

CHAPTER VIII.

PLEADINGS AND THE VERDICT

The instructions of the court, carefully prepared by Judge J. T. Ronald, required sixty-five minutes in the reading. These instructions were divided into twenty-three sections, each section representing a different phase of the case. Herewith is presented the first section in its entirety and a summary of the remaining portion:

“Ladies and Gentlemen of the Jury:

“My responsibility is to decide all questions of law in this case; yours to decide one question of fact. With these instructions my responsibility practically ends, your commences. You have taken a solemn oath that ‘you will well and truly try and true delivery make between the State of Washington and the prisoner at the bar, whom you have in charge, according to the evidence.’

“There is no escape from the responsibility which has come to you, save in the faithful effort to render a true verdict. Any verdict other than one based upon pure conscience will be an injustice. An honest juror yields to no friendship, nor bears any enmity. He is moved by no sympathy, nor influenced by any prejudice. He seeks the approval of no one, nor fears the condemnation of anyone—save that one unerring, silent monitor, his own conscience. Disregard this whispering voice in yourself and you may fool the public, you may fool the defendant, you may, hereafter, with some effort, even close your own soul to her whispering reproaches and enjoy the ill-earned plaudits of the selfish or biased friend or interest whom you sought to please, but be assured you will not change the truth, you will not deceive justice which, at some time, and in some way, will collect

from you the penalty which is always sooner or later exacted from those who betray the truth.

“So let me urge that in deciding the issue of facts which is now your responsibility you be guided by these instructions which you have sworn to follow, and by their conscientious application to the evidence in this case.

“Do not permit yourselves to be swayed by sympathy, influenced by prejudice, or moved in the least by a consideration of what might or might not meet the approval or the condemnation of any person or class or persons, or of interest whatever. To do so will be an act alike dishonest, violative of your oath, substituting for a fair and impartial trial an unfair and a partial one. This is an epoch in your lives to which you will ever look back. Be sure that when you do you may face the smiling approval of your conscience rather than its stinging reproach.

“The guilt or innocence of this defendant is a single question of fact to be determined by the evidence alone. If this evidence shows defendant to be guilty, then no sympathy, no desire for approval, no fear of condemnation, can make him innocent; if the evidence fails to show him guilty, then no prejudice, no desire for approval, no fear of condemnation, can make him guilty. The issue is a momentous one, not only to the defendant, who, if innocent, deserves the deepest sympathy, for the accusation made against him is a serious one; but likewise to the public and to society at large, and the tranquility and security of our different communities.

“A false verdict against the defendant conflicts with the purpose and the laws of the State as effectively as a false verdict in his favor. The State has no higher duty or interest than to preserve all its citizens from suffering under unfounded accusations. If, on the other hand, the guilt of the defendant has been shown, a false verdict of acquittal would not only be a breach of your oaths, but it would inflict a grievous wrong upon the State. If a true verdict calls for conviction, the misfortune to the defendant is not in

the verdict, nor in the penalty, but in the fact it was his conduct which makes the verdict true. You alone of all the world, and who now possess all the facts, are therefore responsible for the verdict in this case. The law is not concerned about conviction merely—but it is concerned, deeply concerned, that juries shall conscientiously and fearlessly declare the truth. Whether it be conviction, or whether it be acquittal, a true verdict is justice—a false is injustice."

Judge Ronald followed this lecture on civic righteousness and personal duty with more specific instructions to the jury, of which the following are excerpts.

"In this case you must answer the question—Is this defendant guilty or innocent? * * * Keep constantly in mind this issue and do not go astray to discuss any other of the many issues that may be suggested by or may lay hidden among the great mass of evidence in this case. Whether the Industrial Workers of the World shall or shall not speak at a certain place in the City of Everett is not an issue here. * * * Whether the open or the closed shop shall prevail is not a subject for your consideration.

"Every defendant in a criminal case is presumed to be innocent. * * * You must be satisfied beyond a reasonable doubt of the facts necessary to show guilt before you can convict. * * * You should give the phrase 'proof beyond a reasonable doubt' its full meaning and weight as explained and defined to you in these instructions. On the other hand, you should not magnify nor exaggerate its force and fail to return a verdict of guilty simply because the evidence does not satisfy you of guilt to an absolute certainty. No crime can be proved to an absolute certainty.

"It does not follow because every one of the facts which are disputed between the parties may not be established beyond a reasonable doubt, that there cannot be a conviction. At the same time you will bear carefully in mind that all facts which are ne-

cessary to establish the conclusion of guilt must be proved beyond a reasonable doubt.

"There are two facts necessary to convict this defendant:

(1) That some person on the boat unlawfully killed Jefferson Beard.

(2) That this defendant aided, incited or encouraged such shooting.

"If you are satisfied beyond a reasonable doubt of these two facts, then you must convict, no matter what may be your belief concerning any other question in dispute in this case; if you have a reasonable doubt as to either of these two facts, then you must acquit."

The instructions then went into detail as to the rights of the workers to organize, to bargain in regard to compensation, hours of labor and conditions of work generally, to go on strike, to persuade or entice their fellow workers by peaceful means from taking the positions which they have left, to assemble at public places where such meetings are not prohibited by law and ordinance, and "no person, either private citizen or public official, has any right to deny, abridge or in any manner interfere with the full and free enjoyment of those privileges and any person who attempts to do so is himself guilty of an unlawful act."

After reciting such acts attributed to the workers in this case as were in violation of law, the instructions went on to state that "a sheriff has no authority to arrest any person without a warrant except upon probable cause for believing such person has violated a law of the state; nor has he authority after making such arrest to hold his prisoner in custody for a longer time than is reasonably necessary to cause proper complaint to be filed, and an opportunity given for bail. * * * A sheriff has no right or authority to interfere with or prevent any person from violating a city ordinance, nor has he the right or authority to arrest for violations of city ordinances" unless "the act threatened, or the act done,

in violation of such ordinance be at the same time violation of a state law."

The instructions then outlined the scope of criminal conspiracy, stating that it was unnecessary for one conspirator to know all of the other conspirators but that common design is the essence of the charge of conspiracy. The acts of one conspirator become the acts of any and all conspirators. In the eyes of the law the sheriff and the deputies also constituted in this case but one personality, the sheriff being bound by the acts of his deputies and the deputies being authorized by the powers of the sheriff. Also the ordinance dated September 21st, 1916, was held to be a valid one.

"Now whether any of the Industrial Workers of the World have been, prior to November 5, 1916, guilty of encouraging disrespect for law, or of unlawful assemblage, or of riot, is not the question on trial here. They could all be guilty of all the acts or offenses heretofore mentioned, and still this defendant be innocent of this particular crime charged on November 5th, or they could all be innocent of all the acts mentioned, and defendant still be guilty of the main charge here.

"Again, whether the sheriff or any of his assistants have been guilty of any of the acts charged against them is not on trial here. They could all be guilty of all the acts charged and still be the victims of unjustifiable shooting from that boat, or they could all be innocent of any offense, and still be the aggressors and cause of that shooting on the dock wherein Jefferson Beard lost his life.

"One of the questions in this case is the question—Which side was the aggressor on that occasion?

"In determining who was the aggressor it is your duty to consider all the facts and circumstances surrounding the situation, the relations of the parties to each other, their intentions toward each other, and all the things they did. You will also consider the past conduct of all the parties, any acts of violence or other assaults that may have been com-

Victims at Morgue.



John Loney Hugo Carlot Felix Boran Abe Rabinowitz

mitted, and any threats that may have been made, and the character as known and understood by each other.

“Therefore, simplify your deliberations and determine first the question: Did somebody on the boat unlawfully kill Jefferson Beard? If somebody on the boat did not kill Beard, then of course Tracy could not be guilty of aiding John Doe to do something which John Doe did not do. But if the State has satisfied you beyond a reasonable doubt that Beard was killed by a shot fired by somebody on the boat, then such killing is either unlawful, in which case John Doe would be guilty of one of three degrees of unlawful or felonious homicide, viz., murder in the first degree, murder in the second degree, or manslaughter; or it is justifiable in which case John Doe would not be guilty. Hence you will render one of four verdicts in this case—

1. Guilty of murder in the first degree, or
2. Guilty of murder in the second degree, or
3. Guilty of manslaughter, or
4. Not guilty.

