all right as it stands."

Now, how far, so far as you have been able to judge, does Mother Jones and Mr. Johannsen, in speaking as they did, and taking the position they did, reflect the sentiments of labor representatitves and of labor leaders?

Mr. DREW. Mr. Weinstock, you can not draw a blanket indictment of a class. It is just as unfair to attribute lawless sentiments to organized labor because

one or two make statements of that kind, as to say that every employer in this counry is unfair and unscrupulous because you find some employers that way. Now, this is my understanding of the sentiment of organized labor on these matters, so far as actual crude lawless violation is concerned. I am not speaking now of violence of injunctions, because the laboring people have their ideas about injunctions, and from their point of view they think the injunction is a lawless thing, but I am referring now to just these matters of brute violence. The better thought in the circles of organized labor is against the idea of its employment. A union is just like the rest of us, an aggregation of individuals—like a city, if you please. Sometimes the administration of a city gets into the hands of corrupt people and then a rotten administration with all sorts of corruption exists. So labor unions, under their democratic form of government, get into the hands of corrupt and unscrupulous men, and you have all sorts of such cases. My objection to the closed shop is that it encourages those cases and that it furnishes that kind of a leader the power of misusing the strength of the union; that is one of the objections to the closed shop.

You take a street car company with a hundred stockholders. The managers of that company will bribe a city council and get a charter, and the company has no objection to getting it by bribery or corruption. The stockholders of that company may know perfectly well that that has been done. They would not do it themselves, the most of them, yet they will take the dividends that come from the corrupt action of the managers of their company. They will wink at the action of their leaders. So the rank and file of organized labor know that oftentimes methods which they themselves would not use are used in their behalf by their leaders. They do just what the stockholders did; they wink at it and take the benefits that come from the employment of such methods. The two are exactly on a par.

Commissioner WEINSTOCK. Now, is the stockholder or is he not liable morally and otherwise if, knowing the methods of his representative, he condones them?

Mr. DREW. Why, of course he is.

Commissioner WEINSTOCK. Would that rule work both ways?

Mr. DREW. Exactly; there is no rule that don't work each way.

Commissioner WEINSTOCK. And if the rank and file of the labor organization do know what their leaders do is unrighteous and unlawful, though it is believed to be in the interest of the rank and file, and they condone it, and do not take exceptions to it, they really assume the responsibility?

Mr. DREW. Well, not entirely; because that leader is a forceful, able man generally. He builds up an organization that safeguards him in his position. He gets himself beyond the reach of the better element in his organization. It is just the same as a city administration which can bulwark itself against the effort of decent citizens to get hold of it. That holds good all along the line. You can not always hold the organization for what the leaders do. You take the better class of labor organizations, the things that they deplore most in their own councils and try to get rid of are the excesses on the part of the leaders. And I think they would add a great deal to their efforts in that direction if they would encourage greater responsibility on the part of the organization. Then the labor leader misusing the power of his organization would know that the organization was held to account, and the members would be more careful who they elect to office. I think that would be a good thing to help men like Mr. Lennon and Mr. O'Connell and Mr. Gompers to get a better condition of affairs.

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Mr. DREW. There is no one remedy. We can not any of us sustain power without responsibility.

Commissioner WEINSTOCK. In the course of your argument you referred today at considerable length to the structural ironworkers' case. Did you follow that? I suppose. being the counsel, you followed it from start to finish?

Mr. DREW. I did.

Commissioner WEINSTOCK. And you are familiar with every phase and angle of the case?

Mr. DREW. I think I am.

Commissioner WEINSTOCK. You probably heard the statement, if you did not hear it, perhaps you read it, by Mr. Job Harriman in Los Angeles?

Mr. DREW. I heard it; I was present.

Commissioner WEINSTOCK. And among other things, you may recall the statement that he made, that F. D. Ryan was an innocent man, railroaded into jail?

Mr. DREW. He didn't say just that, but that was the substance of it.

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Commissioner WEINSTOCK. Will you give your point of view as an authority on the subject and familiar with it?

Mr. DREW. I don't pose as an authority on the question of judicial procedure. Every man that loses a case in court thinks that the court was biased against him. He would not have been in court in the first place if he had not thought he was right, and when the court holds that he is not right then the court is wrong. That is the commomn thought of litigants.