“It is very desirable that you reach a verdict in this case. The law requires that your conclusion shall be unanimous. It is not required that any one of you should surrender his individual freedom of judgment, but it is well that each of you should have in mind that your true verdict cannot ordinarily be reached except by mutual consideration and discussion of all the different views that may suggest themselves to any of your number. The jury room is no place for pride of opinion. A verdict which is the result of real harmony, or that growing out of open-minded discussion between jurors, and a willingness to be convinced, with a proper regard for the opinions of others, and with a reasonable distrust of individual views not shared by their fellows, is a fair yielding of one reason to a stronger one; such, having in mind the great desirability of unanimity, is not open to criticism. The law contemplates that jurors shall, by their discussions, harmonize their views if possible, but not that they shall compromise

and yield for the mere purpose of agreement. One should not surrender his conscientious convictions.

“And now, ladies and gentlemen of the jury, I commit the case to your hands. Listen to the arguments. Regardless of what may be counsel’s recollection of testimony, you must take and follow your own recollection. You are not required to adopt any view which counsel may suggest in argument, but you should give close attention to all they say. Take up your task fearlessly, with but one single aim—to discharge the obligations of your oaths. You have no class to satisfy—simply the dictates of your own conscience.”

Taken as a whole the instructions were distinctly unfavorable to the defendant, not because of any particular bias of the judge whose political ambitions might have made him desirous of establishing a record for fairness, but by reason of the fact that the law itself on the question of criminal conspiracy is archaic and absurd, being based upon precedents established when the use of electricity and steam power were unknown, when the stage coach was the fastest means of locomotion and the tallow dip the principal form of illumination. This law, like all other statute law, was created thru the desire of the ruling class to protect property, therefore it contained no element of justice when applied to the modern proletariat, the twentieth century worker stripped of everything but his power to labor.

Following the reading of the court’s instructions prosecutor Black made his argument, Vanderveer and Moore for the defense addressing the jury in turn, and Cooley making the concluding plea for the state. This arrangement gave Veitch no chance to turn loose his oratorical fireworks, much to the chagrin of the gentleman who had been so kindly loaned to the prosecution by the Merchants’ and Manufacturers’ Association.

Black’s lengthy address was a whine for pity because of his youth and a prayer for relief from the dire straits and legal bankruptcy into which Snoho-

mish County had fallen. It is summarized in the following:

"We are at the close of a great trial. A great deal of evidence has been introduced; practically two million five hundred words. From the standpoint of the attorneys who have tried this case the evidence has been very complicated because it had in it a great mass of evidence that was only remotely connected with the real issue at bar. You as jurors have a very simple question to decide in this case.

"Thomas H. Tracy is charged with the crime of murder in the first degree, not that he himself killed Jefferson Beard, but that he, Thomas H. Tracy, aided, incited and encouraged some unknown one to kill Jefferson Beard of Everett, on last November 5th.

"I repeat first that some person on the boat unlawfully killed Jefferson Beard; secondly that this defendant, aided, incited and encouraged such shooting.

"I come before you as the prosecuting attorney of Snohomish County. Owing to the exigencies of politics I was elected to office a few days after November 5th, the time of this catastrophe. Two months and a few days after, I took office and found a man charged with a crime that I did not have the power of prosecution over up to that time. Mr. Webb, then prosecuting attorney, who had started the action and initiated and seen fit to collect some of the evidence, was not able to complete the prosecution on account of the size of the trial.

"I am a young man without the experience that any man ought to have in the prosecuting of a case like this, a case the size of which has never been experienced in the State of Washington, and in many ways an absolutely pioneer case in criminal trials the world over.

"So the State has been hampered in that at the outset a young man, a new prosecuting attorney, has come into office and to him there has come a case that no man could read up concerning, and a large piece of battle—it is the State's contention, a battle

between hundreds of men on the boat and a large number of deputies on the dock, a battle absolutely and surely initiated by firing from the boat, but still a battle;—a case without parallel in the criminal history of this State or of the United States.

“It happens that fortunately the State has had assistance in this case. The State of Washington, thru its county commissioners, requested the assistance in this case of Mr. Cooley, whom you have all grown to know, a man who formerly for four years was prosecuting attorney of Snohomish County, and who since that time has been associated as assistant counsel in practically all the criminal prosecutions of Snohomish County that have required assistance.

“And in addition to this the State has been fortunate in having, at the request of the county commissioners, the assistance of Mr. Veitch, a young man it is true, but one who thru years of service in the district attorney’s office in Los Angeles County had experience in criminal trials, and especially because of his connection with what are known as the conspiracy murder trials in Los Angeles County, and also in assisting the federal prosecution at Indianapolis. It has been necessary in this kind of a case for the State to have assistance.

“Now I told you my friends that I came here as prosecuting attorney of Snohomish County. I am also a deputy prosecuting attorney of King County under Mr. Lundin. After I was appointed I was very unpleasantly surprised by one statement. A little phrase, ‘without pay,’ so that I don’t know whether really I am a deputy prosecuting attorney or not, because I found that in public office a man always likes to see the warrant come at the end of the month!

“You are a jury in this case from King County because the defendant and the other defendants filed an affidavit to the effect that they didn’t expect that a jury selected in Snohomish County would give the defendant a fair trial. The State is happy in your selection and knows that you will follow the dictates of your conscience and is likewise confident that you

cannot help but believe that Jefferson Beard was killed by someone shooting from the Verona, and that Thomas H. Tracy, alias George Martin, incited, aided and encouraged in that shooting.

“Now, the witnesses on the dock are men of Everett, men of family, men who are laborers, but with families; men who are clerks, with interests in Snohomish County; men who hold some important positions, as lawyers; people with families, people who by residence have established reputation for truth and veracity; men who have established themselves, have made themselves successful, sometimes in merely that they have established a small home, or who have lived in Everett and have made friends and acquaintances. That is the class of men that were on the dock.

“There are only two classes of people who know anything about the shooting. The people on the dock are one set, and the people on the boat are the other.

The people on the boat, with but one or two exceptions, are men who have established no reputation for truth and veracity, have been successful in the world in no way, even from the standpoint of stable friends, living here and there, unfortunately; perchance, with some of them it is due to unfortunate circumstances and environments, and they have been unlucky, but still they haven't established stable friends in any community.

“Then there are the three boatmen on the boat—and those three men, unprejudiced, unbiased, not deputies and not Commercial Club members, but merely laborers, they know where the first shot came from, and they tell, and their testimony absolutely and entirely contradicts the testimony of the defense in this case from start to finish.

“And when you look at that red face and red hair and that honest expression of big Jack Hogan John Hogan here, and his honest blue eyes, it doesn't seem to me that you can have any more doubt than I have that Jack Hogan saw Tracy.

“Now, these men that come on the stand all con-

fess they had a common design. Their common design they say, was that about two o'clock in Everett they were going to speak at the corner of Wetmore and Hewitt Avenues, that is their common design.

"The court tells you that the purpose that they admit was unlawful, so Tracy, by the testimony adduced in his favor, was one of the men having a common design for an unlawful purpose. Tracy, regardless of his location, regardless of whether he fired or not, is guilty.

"The sheriff and his deputies could have been guilty of everything claimed against them previous to this and the defendant still be guilty of helping and encouraging someone else to unjustifiably kill Jefferson Beard.

"Under the Court's instructions there were acts done at Beverly Park that were unlawful. There is no question about that. Instead of this being a weakness on the State's part, it seems to me that it is an added strength. Because the I. W. W. used Beverly Park for what purpose? They jumped on it with desire, deeming it a fortunate circumstance because they wanted to inflame men to invade Everett. They jumped on this, the men at the head of the conspiracy, they jumped on Beverly Park because they could use it to inflame their members. How do we know? Their own statements! Their telegrams! 'Advertise conditions and send volunteers.' Volunteers for what? Volunteers for what? When a man represents things and so helps to make men mad he wants these men up there as volunteers for retaliation. And the Court has instructed you that if these men went up there with the purpose of retaliating, they are guilty. Tracy having been one of a common design makes it central, vital, in good conscience as citizens, that you return your verdict asked by the state.

"Any time a murder is committed it is important that prosecution be had and conviction secured. That is always vital from the standpoint of protection to society. The police, the sheriff's office, and the officials of all cities and states of the United

States sometimes forget themselves, I take it, sometimes do things they shouldn't do, sometimes do things they should be censured for, but the fact that they had is no reason that murder is to be excused or justified, because if you did, we would have no society. That is true in an ordinary murder case. That is overwhelmingly true in this case.

"The I. W. W. is an organization that realizes the great truth in combating government. They have stumbled upon an overwhelmingly successful instrument in fighting society. What is that? To commit a violation of the law in numbers, to violate the law by so many people that only a few can be prosecuted and even if they are convicted, the great majority go scott free. They built better than they knew when they stumbled upon the great secret that the violation of a law in great numbers would protect practically all of the violators. And this trial itself is proof of that.

"Snohomish County can ill afford the expense of this one trial; can ill afford the expense of two or three trials after this; would be overwhelmed with debt to convict all the men who are in this conspiracy, if there were a conspiracy it can't do it; most of them are safe from prosecution and they know it; and the only protection that Snohomish County has, and King County has, and the State of Washington has, and the United States has, is that when something happens like this a conviction be secured against a man who is guilty, not because you are convicting all, because you can't, you are helpless—but because that at least is the voice of warning to the men that if you lead an attempt you may be the one of the great number that will be caught. It is important from the standpoint of citizens of the State of Washington to establish the principle that crimes cannot be committed by numbers with impunity, that while it is fairly safe, it won't be absolutely safe. We have no protection. That is the vital part of this case. We have no protection.

"If this case were just that of murder committed by one man acting alone, the importance of your

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verdict would be of small significance, compared with the importance of your verdict in a criminal case where the members are part of an organization. True, the society has no doubt a great many aims that are desirable to improve the welfare of the workingman. But it has one aim, one vital aim, in its platform to bring upon it the condemnation of thinking, sober men and women residing permanently in the State of Washington, and that is sabotage.

"We are not claiming that the killing of Jefferson Beard was in the exercise of sabotage. We are saying that sabotage along with the conscious withdrawal of efficiency, sabotage along with the destruction of property, may also mean crime.

"The I. W. W. members did not come to Everett for the purpose of employment; they were men who were wanderers upon the face of the earth, who desired to establish themselves nowhere, and none of them, as far as this witness stand is concerned, expected to work in Everett or to put sabotage in effect in Everett by working slow. The only way they could use sabotage in Everett was by the destruction of property. The mayor became alarmed, and the sheriff, after their repeated threats in their papers. But whether you believe sabotage to be good, bad, or indifferent, really is not vital in this case except as a circumstance.

"Now, the Wanderer. The Wanderer did not happen the way they said it happened. The sheriff did shoot after they refused to stop. The sheriff did hit some of them with the butt of his gun. The sheriff brought them into Everett because they constituted an unlawful assemblage. The sheriff did the only thing he could do. He filed charges against them and they were arraigned in court. Twenty-three men cannot be tried quickly when each one demands a separate trial by jury. Twenty-three trials would stop the judicial machinery for three months. They could not be tried and so the sheriff turned them loose. Maybe he did hit them harder than he should have. Policemen do that! Sheriff do that! Lots of time they hit men when it is not necessary. Hit them

too hard, sometimes. They don't always understand exactly what they are supposed to do. But the I. W. W. exaggerated the matter and used it to incite retaliation on the fifth. So the Beverly Park incident, and all other incidents, if true to the last syllable of the defense testimony, merely in this case extenuated the motive on November 5th.

"Now then, why did the State select Tracy? The State's evidence was to the effect that Tracy was not only a member of the conspiracy, but was firing. Several State's witnesses recognized Tracy. There was another reason. What was that? Some of these men, some of these boys, flitting here and there from job to job, with never more than a dollar or two in their pockets, were inflamed intentionally by people who misrepresented conditions. They did not have any right to be inflamed; they did not have any right to go to Everett and they are guilty of murder if they went up there to retaliate for any wrong, actual or conceived. But the State has preferred to put on first a man who was in the forefront of the conspiracy; the man that appeared to be an important cog of that conspiracy, and that man is Tracy.

"Tracy knew that a great many people of Everett were alarmed and disturbed. Tracy knew that the I. W. W. did not want anything in Everett, had no interests there, no friends there except as they were disturbing conditions. Tracy knew the purposes and Tracy went back to Seattle so he could lead this excursion to Everett. Tracy is a man of determination. He knew the situation and he was prominent enough to be selected by the organization as a stationary delegate. And if any man knew what they intended to do in Everett, it undoubtedly was Tracy. So, regardless of whether he fired or not, Tracy was one of the men who were on the inside. Tracy is a part of the conspiracy that happened. But no man, my friends, on that boat, that went up there with a common design to break the ordinance has been sinned against because he is in jail.

"Now, my friends, you want in good faith to follow the instructions of the court. It seems to me that the only question you have to decide is the one the court told you to decide—Was Beard killed unlawfully by a shot from the boat, and did Tracy aid, encourage or incite that killing?"

"The murder of Jefferson Beard was a premeditated murder. Following the instructions of the court, separating the wheat from the chaff, and deciding that one question, we of the State are confident that you as jurors and good citizens, as honest, sincere and conscientious citizens, will protect Snohomish County—we believe that your verdict will say 'We are convinced, beyond a reasonable doubt, that Tracy is guilty, and, being so convinced, we are going to protect Snohomish County as we would our own.' I thank you!"

Vanderveer handled the case from two different viewpoints—that of a first degree murder trial and also as a section of the class struggle. His address was a masterly array of invincible logic and satire. Omitting his readings from the transcript of evidence, his speech was substantially as follows:

"This cause is, as the counsel for the state has told you, one of momentous importance not only to the defendant but to a class—a large class of people of whom today he stands merely as an unfortunate single member, fighting their battle.

"We do not ask in this case for mercy, we do not ask for sympathy, but it is essential, absolutely essential that we should have cold, stern justice; justice for the defendant, justice for those who have oppressed him, those who have denied him his rights. We hope this case is the beginning of a line of prosecution which will see that justice is done in the Everett situation.

"It is not the defense who outlined the issues in this case, it was the State who determined that. They have chosen their fighting ground, and we had to meet them on that battle. In the beginning of this case the State, thru Mr. Black, told you that it would prove a conspiracy of very formidable proportions,

a conspiracy in the first place to commit acts of violence and to incite acts of violence, a conspiracy to commit arson, a conspiracy to overrun all law and order in Everett and bring on a condition of chaos. The claim was a very formidable one. The evidence has been very silly. The State ought to apologize, in common decency, for ever having suggested these things.

“What is the evidence about the fires? The fire marshall’s report, made by a man who would naturally try to enlarge the performance of his duties and impress upon the public the manner in which he discharged them, reports only four fires of incendiary origin for the entire year. Every one of these were discovered before they did five cents worth of damage. Who had notice of them? Was it the I. W. W. who set them or was it Reese or some paid employe of the Pinkerton Agency? Can you conceive that an organization embracing as many members as this does, bent upon the destruction of Everett, could not set one fire at least that would do some damage. It is nothing but a hoax!

“As to force and violence, who did they put on to prove it? Young Howard Hathaway, a mere boy, whose father represents some mill companies in Everett. Then Sheriff McRae, and McRae couldn’t tell you one thing that he heard at the street meetings. Then they put on Ed Hawes, the big brute that out at Beverly called the little boy a coward, a baby, because he wouldn’t stand there and be slugged with guns and clubs. And what did Hawes say? That he looked up sabotage in the International Dictionary! And you can search that book until you are black in the face and you won’t find a word in there about sabotage. Why, if sabotage is such a terrible thing, did Hawes, having heard all about it at the street meeting, have to go home to look it up at all?

“At these meetings there was not one thing said that could invite criticism, there was not one thing said that could justify or invite censure or abuse; there was not one disorderly thing done but was done by the officers of the law themselves, and they

went in recklessly, without excuse, without right, they clubbed Henig, they clubbed Carr, a former member of the council, and they roughed women around and knocked them down. Why? Because these people were mill owners, their hirelings and their representatives, who had been instructed in the propaganda of the open shop by employes, aides and emissaries of the Merchants' and Manufacturers' Association.