I was present at the Indianapolis trial, and from my point of view I think that the trial was absolutely fair. So far as some of the substantial statements that Mr. Johannsen made, I know they have no basis in fact. The statement as to seizure of evidence and papers, the first bunch of correspondence and papers were seized under a search warrant by the State authorities from the vault of the ironworkers. The second mass of evidence later was taken from the office of the ironworkers themselves, which was entered with a key furnished by Mr. Hockin. And he was present, and he was at that time the acting secretary of the union, and the entry was absolutely lawful, and the papers were delivered by the acting secretary of the union.

As to the fact that a United States marshal on December 19, after the trial had been in progress nearly three months, and the evidence was all in and the case ready for argument before the jury, saw fit to order a train, if he did so order it, to take the men to Leavenworth in case of conviction, I can only say that if there is anything out of the way in that procedure, the United States marshal should be called upon to explain it. That the United States marshal was advised by Judge Anderson or the jury that they intended to convict those people I don't think for a moment.

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Mr. DREW. Because it would be pretty hard to enjoin the particular things that we had to contend with, unless you had evidence that would be sufficient to start criminal prosecution, and when we got that the criminal prosecution was instituted.

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Mr. DREW. In the old days, yes; not in recent years.

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Mr. DREW. I tried to get an injunction against the printers in Grand Rapids in 1906, and the court didn't give me all I thought I was entitled to.

Commissioner WEINSTOCK. Then, from your knowledge and observation and experience, would you admit the charge, made by labor representatives, that capital or employers always get a square deal in court, and labor does not?

Mr. DREW. I don't think you can draw a blanket indictment there. Courts are human beings, with different training, and to some extent different points of view, even in judicial matters, and one court goes a bit further than the other, or not quite so far. You can not say it is due to partisanship, or due to preconceived opinions or bias. Personally, I like to feel that our judiciary in this country is above charges of that kind, and if it is not, we are certainly in a sad way. I do know there is a general uniformity both in National and State decisions on the fundamental principles applying to combinations of labor and other combinations. Even in the famous McQueed case, where Chief Justice Parker held there was no action, it was not a difference on the law, but on the facts. Chief Justice Parker held in that case, which was a strike to compel the discharge of a nonunion man, that the evidence failed to show any malice on the part of the combination. He held that they were trying

one or two make statements of that kind, as to say that every employer in this counry is unfair and unscrupulous because you find some employers that way. Now, this is my understanding of the sentiment of organized labor on these matters, so far as actual crude lawless violation is concerned. I am not speaking now of violence of injunctions, because the laboring people have their ideas about injunctions, and from their point of view they think the injunction is a lawless thing, but I am referring now to just these matters of brute violence. The better thought in the circles of organized labor is against the idea of its employment. A union is just like the rest of us, an aggregation of individuals—like a city, if you please. Sometimes the administration of a city gets into the hands of corrupt people and then a rotten administration with all sorts of corruption exists. So labor unions, under their democratic form of government, get into the hands of corrupt and unscrupulous men, and you have all sorts of such cases. My objection to the closed shop is that it encourages those cases and that it furnishes that kind of a leader the power of misusing the strength of the union; that is one of the objections to the closed shop.

You take a street car company with a hundred stockholders. The managers of that company will bribe a city council and get a charter, and the company has no objection to getting it by bribery or corruption. The stockholders of that company may know perfectly well that that has been done. They would not do it themselves, the most of them, yet they will take the dividends that come from the corrupt action of the managers of their company. They will wink at the action of their leaders. So the rank and file of organized labor know that oftentimes methods which they themselves would not use are used in their behalf by their leaders. They do just what the stockholders did; they wink at it and take the benefits that come from the employment of such methods. The two are exactly on a par.

Commissioner WEINSTOCK. Now, is the stockholder or is he not liable morally and otherwise if, knowing the methods of his representative, he condones them?

Mr. DREW. Why, of course he is.

Commissioner WEINSTOCK. Would that rule work both ways?

Mr. DREW. Exactly; there is no rule that don't work each way.

Commissioner WEINSTOCK. And if the rank and file of the labor organization do know what their leaders do is unrighteous and unlawful, though it is believed to be in the interest of the rank and file, and they condone it, and do not take exceptions to it, they really assume the responsibility?

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to get the job for themselves, and that the particular case did not show any malice. It is true that Mr. Justice Mann and one or two others in a dissenting opinion held that it did show malice. The majority, though, decided that the facts did not show malice, and no injunction was issued. The difference was on the facts of that particular case, not on the general principle of law.