"A lot of people went to the jail one night, a thousand, maybe. They hooted, they cat-called, and they hissed. Is it any wonder they did? Ladies and gentlemen, I want to tell you there is no surer verdict on earth than the verdict of a crowd; and the verdict of that crowd condemned what the deputies had done.

"Finally they say there was a conspiracy on the 5th of November to go to Everett and to hold their meeting at all hazard, to brook no opposition, to ride rough-shod over it, to oppose everyone and anything that stood in the way of accomplishing their purpose. I ask you to think just for a moment how foreign that is to everything you know about the I. W. W. and their operations and behavior in Everett. Not one witness for the state could tell you an incident where one of them resisted arrest, could tell you an occasion where one of them had advocated violence, could tell you one occasion where any one of them had committed any acts of violence.

"These people wrote to Governor Lister calling his attention to the violations of the law on the part of the officers of Everett; they wrote to Mayor Merrill, enclosing a copy of that letter and calling on him to restore the order that had been violated by the officers of the law; they scattered handbills all over Everett, among its best homes and in its business streets, calling upon the good citizens to come to their meeting on November 5th at Wetmore and Hewitt, to come and help maintain your own and our constitutional privileges; they mailed to the citizens of Everett on October 30th, seven or eight hundred copies of a little pamphlet calling upon

them to intervene and stop the brutality of officers of the law; they questioned Governor Lister at a public meeting and again called his attention to the conditions in Everett; they called in the reporters, called the newspapers and notified the editors that they were going to Everett and asked them to have representatives present. Are these the acts of conspirators?

"You know how that meeting was called and why it was called. You know it from ministers of the gospel, you know it from the lips of those whom you cannot help but believe. And it was called for Sunday, the day when people ordinarily resent disorders of the kind that had occurred there. It was called for the daytime, when ordinarily abuse and violence are not attempted. And this big crowd went up there on this fine Sunday afternoon because in number there is strength and in numbers there is protection against brutality.

"At first the deputies had taken out one or two and abused and beaten them; then they had taken five or six; they had taken eighteen; finally they had taken forty-one. But I ask you, would you believe it possible that they could take two hundred or three hundred people in broad daylight and do to them what had been done to the others? Yet the evidence in this case shows convincingly and conclusively they intended to do substantially that thing. They intended to run those men into a warehouse; they didn't intend to let one of them get away. And had they gotten them into that warehouse you don't know, I don't know, nobody knows what would have happened!

"That is the evidence of conspiracy in this case. They have claimed no other conspiracy; they have offered no other evidence of conspiracy, either to set fires or to incite violence, or to override all opposition on November 5th. Their evidence doesn't stand even if unanswered—and no evidence could be more successfully answered.

"What evidence is there that Tom Tracy had anything to do with such a conspiracy, if there were

one? Their most willing tools, Auspos and Reese, don't say a word about Tracy.

"What does the identification by McRae amount to? He identifies Tracy as the man who leaned out of the window and shot at him. Now at the time this shot was fired McRae had his back turned to the man who shot it. He says himself he did, and he was shot thru the heel, which seems to prove it. That, by the way, suggests to me that it was not an I. W. W. who shot McRae. The man who shot him must have thought McRae a hero, like the gentleman of mythological fame who was killed by an arrow thru the heel which no I. W. W. does, I assure you. Or else he thought that McRae wore his brains there.

"But I am not going to discuss McRae at great length either now or at any other stage of this case, because the greatest kindness I can do him is to forget him. The man is a perjurer! He lied! He was not mistaken. He deliberately, cold-bloodedly lied about almost everything in this case wherein his conduct as an officer was questioned. He lied about 'Sergeant' Keenan! He lied about shooting at the "Wanderer," and you saw the bullet holes. He lied about Berg and about Mitten, and finally, and last of all lied, and we have proven it conclusively, about being out to Beverly Park.

"Bridge's identification of Tracy does not agree with that of Smith, and Bridge does not even agree with his own testimony given at the coroner's inquest. Smith picked out a photograph and said it was Tracy and that picture resembles Tracy about as much as I do some of you jurors. Bridge and Smith say that Tracy fired three shots, and Hogan says he fired only one. And you know, ladies and gentlemen, that Hogan did not see this man at all. You know that he did not even see the window at which he pretends this man was sitting when the shot was fired. You know it because you went there to the dock and you saw the boat lined up to a mathematical certainty by the shot marks, and you saw a photograph taken with the camera placed by

John Hogan exactly where he said he was standing himself. And there wasn't a one of you who could identify Bob Mills, with his long nose and angular features, with everything that makes identification easy, when he was in the position attributed to Tracy. And when you came around from there to where you could look directly at the place, the reflected glare of the sunshine left nothing but a blank background.

"There were one hundred and forty deputies looking toward the place where the first shot was supposed to have been fired. They have produced on the witness stand only about one in ten. We challenged them to bring them all on, we dared them to do it, and Mr. Cooley said 'I accept that dare!'—look it up Mr. Cooley on page 1802 of the transcript—but he did not dare accept that dare. Mr. Cooley knows what those nine-tenths would testify to. Twelve out of their sixteen witnesses who testified about the first shots said that their brother deputies were mistaken as to even the place on the boat where the first three shots came from.

"I venture, ladies and gentlemen, that with a bit of the kind of work the State has employed in this case, a little bit of the same zeal that was employed on Auspos, a little bit of the same zeal that was employed with Reese, a little bit of the help of McLaren of Los Angeles, I can take these one hundred and forty-five men and pick out four men who will honestly and truthfully testify that they saw anything, and I say that with no reflection on their honesty either, because the power of suggestion is enormous. It is not surprising that four people have come here to say they saw Tracy. It is not surprising that three out of the four should have been proven, conclusively, convincingly and absolutely, not to know what they were talking about.

"The court has told you that in this case it is not a question of who shot first, not a question of which side shot first, it is a question of who was the aggressor, who made the first aggressive movement,

FELIX BARAN



Dark lines on body caused by internal hemorrhage; Portland doctor said life might have been saved by operation.

who did the first hostile thing. The man who did a thing to excite fear was the aggressor, and that man was McRae when he pulled his gun. McRae clearly did that before there was any shooting.

"In determining who the aggressor was, you are entitled—not only entitled but must take into account the past behavior of all parties. And what does that show you? Was it the I. W. W.'s who had never offered violence, who had never done an act of violence, who had decried and deplored violence, as members of their audiences told you, and advised caution against it? Or was it McRae and his deputies?

"It is only formally correct to refer to these as deputies. They had commissions, but in nothing else in the world did they bear the remotest resemblance to officers of the law, not in their conduct, not in their training, not in their purposes, not in anything. They were the hirelings of either the mill owners of Everett or the Commercial Club. Did you ever in your life before hear of officials taking their instructions from representatives of an industrial movement? Did you ever before hear of deputy sheriffs being instructed in the propaganda of the open shop, being instructed in the methods employed at Minot unlawfully to prevent street speaking? That is where the first mistake in this case was made. First in the selection of that kind of men; second in the deliberate attempts which were made to color their actions, to prevent them, to make them the tools of the employers.

"That is the reason Henig and Carr were beaten, that is the reason Feinberg and Roberts were beaten, that is the reason men and women were knocked down in the crowds, that is the reason that this boy, Schwartz, was taken out by McRae and chased zig-zag down the road in mortal terror of being run down by the sheriff's automobile, that is the reason 'Sergeant' Keenan was hit over the head with a gun, that is the reason James Rowan was taken out and beaten black and blue. How do you suppose Rowan got those marks on his back? Did he put

them there for fun, or were they put there by somebody else's rotten, dirty brutality? If you didn't know a thing about him except what you know about Beverly and these other incidents, and it was deep darkness where this happened, I venture you would all say off-hand, 'It must have happened at Everett, anyway. There is no place else that I know of where they do such things.'

"Black says the "Wanderer" has been greatly misrepresented to you, that the things we claim happened did not happen there at all. Well, there is a lot of evidence that they did happen. There are a lot of people who could have denied it. There are a whole crew of deputies who could have come up here and denied it. Why didn't they? Because they were ashamed of it and they knew they could not stand the grilling that was awaiting them in the court room. It is true, certainly! And I say here that nothing but providential intervention prevented McRae on that day from being a cold-blooded murderer! That is the manner of man you are considering. You are considering whether he was the aggressor, he or the people he shot at.

"Counsel says that Louis Skaroff lied. Now I am very frank to confess that when we produced that story on the witness stand I feared you would not believe it, not because I doubted the truthfulness of his statement but because the story itself is so brutal and inhuman that I questioned whether there could be found anywhere in the county twelve persons who would think such things could possibly happen just thirty miles away. But when one of their own witnesses went on the stand here, in rebuttal, and told you that Louis Skaroff came out of that room with his arms above his head, crying, with the blood running from his finger tips, I knew that you knew that Louis Skaroff had told the truth.

"The state has been very reluctant in this case to admit that there were rifles on the dock, because if the deputies went there with rifles there was a reason for it. You could not find a rifle on that dock until we proved—what? That rifle shells were around

the dock in great numbers; we proved it by innocent, clean little boys who picked up the shells; until we proved by witnesses that the rifles were there and were being shot; until we proved by a rifle bullet with human blood and a man's hair on it that the use made of the rifles was a deadly one.

“Who was the aggressor? Even now the State doesn't like to admit, because the State knows it is fatal to their case to admit, and notwithstanding hopeless to deny, that there were helpless men in the water being shot at. They do not like to admit that a man was so impressed with the inhumanity of the thing that he ran from the depot to the boat house hoping to effect a rescue of the men and was stopped by the armed deputies. The State does not like to admit the evidence of their own deputy witness, Groger,—whose actions I want the counsel for the state to explain and justify if he can—who repeatedly fired at a man who was trying to untie the boat so the unarmed men could escape.

“Counsel said that if there was any intention to start trouble men would not have lined up as they were on the dock in an exposed position. And I ask you, if there was not an intention to start trouble why were they kept in the warehouse until the boat had almost tied up? If that was not an ambushade, what on earth was it? If they did not intend to start trouble why was it McRae waited until the line was out and made fast. Why was it, then, he did not say to the captain, ‘Take your boat out?’ He said he was afraid they would go somewhere else. Well, when he told those boys they could not land he expected them to go away. Or did he expect them to go away? Which was it?

“The manner in which McRae handled this thing indicates nothing so much as that he intended to get them there and administer to them another of the things that he calls a lesson, another of the things that other people call infamous, damnable brutality.

“Counsel says there have been mistakes made. He doesn't want to apologize for them, but clearly he doesn't want to be held responsible for them.

There were mistakes made. Beverly was one! The "Wanderer" was one! From the beginning to the end of all their operations in Everett everything has been a mistake—a mistake because the ordinary processes of law and the rights of other people were ignored. There was no ordinance prohibiting speaking. The boys were yielding implicit, careful obedience to such law as there was. McRae unblushingly tells you that the reason he made arrests was because there were labor troubles in Everett and the shingle mill owners didn't want things embarrassed by the truth, by the disclosures contained in this little report of the Industrial Relations Commission.

"They were not afraid of the I. W. W.'s going up there to incite violence, to advise disorder, to invoke a reign of terror. Reigns of terror are the employers' specialty! They were afraid of cold fact. Never a man went up there to speak on the street and used that little Industrial Relations report but was thrown in jail for it—Thompson, Rowan, Feinberg, Roberts, all.

"It's nice to enjoy the powers, the position and authority of a dictator who can repeal, amend and modify, ignore, disregard laws when it suits his fancy, but it's kind of tough on other people. That's what McRae did!

"On the 5th of March, nearly nine weeks ago, His Honor called this case from his bench 'State versus Thomas H. Tracy,' and my friend Mr. Cooley rose from his chair and said 'Your Honor, the State is ready.' I say to you, Mr. Cooley, you slandered the fair name of your state! What has the State of Washington to do with this thing? The name of the State of Washington in such a case as this should stand for law and order and decency. The State is supposed to protect the innocent against abuse and injustice and you who are now running this case do not now maintain these things, or if you do, you protect them only when convenience requires it.

"It is not the State of Washington versus Thomas H. Tracy at all, and if the decent people of Everett who know the facts could decide what course this

action should take it would never be here. Even the title of the case is a mistake. It is the case of the Commercial Club of Everett, the mill owners of Everett, against Labor. This is an attempt, just as all the actions for months have been an attempt, to keep Labor out of its rights in Everett. The same people who took possession of the machinery of law in Everett, who took possession of the sheriff and furnished him with guns and clubs and murderous things like that and instructed him how to act, the same people who employed detectives to set fires in order that they might manufacture evidence and public sentiment against these boys, those same people are today prosecuting this case.

"I don't know where Governor Clough was on November 5th. I suspect he was not anywhere where there was any danger, but I know the smoke had not left the decks of the Verona before he was hot-footing it to the telegraph office,—Governor Clough, not the prosecuting attorney, not the sheriff, nobody but Clough and Joe Irving, the man who was so drunk that he beat up Schofield,—to send a telegram to Judge Burke of the Chamber of Commerce of Seattle, to the Mayor of this City and to the Chief of Police of this City to arrest the whole bunch of them.

"Then right away they got their other emissaries at work, Reese and Smith, down here with two fingers out of the door of a darkened cell, deciding for the State of Washington who should be prosecuted in this case, and H. D. Cooley, who surely then was not a prosecuting attorney, giving them legal counsel and directing their energy, taking out the men, preparing statements, and getting ready for the work he was going to do in this case, because his employers wanted it.

"There is a conspiracy in this case, a conspiracy supported by evidence, a conspiracy of men in the Commercial Club to take over the machinery of government, and by it club these fellows out of their rights, club them out of Everett, club them out of all contact with the workers in order that they

might not bring to them the gospel of their organization.

“But I say to you, ladies and gentlemen of the jury, that this struggle, the struggle of Capital against Labor, the struggle of the Commercial Club against the I. W. W., which is just one phase of the bigger one, this struggle is going on in spite of Cooley, this struggle is going on in spite of McLaren, this struggle is going on in spite of Arthur L. Veitch of the Merchants’ and Manufacturers’ Association, this struggle is going on in spite of McRae, this struggle is going on in spite of the Commercial Club, because it is founded on a principle so big, so wholesome, and so decent, so righteous, that it must live. And it will go on until in this country we have industrially that which we have struggled so long and hard for and finally won politically; until we have democracy.

“There is nothing in revolution, gentlemen, that is wrong. We came to the condition in which we now find ourselves by revolution; first the grand American revolution and then the revolution against chattel slavery. It was nothing more nor less than revolution, because slavery was then entrenched under the highest law of the land, the decision of the Supreme Court in the Dred Scott case. We took it out of the courts and slavery was wiped out. Slavery again will be wiped out!

“The thing about this case which makes it of most serious importance, the thing about this case which makes it of public interest, the thing about this case which has so enlisted the sympathy of every one connected with it, which makes us feel the importance of a just verdict, is that it is not merely the liberty of a man that is at stake, but in a larger measure than you know there is at stake in your verdict in this case the rights of the working people, their right to organize, their right to protect themselves, their right to receive and enjoy the fruits of their labor.

“There is involved the question of whether or not the working people shall receive justice or forever

must be victimized by organized capitalists. There is involved the question of whether or not such things as have gone on in Everett for the last six months may continue forever with the endorsement of the jury or whether the working people on the other hand may go and discuss their wrongs and grievances and strive for their rights.

"As I have confidence in the righteousness of this cause and the integrity of this purpose, so I have confidence that your verdict will be not guilty."

Attorney Fred Moore closed the case for the defense with one of the greatest speeches ever delivered in a court room, a speech that seered its way to the minds and hearts of the jurors. Far more than a defense of Thomas H. Tracy it was an explanation of the industrial problems underlying society, the class warfare rooted in industry and manifesting itself on November 5th. It was a sustained and definite statement of the aims and objects of the I. W. W. and Moore showed, not only a great knowledge of the problems of the working class, but a wonderful command of satire and irony. Following is an abridgement of Moore's speech to the jury:

"May it please the court, and ladies and gentlemen of the jury; For a period of something like five hundred years the Anglo-Saxon has seen fit to place the final adjustment of the question of justice in the hands of twelve men. In the evolution of the law, that number has been increased until now in this state we have fourteen. Likewise, in the evolution of the law and in the face of the vast amount of public protest, and in the face of the most reluctant world, we have enlarged the term jurors to include women jurors. This is the first time that I personally have ever tried a lawsuit in which ladies sat in the jury.