Commissioner WEINSTOCK. In your statement this morning, among other things, you more or less criticized the Secretary of Labor, because of certain things that he had done in connection with labor disputes. What, in your opinion, should be the qualification of the Secretary of Labor?

Mr. DREW. I think he should represent the laborers of this country, not any one class. Say we had a Department of Commerce that represented the Standard Oil Co. and the Steel Trust and other large corporations and refused to take cognizance of these little manufacturers over the country. What kind of a Department of Commerce would you call that? The organized laborer, through the strength of his organization, less needs the protection of an arm of Government than the unorganized man.

Commissioner WEINSTOCK. What is the attitude of the Secretary of Labor, as you have come to know it in your experience?

Mr. DREW. I have recited the one instance in which I came in personal contact with that attitude, and I have stated it here. The rest that I know concerning his activities is gained from general reading, and I presume this commission has as good access to that as I have.

Commissioner WEINSTOCK. As a student of the problem, Mr. Drew, what is your remedy for industrial unrest?

Mr. DREW. Well, I can not give any remedy, Mr. Weinstock, that would be worth your consideration.

Commissioner WEINSTOCK. If a man who has given the thought and time and energy to the problem that you have has no remedy, where are we at? It would appear it is a hopeless situation?

Mr. DREW. No, sir; I am rather of an optimist. I think we are making headway, in the general education of our people. I think all this talk that we get from people like Johannsen and Mother Jones is good. It sets people to thinking, and if we tell a thing to a man, even if it don't agree with our ideas, as to the kind of mental food that we ought to feed him, still, if he is a thinking animal, he will turn it over in his mind and reject it if it is not right, and will accept it if it is according to his standard. But if we can make him think, that is the important thing. As I have said to Mr. O'Connell a while ago, we can not make any general social progress unless it comes from the bottom of the mass, and the more we can make those people think about themselves and their relation to the industrial problem and social problem, the nearer we are to their expression, their self-expression in some effective way. Such expression would be most effective through organization. Where you can get a lot of them together and exert their force, that, of course, is a greater advantage. But the individual has got to understand fundamentally his relations to industry and to society; and educating and stirring him up and making him think, all these things are helpful. There is no general panacea; there is no one rule of growth. The moment an institution becomes established, some philosopher has said, it becomes obsolete, because the things out of which it grew—the conditions out of which it arose—have changed, so that it is obsolete. You can not force any hard and fast rule upon society.

Commissioner WEINSTOCK. You doubtless have heard more or less discussion, Mr. Drew, in the commission and out of the commission, of the proposed recommendation or suggested recommendation to be made by this commission to Congress for the creation of a permanent board of mediation and conciliation to deal with the interest of labor disputes. What is your judgment of such a proposed body?

Mr. DREW. Well, I can not speak for all the people I represent on matters of that kind. Personally, I think it is a good thing to get big industrial issues national in character into the hands of the Federal Government as far as possible. I think one of our troubles now is having a multiplicity of laws in different States dealing with these questions—different laws, different provisions, and different ways of administration. It make industrial chaos, not only for the worker but for the employer who seeks to do business. I think the more we can simplify and concentrate our legal rules and our administration of those rules, the better it will be for all of us.

So far as mediation and conciliation is concerned. I believe in two people sitting down and talking things over across the table. They will find things

in common that they did not dream of, and they will certainly find that they are human beings, which they have a tendency to deny now.

Commissioner WEINSTOCK. Well, then, you, for one, would not look with unfriendly eyes on such a proposed board of mediation or conciliation?

Mr. DREW. I would not look with unfriendly eyes upon any experiment, Mr. Weinstock, because that is the whole spirit of modern society. We have to try out things—even if a thing is wrong we have tried it and discarded it. We have made some progress.

Commissioner WEINSTOCK. There will be some things, of course, from your experience, that you know in advance would fail?

Mr. DREW. I might think they would fail, and yet sometimes we get surprised at the way things turn out.

Commissioner WEINSTOCK. Could you express an opinion for those whom you represent in this connection?

Mr. DREW. You mean as to what—to a remedy?

Commissioner WEINSTOCK. As to a proposed board of mediation and conciliation, yes.

Mr. DREW. No; I would a little bit rather not do that. Some employers believe in compulsory arbitration, especially for people in the railroad service and other forms of public service. Our people I don't think would oppose any such suggestion as that you mention.

Commissioner WEINSTOCK. That is all.

Chairman WALSH. Commissioner Lennon has a question or two.

Commissioner LENNON. Mr. Drew, is there any opportunity for unorganized labor to express themselves as to their desires for betterment and human uplift except through the voice of organized labor?

Mr. DREW. Well, you assume that they are so expressing themselves, and I would have to debate, of course, the hypothesis before we discussed the conclusion.

Commissioner LENNON. Well, suppose they are discontented; what method of expression have they of themselves?

Mr. DREW. Mr. Johannsen, of San Francisco, is part of the organization which absolutely controls the industries in San Francisco. You have heard him state that their attitude toward unorganized labor is absolutely and uncomprisingly hostile. Now, he does not speak for the average man in San Francisco, but speaks for those whom he represents directly.

Commissioner LENNON. The ends for which organized labor is striving touch all our people; doesn't organized labor speak for those who are unorganized as well as for those who are organized?

Mr. DREW. Mr. Lennon, a while ago I said that whenever in any particular matter the interest of organized labor was not in conflict with that of the unorganized man, then it was perfectly willing to include him in its representation. That, I believe, is true. I believe you, just as any other good citizen, will try to get child-labor laws and other reforms of remedial and social legislation which would include all labor. But wherever any question of legislation comes up, where the interest of organized labor is in conflict with that of the outsider, then I believe the attitude of organized labor would be absolutely different.

Commissioner LENNON. You believe those instances where there is a conflict of interest of laborers do occur?

Mr. DREW. Oh, no question about it. They are competitors for a job.

Commissioner LENNON. Did you express in your paper a seeming belief that there was a hatred and hostility toward unorganized labor by the union men?

Mr. DREW. No question about it. I can read you extract after extract from the official labor magazines expressing that hatred. The very terms of "scab" and "rat" for the unorganized man expresses hatred.

Commissioner LENNON. As to evidences of hostility, are you aware of the fact that a large part of the income of the unions is expended to organize the unorganized workmen?

Mr. DREW. Wherever the unorganized worker, by reason of furnishing a market for the employer, or for some other reason, becomes a menace to organized labor, then organized labor goes out to organize him for its own interests as well as those of the man; and I can demonstrate that from your periodicals.

Commissioner LENNON. I said he did it for his own interest, but primarily for the interest of unorganized labor.

Mr. DREW. Incidentally, but not primarily. May I read right here an extract from the Bridgemen's Magazine bearing directly upon that point?

Commissioner LENNON. Why, I can't stop you.

Mr. DREW. It is not very long. Well, I do not find it; I have mislaid it. I will state the substance of it and file it in the record later.

(The matter referred to will be found among the exhibits at the end of this subject printed as "Drew Exhibit No. 2.")

The substance of it was that reports were coming to the international organization that competent men were being secured in the outlying districts in the South and in Canada to work open shop for the members of the erectors' association; and the proposition was that in view of that a determined effort must be made to organize these outside men so that they would cease to furnish a supply of labor to the open shop work, to the open shop employers. Before that they had made no effort toward organization in those districts.

Commissioner LENNON. Doesn't that justify the conclusion that their interest was to maintain wages and conditions of labor for the unorganized man as well as themselves?

Mr. DREW. There has never been any question about wages or conditions or hours between the International Association of Bridge and Structural Iron Workers and the members of the National Erectors' Association since the open-shop fight. The fight was not over wages or conditions or hours. There has never been any question between them on that score. Our people have increased the wages under the open shop.

Commissioner LENNON. More than they have been increased in the union shop?

Mr. DREW. I made a compilation about three years ago which showed that our people had increased wages on an average of about 11.2 per cent, while the general average of increase in the closed shop trades, taken the country over, was something like 10 per cent during the same period.

Commissioner LENNON. Well, I can not—or have not those figures, but that is not in accord with my experience.