"The state has told you why this case is one of grave responsibility for them. Allow me to tell you why this is one of grave responsibility for you. One hundred and ninety-six witnesses have appeared for the defendant in this case. Yesterday, counsel brought home the fact that many of these witnesses



HUGO GERLOT

were not residents of this community, were without homes, without any permanent places of abode. All true. The responsibility that you have in this case is commensurate with the fact that the case reveals to you, as it were, a cross-section of our lives. You who are property-qualified have a responsibility to pass upon the liberties and the lives of a body of men who are propertyless. If there is any change in men's thoughts and views as they acquire a home, as they settle down, as they marry, as they bring into the world children, then I ask you in all fairness to attempt to put yourselves in the places of this defendant and of this defendant's witnesses who have taken the stand, and to realize that your responsibility here is commensurate with the fact that the testimony reveals, as it were, a most deplorable condition of modern life. In other words, your responsibility here is that of measuring out absolute and complete justice between warring elements in our modern life, not for one moment allowing your judgment to be swerved by the fact that one class of witnesses here are witnesses of social position, are witnesses of property qualifications, are witnesses with homes, while, on the other hand, the witnesses called by the defense were witnesses from the four parts of the earth, witnesses whose only claim to your consideration is that they have built the railroads, that they have laid the ties, that they have dug the tunnels, that they have harvested the crops, that they have worked from one end of the country to the other, in season and out, floating from job to job.

"In most jurisdictions, the defendant has the opportunity of either a grand jury investigation or of a preliminary; in other words, he is in some degree advised of what evidence he is going to be called upon to meet. In this case, we came in here on the 5th day of March with no information whatsoever relative to the State's case other than that given us from the four corners of the instrument on file here, known as the information, together with the fact that on that information there were the names of some three hundred or more witnesses. That was all

we had. We were further handicapped in view of the fact that we did not have behind us all the resources of the State of Washington and the county of Snohomish, neither did we have behind us all of the resources of various business interests, neither did we have behind us all the resources of allied business on this west coast, as represented by Mr. Veitch."

Mr. Veitch: To which I take an exception, if the court please.

The Court: Exception allowed.

Mr. Veitch: On a matter of personal privilege, I have a right to characterize that statement as a deliberate misstatement of the fact.

Mr. Moore: Mr. Veitch has not seen fit to explain why he was here.

Mr. Veitch: I am employed by friends of Mr. Jefferson Beard. If that is not enough—

Mr. Moore: That is outside of the record.

The Court: Both of you are outside of the record. Proceed Mr. Moore.

"Suffice it to say that we are here as the frank and honest representatives of the defendant and of the defendant's organization. We do not have behind us the power of the State, or the power of any interest other than the defendant himself and of his organization.

Mr. Black complained that the State had been hampered in this cause. Is it fair to say that the state has been hampered when on the fatal November the 5th. Judge Bell and Mr. Cooley were both on the dock? Judge Bell would have us believe that he was unarmed, and so far as we know Mr. Cooley was unarmed. Then why were they on the dock? Judge Bell was there as the representative, as he himself has testified, of a number of lumber mills, and Mr. Cooley was there likewise; both citizen deputies; both there; both unarmed if their testimony is to be believed. Again Mr. Cooley was, in the matter of a few hours, down here at the Seattle jail. Certainly he was not there to represent the defendant Tracy. Who was he there to represent? He was either there in a private capacity, representing private clients,

or he was there in a public capacity representing a public client, namely, Snohomish County. Wherein do you find the evidence of the State being hampered, sir? From the beginning to the end the State has moved majestically, exercising all the power that it had. Mr. Black has had able assistance in this cause, the able assistance of Mr. Cooley, the able assistance of Mr. Veitch, the able assistance of the man behind Mr. Cooley and Mr. Veitch, Mr. McLaren. Yet, all the resources of the State have failed to produce one scintilla of evidence against the defendant Tracy here so far as tending to indicate that he did counsel, aid, incite, abet, or encourage anyone to fire any shot, except the testimony of George Reese produced at the eleventh hour on rebuttal. I intend to treat of our friend Mr. Reese later.

"It is significant that out of all that mass of testimony that has been introduced in this case up to this time not one single bit of testimony has been introduced or any argument had upon that testimony dealing with the object and principles and purpose of the Industrial Workers of the World. Mr. Black did not refer to it. Mr. Cooley has the final say. I anticipate his argument for the State. They have that old reliance, that old faith, if you will, in the trial of a case of this character, namely conspiracy; hallowed by age.

"Way back in the sixteenth century the tub women on the banks of the river Thames were indicted for conspiracy in attempting to raise wages. The chandlers in London were likewise later indicted. The stonebreakers in New York, the carpenters in Boston. From time immemorial the charge of conspiracy has been leveled against the ranks of labor. Indeed, it was only in the reign of Queen Victoria that labor unions became other than simple conspiracies. Up to that time labor unions were within a classification themselves of criminal conspiracy.

"Knowing that under the charge contained in the information we might be called upon to meet evidence of conspiracy, we then commenced a careful survey of all the facts in connection with the Everett



Dead body of Abraham Rabinowitz.

tragedy. And what did we find? We found not a hint of conspiracy!

"James Rowan had come into Everett without knowledge at the time that there was any trouble there. He had not been advised that there was any possibility of trouble. From all the prior history of Everett he had no reason to anticipate trouble. Thompson had spoken there and many others had spoken there. Rowan was charged with a violation of the peddling ordinance. He had been given an arbitrary floater out of town and had exercised his right to come back, was seized again and taken to the city jail; the sheriff goes there and arbitrarily demands Rowan from the Chief of Police. These things happened prior to any acts that by any remote possibility could be charged to us. There was no literature in the town at that time other than the Industrial Relations report. What at that time did we have to conspire about? We had no object.

"And as with Rowan so it was with Thompson, Remick and others. If there was a conspiracy to violate a city ordinance why did not the city officials make arrests and charge the men with such violations? The record is silent. Why wait until Tom Tracy is on trial for murder, and then at the eleventh hour spring this delightfully specious argument?

"I can almost hear ringing in my ears the impassioned plea of Mr. Cooley in closing this case. He is going to read this, 'The question of 'right' and 'wrong' does not concern us.' He is going to say that is the I. W. W. philosophy. My God, did it ever concern the sheriff of Snohomish County? Does it seem very much to concern others who are attempting this prosecution?

"We were told in connection with the argument of counsel that Hickey was not on trial. They might have said that sheriff McRae was not on trial; they might have said that Bill Pabst was not on trial; they might have said that Joe Irving was not on trial; they might have said that the Commercial Club was not on trial; they might have said that all the men that have been guilty of all the brutality in that

County during the months of August, September and October were not on trial. We know it! Why are they not on trail?

"Deprivation of due process of law and confiscation of property! And yet Mr. Cooley is going to urge that the I. W. W. does not believe in government; he is going to urge that the I. W. W. does not respect the law. That kind of law never gets the respect of anyone. I hang my head in shame before such a history of usurpation and seizure of public authority as has been shown in this case.

"Are you going to give the stamp of your approval to this sort of thing? When you bring in a verdict in this case for the State you give your approval to Donald McRae. I beg of you to not put the seal of your approval upon lawlessness, official lawlessness, the kind of lawlessness that is worse, ten-fold worse, than any private lawlessness.

"You are asked to stamp with your endorsement, to give your approval, to a man; a public official, the chief executive officer of a municipality, Mayor Merrill, who admits on the witness stand that he allowed a little group of members of the Commercial Club to take the power of the police department out of his office and turn it over to the sheriff of the county.

"Had the State put on Governor Clough and others on their side of the case we might have wrung from their reluctant lips the evidence of what occurred at the meeting on August 30th at the Commercial Club. But the State was careful not to put him on. Indeed, the most significant and outstanding thing in all this case is not who they put on, but who they did not put on. Neil Jamison did not testify in this case for the State; Governor Clough did not testify in this case for the State; Joe Irving did not testify in this case; Colonel Hartley did not testify in this case; Captain Ramwell did not testify. Why didn't Kelly, Chief of Police, take the stand? You might go down the line and you will find that the assets of all the witnesses for the State combined would total but a few thousand dollars, while you could take the remaining witnesses for the State who

did not testify and you could build up an enormous fortune, running into the hundreds of thousands of dollars. We didn't call them because we cannot cross-examine our own witnesses.