Mr. DREW. Well, on that point may I read a letter from Mr. McClory, president of the International Bridge & Iron Workers, which I received just a few days ago? Mr. McClory wrote and asked for a conference. I wrote and told him that I did not think such a conference would be granted. In my letter to Mr. McClory, which is dated May 4, 1915, I used this language:

"None of the dire evils prophesied from the open shop regarding the exploiting of labor or the oppression of the workmen have come to pass. You allege no grievances or conditions which call for adjustment. The fundamental purpose of trade agreements is to secure proper wages and conditions for the men, not to secure arbitrary unchecked power over the industry. You will find both this association and its individual members not only willing but anxious to take up at any time any question which concerns the well-being of its workmen. We do not consider it a necessary prerequisite to the discussion of labor conditions that your organization or any other be given an unlimited and arbitrary closed-shop control."

In answer to that Mr. McClory says, in part:

"In paragraph 4 you state that none of the dire evils prophesied to follow from the open shop regarding the exploiting of labor or the oppression of the workmen have come to pass. To this I will say that the reason these evils prophesied have not come to pass is because organized labor stands as a barrier between the open-shop employers and the realization of the fruitfulness of that beautiful dream known as the open shop; but the evil of this plan is apparent where it is completely established. I refer you to some of the large cities in the South, where there is no semblance of organized labor and where the conditions of the working people are most deplorable; and it is such conditions as those of the South that the apostles of the open shop would like to establish in the industries of our northern and western cities, and they undoubtedly would but for the opposition of organized labor."

So Mr. McClory admits that in our case at least the exploiting of labor has not come to pass.

Commissioner LENNON. I was just going to ask you, was it not probably a fact that the existence of the ironworkers' organization has been a deterrent against any effort to reduce wages?

Mr. DREW. I think it has, Mr. Lennon, to a certain extent. I think undoubtedly it has, in the first place; and in the second place we are only a small group of people, and we can exercise a general control over the industry which a larger group would not be able to do. Therefore, if our large open-shop concerns desire to adopt a fair and liberal policy in regard to wages, they are in a better position to carry it out than perhaps a larger number of people would be. I think there is something in that.

Now, we have increased the wages, maintained the same hours, and paid the cost of all these dynamitings and all these assaults—hundreds of them—and yet our people can erect steel from 20 to 30 per cent cheaper than they could under the old closed-shop system, and it is something which the public gets the direct benefit of in that decreased cost. Labor has the increased wages, the cost of erection has been lessened, and I see nothing but an economic advantage from the open-shop in the iron-erection industry.

Commissioner LENNON. Then, if you feel that way, you believe that the situation would be better if there were no unions in industry?

Mr. DREW. I believe—I have no objections to unions. No; I do not believe that. I don't see why, Mr. Lennon, a union has got to have absolute power of life and death over an industry in order to exist and to be done business with. I don't see why you can't go to any dry goods store down town and patronize it without patronizing it exclusively.

Commissioner LENNON. Well, if they do not continue the struggle they will soon give away their wages, their hours, and their conditions.

Mr. DREW. It has not been so in our industry. It has not been so with the metal trades.

Commissioner LENNON. Maybe; but I want to say, though, as a union man, for the record, instead of there being hatred and hostility toward the nonunion man, more than half of my time since I have been a union man, which is more than 40 years, has been devoted to trying to promote the interest of the nonunion man; although I have been an official a great many years of my life, my experience is that that is true of nearly all the union men with whom I have been associated.

I want to ask a question: You spoke regarding the legal responsibility or irresponsibility because of not being incorporated, rather intimating that because of the lack of incorporation the unions were not legally responsible in any direction. Is it not true that members are guaranteed benefits, and all the other things guaranteed by the unions, and that they can bring suit and recover, and have done so?

Mr. DREW. In the States that provide that a voluntary association can sue and be sued in its own name; in other States, no.

Commissioner LENNON. I want to ask you one question in connection with a matter pertaining to the ironworkers' case that I think has not come directly before the commission while I have been present. I want to say that it is a cause of tremendous unrest among the workers of this country who believe that John J. McNamara was extradicted from Indianapolis and taken to California, not in accord with the law but the very opposite.

Mr. DREW. Do you want me to explain that?

Commissioner LENNON. What have you to say to that?

Mr. DREW. I was advised by long-distance telephone from Mr. Burns's office in Chicago that McManigal and J. B. McNamara were under arrest in Chicago. I went to Chicago. In Mr. Burns's office I met Mr. Ford, assistant prosecuting attorney of Los Angeles County. Mr. Ford had with him extradition papers signed by the governor of California for the extradition of J. B. McNamara and McManigal and J. J. McNamara. The extradition arrangements were made with the governor of Illinois. With that I had nothing to do. I went to Indianapolis with Mr. Ford and Mr. Burns. Mr. Burns was detailed to get in touch with the superintendent of police and make arrangements for the actual arrest of McNamara, after the proper warrant was secured from the governor of Indiana. Mr. Ford and myself called upon Gov. Marshall, stated the situation to him, showed him the extradition papers properly made out and signed by the governor of California. Gov. Marshall signed a warrant directing the arrest of J. J. McNamara. We took that warrant back to the superintendent of police and turned it over to him. J. J. McNamara was arrested under that warrant.

Under the extradition laws of the country, as I understand them, that was all that was necessary to constitute a legal extradition. The man appointed by the sheriff of Los Angeles County was present to take possession of Mr. McNamara after his arrest. The statute of Indiana provides that in extradition cases the man to be extradited, after arrest, shall be taken before a court and a hearing conducted for the purpose of determining whether he is the man described in the warrant. The superintendent of police said that the judge who usually took care of extradition cases was the police-court judge. On his own initiative he called up the police judge, who came down town and held court after the arrest of Mr. McNamara. Mr. McNamara was taken before this

judge, and he was asked if he was the J. J. McNamara mentioned in the extradition warrant, and he said he was. Thereupon the police-court judge turned Mr. McNamara over to the State officer of California. Mr. McNamara asked for the privilege of a day or two to get affairs in order before being taken out of the State. The judge replied that so far as the State of Indiana was concerned the matter was now beyond its jurisdiction; that he had been arrested under a warrant of the governor and had been turned over to the officer of the State of California; and that the court had no further jurisdiction in the premises.

Commissioner LENNON. Had the court——

Mr. DREW (interrupting). Now, Mr. Burns and myself and a number of the rest of us were thereafter arrested for kidnapping Mr. McNamara, and the ground of our arrest was this, that Mr. McNamara should have been taken before a circuit court and not a police court for purposes of identification. There was no question but what he was the J. J. McNamara; no question but what the extradition papers were all right; no question but what the governor of Indiana had signed a warrant for his arrest. Only the incidental fact of identifying him as the man desired, which he admitted, was involved in that matter, and finally this whole Indiana statute was held void by the Federal court at Indianapolis.

Commissioner LENNON. At the time that the deportation took place under the law to which you refer, was that a court of competent jurisdiction to pass upon the question?

Mr. DREW. Mr. Lennon, we were in a hurry——

Commissioner LENNON. That is evident——

Mr. DREW. We said to the superintendent of police, "What is the court before whom extradition cases are taken?" and he said, "The police judge always handles them, and I will call him up over the phone." And he called him up, and that is all the discussion there was as to what court should handle the matter, or that Mr. McNamara should be taken before. And it developed afterwards that the police court generally and almost universally had assured jurisdiction of cases of extradition, and that no other court did generally do so.

Commissioner LENNON. Have you any knowledge of any other similar case in Indiana where the same judge passed upon the question of deportation and where, after the usual court hours, the judge went out of the usual order to come down town and open court for a specific case of this character?

Mr. DREW. No; I do not; and I will say to you frankly that this was Saturday, that by the time we got the warrant signed by the governor it was noon, and the courts closed at noon in Indianapolis, on Saturday, and whatever court come down would have had to be summoned for that special purpose.

Commissioner LENNON. The cause of unrest lies in this, Mr. Drew, that it is alleged that, and labor believes properly alleged, the undue haste and the way it was conducted deprived Mr. McNamara of rights that he was entitled to exercise through the courts.

Mr. DREW. Well, admitting the deprivation of the technical right, which I don't admit, Mr. McNamara later confessed that he was guilty of the crime of which he was charged. Does organized labor stand in the position of setting up mere technical defenses in the defense of men confessing themselves guilty?

Commissioner LENNON. No; they do not.

Mr. DREW. What is there to all of this argument but that?

Commissioner LENNON. They do contend that any legal right a man has the court could not deprive him of.

Mr. DREW. But legal rights are for the purpose of securing justice, and it would have been an injustice for Mr. McNamara to have asserted a technicality in Indiana, and thereby have escaped a trial in Los Angeles, and if organized labor had had its way and asserted that technicality successfully, it would have been a party to the escaping of Mr. McNamara from just prosecution and punishment.

Commissioner LENNON. That is not the way we see it.