"Is the administration of the law to be made a farce? Shall the State be allowed to blow hot and cold; one minute hot on the enforcement of the law, the next minute cold when the shoe pinches, and then hot again when they can use the law for the advancement of the interests of their prosecution? They say McRae and Hickey are not on trial; there is no promise that they shall ever be on trial!

"Let me say to you that no one violates the law, I care not who it is, just for the fun of violating the law. Jails are not pleasant places to abide in. People who violate the law and go to jail do so either because they are deliberately criminal or because they want to focus attention on some public issue. However, Mr. Black is too kind and considerate when he gives all this credit to the I. W. W.

"The facts are, if you go back into the history of the Revolutionary Days, that our forefathers urged and banded together and combined and federated, and if you will, conspired to violate the Stamp Act of the British Government, and were willing to go to jail if necessary. They went even further! They threw the British tea into Boston Harbor. Violation of the law? Yes, if you want to call it such, but the indignant protest of a people as against the enforcement of an unjust law.

"I might urge upon you that the State at that time wanted to absolutely suppress any speech whatsoever, because they had constituted the chief of police, the sheriff, the arresting officer, as the executive, the legislative and the judicial department of our government. The sheriff executed the law in person, the sheriff declared the question of guilt himself, the sheriff ordered deportations, and the sheriff took physical charge of the deportations. Isn't it impossible to avoid a fight when someone usurps unlawfully and illegally the legislative and judicial functions of government? Isn't it time to fight? If it isn't

then we may as well cease any attempt to administer the law!

"In the phraseology of these boys 'Fight' means a moral adherence to principle, a firm determination to face the authorities in the administration of the law, and if necessary to be arrested. But the State would have you put into it now a more sinister meaning, entirely new and foreign to its former use.

"The State brought in the death of Sullivan of Spokane in their opening and abandoned it in their close. One of the exploded hopes of the State! They counted on North Yakima and Wenatchee to show violence and arson, and they failed most miserably. They have failed in their identification of the defendant. Now, their folorn and bankrupt plea here is the charge of conspiracy.

"The court has told you that this is a murder case. Why then has the State cumbered the record with the I. W. W. preamble and constitution? Why with two pamphlets on sabotage? Why with an I. W. W. song book and such matters? Why?"

"Because out of some of the phraseology here, phraseology far removed from you and me, they may build up a condition of prejudice which may result in your returning a conviction on a smaller degree of evidence than you would otherwise require. Mr. Cooley is going to stand here and read little, short, listed extracts from the context of the whole. The pamphlets he has introduced on the question of patriotism and the worker is the foundation from which Mr. Cooley will appeal to your prejudices and passions.

"We are not afraid of the evidence. We are afraid of this deep-grained interest that goes down into men's conscience and that reached back a thousand years.

"Remember that behind this case are many women and children whose cause these boys represent; whose cause these boys are attempting to fight for. They fight because they must! They fight because to do anything else is suicide. You could not have stopped the American Revolution with all the pow-

ers of the British government. Since this jury was empaneled you have had the collapse of one of the greatest powers of modern times. I refer to Russia. It has passed from an absolute monarchy to a stage of a republic.

"The trial of this cause is the presentation of a great social issue, the greatest issue of modern times, namely, what are we going to do today with the migratory and occasional workers? These migratories, they are the boys who have told their story on the stand.

"If there is one principle that is ground into Angle-Saxon thought it is that of liberty of the press and freedom of speech. Those two things stand as the bulwark of our liberty. They are the things for which the Anglo-Saxon has fought from time immemorial. Away back in the eighteenth century Charles Erskine, a member of the British bar, defended Thomas Paine for having written the 'Rights of Man'. Case after case was fought out during that period when English thought was budding into fruition; when English thought was being tremendously influenced by the French Revolution and when those thoughts were bearing fruit in England. Time and time again the British crown attempted to throttle freedom of speech and liberty of the press. Time and time again Charles Erskine's voice was raised in the House of Lords in protest. Time and time again the British courts and finally the British jurors, gave voice to the doctrine that freedom of speech and liberty of the press may not be invaded except insofar as that subject, that document, is accompanied with acts; that you may not convict men for what they think; you may convict men only for what they do. Freedom of discussion thru the press and thru the public forum are the mainstay and the backbone of social development and social evolution. Only in that way, thru freedom of thought and freedom of discussion, may you fan the wheat from the chaff.

"Why, if this I. W. W. literature is all the State claims it is, why doesn't the State act in the way the law says they should act, prefer charges, arrest

someone, bring the literature before a duly qualified body, a court with jurisdiction, and try the matter out? The State has not done that; the State will not do that; and we are in the position of a man fighting in the dark, without knowledge of what character of argument the State proposes to make.

"I do know that the name of Joe Hill is going to be paraded in front of this jury. The I. W. W. song book dedicated to Joe Hill, with the inscription 'Murdered by the authorities of the State of Utah, November 19th, 1915.' I cannot go into the conditions that surround that tragedy, but I can call your attention to one or two things that bear upon the question of the type of the man. Before he died, written in his cell on the eve of the execution, was Joe Hill's last will:

My will is easy to decide,
 For there is nothing to divide.
 My kin don't need to fuss and moan—
 Moss does not cling to a rolling stone.

My body? Ah, if I could choose,
 I would to ashes it reduce,
 And let the merry breezes blow
 My dust to where some flowers grow.

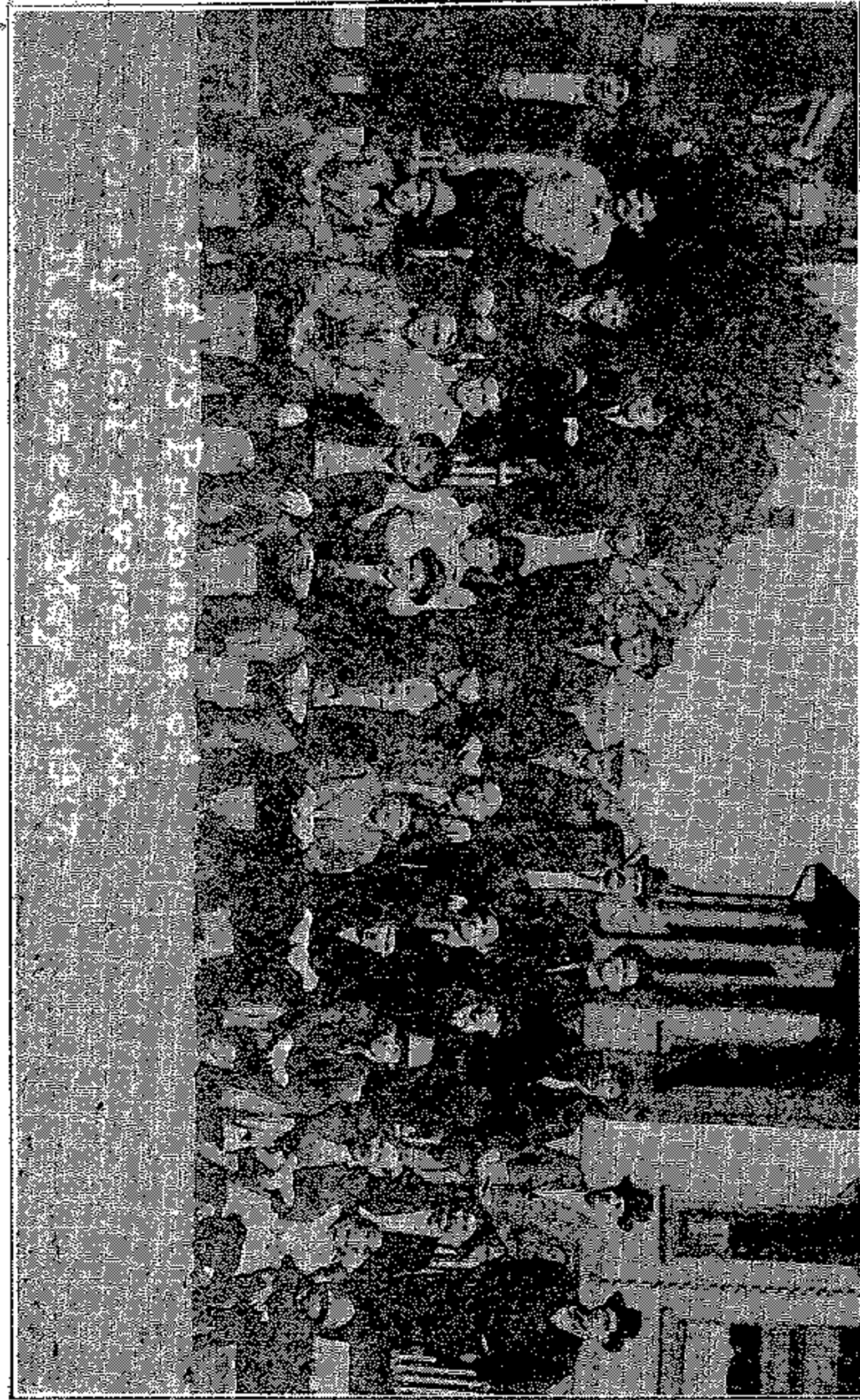
Perhaps some fading flower then
 Would come to life and bloom again.
 This is my last and final will.
 Good luck to all of you, JOE HILL.