Mr. DREW. It seems to me a pretty fundamental proposition, if organized labor wants to put itself in a position of fighting by technicalities in defense of men they know are guilty.

Commissioner LENNON. Then, there must have been technicalities used in order to prevent his having the opportunity of having technicalities, as far as he was concerned?

Mr. DREW. I have explained exactly what we did, and the governor of Indiana, and the former superintendent of police, and the judge, and all, will bear me out. There was no choice of this particular court, for any particular purpose. We simply followed out the regular procedure, and after it was all over, it developed that there was a technical question as to whether a police court judge in Indiana was a court of general jurisdiction, or something of that kind.

Commissioner LENNON. That is the kind of thing that causes labor to believe that they do not get a fair show in court. That all their rights can not be exercised, exactly the same as it could have been done if these men had been——

Mr. DREW (interrupting). I don't see much point to be made out of the McNamara case, for the reason that the police court judge was the one that generally took charge of extradition cases. The police always take them to him as a matter of course; the other courts have not been called upon to do that; his authority to do that has been unquestioned.

Commissioner LENNON. I have a different understanding of it.

Mr. DREW. No; that is a fact, Mr. Lennon; and if you will look the matter up in Indiana you will find it to be the fact.

Commissioner O'CONNELL. Mr. Drew, you said you had in your papers the report made by Mr. Moffitt, the representative of the Department of Labor, in connection with the strike of the boiler makers?

Mr. DREW. Yes, sir; I have.

Commissioner O'CONNELL. I wish you would file that, for the reason I have sent a verbatim copy of your testimony this morning to the Secretary of Labor.

Mr. DREW. I will say that I wrote a circular letter to our people some time ago, which was forwarded to the Secretary of Labor, stating exactly what I have said here, so he is familiar with all that I have said here.

Commissioner O'CONNELL. I sent a copy of your statement to him this morning.

Mr. DREW. Shall I read this, or do you wish it in the record?

Commissioner O'CONNELL. Just file it.

Mr. DREW. He states specifically that the charges made are true.

(The document referred to and offered by the witness is printed among the exhibits at the end of this subject as "Drew Exhibit No. 1.")

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

Erectors' Association. In doing so the department was not committing itself to the "open shop" any more than it would be committing itself to the "closed shop" if it had advised the employers to grant "closed-shop" conditions.

Each trade dispute, as it arises, has its own problems and is dealt with in accordance with the circumstances surrounding it. During negotiations innumerable suggestions may be made to either side, no one of which in any manner commits the department to the support of the principles involved in them. They simply represent the efforts of the conciliator to find a basis of an agreement that will be mutually satisfactory.

Respectfully, yours, W. B. WILSON, *Secretary.*

(The documents referred to by Secretary Wilson will be found among the exhibits at the end of this subject, marked "Wilson Exhibit.")

Chairman WALSH. We will now adjourn until to-morrow morning.

(Thereupon the commission adjourned on Tuesday, May 18, 1915, until Wednesday, May 19, 1915, at 10 a. m.)

WASHINGTON, D. C., *Wednesday, May 19, 1915—10 a. m.*

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

Chairman WALSH. We will please be in order.

Mr. Weinstock has a letter he desires to read into the record.

ADDITIONAL STATEMENT OF MR. WALTER DREW.

Commissioner WEINSTOCK. I am in receipt of a letter this morning, Mr. Chairman, signed by Mr. Walter Drew, counsel for the National Erectors' Association, which he asks to be made a part of our record. It reads as follows:

[National Erectors' Association, 286 Fifth Avenue, New York.]

NEW YORK CITY, *May 18, 1915.*

Mr. HARRIS WEINSTOCK,
United States Commission on Industrial Relations,
Shoreham Hotel, Washington, D. C.

MY DEAR MR. WEINSTOCK: Yesterday I heard only a part of what Mr. Darrow had to say, but I did hear him state that Mr. McNamara had been deprived of a substantial right and that, in effect, he had been kidnapped. These charges are both untrue.

The fact that the original indictment against McNamara was for murder in connection with the Times explosion, and that after he arrived in California this indictment was dismissed and another one issued charging him with the Llewellyn explosion is absolutely immaterial, so far as the question of extradition is concerned. Formal extradition papers, conforming in all respects to the requirements of law, were presented to the governor of Indiana, and a warrant for the arrest of McNamara was signed by him. In most States of the Union, this comprises all that is necessary to authorize the arrest of the men charged and his removal to another State. It is all that is required by the Federal laws. The fact that after removal to such other State one charge is dismissed and another made can have no effect upon the situation as it existed at the time of the extradition proceedings, nor affect their validity in any manner.

In the State of Indiana, however, a statute existed providing for a court hearing to determine the identity of the man described in the governor's warrant. As Mr. McNamara admitted his identity, I still think, so far as this question is concerned, that whether he was taken before a police court or a circuit court was a technicality. However, all the claims based on this matter of court procedure fall absolutely to the ground, as Mr. Darrow must be well aware, from the fact that this statute was held unconstitutional by the United States court in the proceedings begun in that court by Mr. Burns, who was under indictment for this alleged kidnapping. The whole legal status of extradition matters is one primarily within the jurisdiction of the United States and not of the individual States, as any lawyer well knows, and no State has the right to throw such restrictions or limitations about the procedure of extradition as will abridge the general right of one State to demand and receive persons charged with crime who may be in some other State.

Had no court procedure been had at all, the taking of McNamara under the governor's warrant would have still been absolutely legal, since the statute providing court procedure was held unconstitutional. Mr. Darrow must know, as a lawyer, that his charge that Mr. McNamara was deprived of any right whatever, substantive or technical, is absolutely unfounded.

I would appreciate it if this letter could be filed as an answer to such a charge.

Yours, truly, WALTER DREW, *Counsel.*

AFTERNOON SESSION—2 P. M.

Chairman WALSH. If the house will please be in perfect order, we will proceed. I understand that Commissioner Weinstock has some letters he desires to read.

Commissioner WEINSTOCK. I am in receipt of a communication from Mr. Walter Drew, counsel of the Erectors' Association, in New York, requesting that this exhibit be made a part of the record. His letter reads as follows:

NEW YORK CITY, *May 18, 1915.*

Mr. HARRIS WEINSTOCK,
United States Commission on Industrial Relations,
Shoreham Hotel, Washington, D. C.

MY DEAR MR. WEINSTOCK: I inclose copy of the Chicago Herald of April 28, 1915, containing article upon the indictment of Chicago labor leaders and contractors. The Chicago situation, as outlined in the article, is exactly in line with my statement that the ultimate result of a closed shop in the union was a conspiracy between the union and a combination of employers against the general public. I would be glad if this article could be filed as part of the record.

I also call your attention to the article on page 4, in which the Herald refers to its campaign for the exposure of graft in union labor circles of Chicago. It seems to me that valuable data as to this use of the power of the closed shop by corrupt labor leaders could be obtained from the files of the Herald authenticated, if necessary, by a statement of the editor.

All the evidence of excesses on the part of union agents is valuable, not so much as an indictment of the persons involved, as evidence of the tendency and results of a system which confers immense power upon labor organizations without corresponding responsibility. When the millenium is reached and all men are perfect then, of course, our cities and our unions will be wisely and honestly run, if, indeed, we need any such institutions at all. Until that time comes, and human nature remains frail, we must admit that all possible safeguards must be thrown about the administration not only of our cities but of our unions and other organizations of men in order to prevent them from failing to accomplish their true missions, because of the ignorance or the selfishness or the corruption or the mistaken zeal of men intrusted with leadership. It is the system that permits graft and corruption rather than the men involved that is to be condemned, for where conditions favorable to misuse of power come into existence it must be expected that sooner or later men will achieve leadership who will devote such power to its most vicious uses.

Yours, truly,

WALTER DREW, *Counsel.*

(The articles referred to by Mr. Drew are entitled "Chiefs of unions and employees in Federal net," and "How Herald exposed grafting labor men." They appeared in the Chicago Herald of Apr. 28, 1915.)

Commissioner LENNON. I desire to give notice that I will file a letter in reply to that at the first opportunity.

ADDITIONAL STATEMENT OF MR. JAMES A. EMERY.

Commissioner WEINSTOCK. I am also in receipt of a request from Mr. Emery, who testified before the commission yesterday, to make a part of the record the following statement published in a congressional document, in a hearing before a subcommittee of the Committee on the Judiciary, United States Senate, sixty-second Congress, second session, at page 265. Mr. Emery also asks that this communication be read into the record in rebuttal of a statement made yesterday by Commissioner O'Connell, in which Commissioner O'Connell said as follows:

"In one donation I see about $35 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