"This is the type of man you are asked, because he was honored, because some odd hundred thousand workers who suffer and who wander and who live in the jungles of labor as he did, and because he wrote songs that they understood, songs that because their songs, to judge as the author of the songs and bring in a verdict against Tom Tracy. Mr. Cooley will parade the songs one by one. Remember that behind any words he voices, any thought he expresses, behind it all was a human soul, a human soul passed, a human soul that lived as you and I. a human soul

that had rights that had been trampled upon, and who attempted to voice those things.

“With all the oratory he can display Mr. Cooley will read the song, ‘Christians at War.’ A song that Mr. Thompson designated as a satire. You recollect that when the European war broke out both parties in that conflict called to their aid and said they were acting under divine guidance; that the Kaiser was fighting under the name of God, and that the British and French governments were allied with the Almighty. It is not for me to attempt a settlement of that dispute. History will say that of all the tragedies of the Twentieth Century, the most tragic thing of our modern life is that we of different nationalities, but bound together by all other ties, should be engaged in a death grapple. But that is not the issue here. But I cannot at this time anticipate wherein and how this literature presented by the State helps you to decide the question of who was the aggressor on November 5th.

“Who was the aggressor on July 31st when James Rowan was arrested and brought into the city court? McRae comes in and tells him to get out of town. An intervening series of events and Levi Remick is run out of town. Who was the aggressor? Sheriff McRae! On August 22nd Rowan and Remick were both in the union hall. McRae comes in and orders them out of town. Who was the aggressor? That night Thompson and others came up to Everett—who was the aggressor then? Next morning, with Kelly treating them half way white, along comes McRae and takes away one of the boy’s money. Who was the aggressor? We come now to the deputies meeting at the Commercial Club on August 30th. Who was the aggressor? Had any of their members been beaten up? Had anything happened to their members whatsoever? Not at all! Yet murderous blackjacks were put into the hands of the membership of the club. Was James Rowan the aggressor when he was railroaded out of town and beaten? Who was the aggressor at the time of the ‘Wanderer’ outrage? Old Capt. Mitten, old John Berg, Edith



Frenette? Who was the aggressor with Henig? With Feinberg? With Roberts? You have the testimony of Cannow, you have the testimony of Schofield, you have testimony showing the instructions given to the deputies. No one denies it. Here is a series of acts leading up to October 30th, in which on each and every occasion McRae and his deputies, either regular or citizen deputies, were the aggressors. I said, who were the aggressors? Is there any question in your mind who was the aggressor up to Beverly Park? Any question in God's world who had done the dirty work up to that time? The State would have you believe that the I. W. W., with its membership coming from the four corners of the country, changed complexion practically over night, changed their whole ideas and their methods. I do not believe it and you do not believe it.

"The excuse the State gives for the actions of the deputies is that in the case of large numbers they could not give due process of law. Gentlemen, I refuse to believe that the Government is bankrupt in its capacity to protect itself thru legal and lawful measures of law enforcement. I have yet to sit in a court room and hear a plea on social and governmental bankruptcy such as is the plea of counsel for the State.

"The machinery of the government was there but it was not the kind of machinery that McRae wanted to use. It was not the kind Clough wanted to use. It was not the kind of machinery the executive committee, whoever they were, sitting behind the closed doors of the Commercial Club, wanted to use.

"And these members and leaders of the Commercial Club passed resolutions stigmatizing their own citizens, member of their own community, property owners in their own town, as well as the I. W. W., when they declared for an open shop. How do they stigmatize them? 'Professional agitators!' Yes. Lloyd Garrison was a professional agitator. Wendell Phillips was a professional agitator. The men who fought the battle that lay the ground work that made Abraham Lincoln possible, the men who are at work

to better American politics, those men have all been professional agitators.

"Now on the boat they were ninety-nine percent I. W. W.'s, just a few passengers had bought their passage before. On the dock they were all citizen deputies, persons interested therein, and persons satisfactory to the men who had been stationed there to see that nobody but the right ones got on the dock. That means that as far as the first shot was concerned the two classes of witnesses are in some degree interested parties. The State put on a total of twenty-two witnesses, one of them not a deputy, all of whom testified that the shot came, or they thought it came from the dock, and of that number thirty-seven were I. W. W.'s, and twenty-four were not members at all but were Everett people from all walks of life.

"Now counsel is going to discount the value of the testimony of these citizens. Well, Mr. Cooley, we used the only kind of witnesses that you, in all of your care exercised in advance on November 5th, left for us. In the exercise of the highest degree of judicial advance knowledge they saw to it that nobody got any closer to the end of the dock than the landing. We could not help that. You barred us from the dock; you barred us from access to the facts. We did all we could to get the facts, and if we couldn't get any closer it was not our fault. And the man who barred us from access to the facts is the man who is least qualified to come into court now and urge that our witnesses are disqualified in the face of the evidence that they disqualified them. But those witnesses could testify, and they did testify, to the very definite and specific facts—the first tipping of the boat, the rushing of the men, the volley firing, all of those matters.

"At the eleventh hour there came into this case a man by the name of Reese, a member, if you will, of the I. W. W. Back in the Chicago stockyards they have a large pen where they keep the cattle which are to be driven to slaughter. In that place they have had for years a steer that has performed the function

of going into the big pen where all the cattle are, and, after mingling with them, then walking out thru a gate. He is trained to do it, he is skilled at it, this steer—and after walking around with the poor peaceful cattle that don't know they are about to be killed, this steer then goes up an incline, the gate is opened and the other cattle follow, and when he gets to the top of the incline there is a door and he turns to the right thru this door to safety and his followers turn to the left to death. That's George Reese! Proud of him? George Reese, the man who reported day by day with his confederates! To whom? During one period to the Pinkerton agency in regard to the longshormen's union; during another period on behalf of the Pinkerton Agency to the Commercial Club in Everett. George Reese! A man who doesn't even come under the approximately dignified title of a detective; a man whom Ahern, of his own agency says, "Well, he wasn't a detective, we used him as an informer." Informer! A human being that has lost its human color.

"In connection with the testimony of Reese let me call your attention to the Industrial Relations Commission Report, a report that our friends of the Commercial Club had read and knew all about:

" 'Spies in the Union: If the secret agents of employers, working as members of labor unions, do not always instigate acts of violence, they frequently encourage them. If they did not they would not be performing the duties for which they are paid. If they find that labor unions never discuss acts of violence they have nothing to report to those employing them. If they do not report matters which the detective agencies employing them can use to frighten the corporation to cause their employment, they cannot continue long as spies. Either they must make reports that are false, in which case discovery would be inevitable, or they must create a basis on which to make a truthful report. The union spy is not in business to protect the community. He has little respect for the law, civil or moral. Men of character do not engage in such work, and it follows that the

men who do are, as a rule, devoid of principle and ready to go to almost any extreme to please those who employ them.'

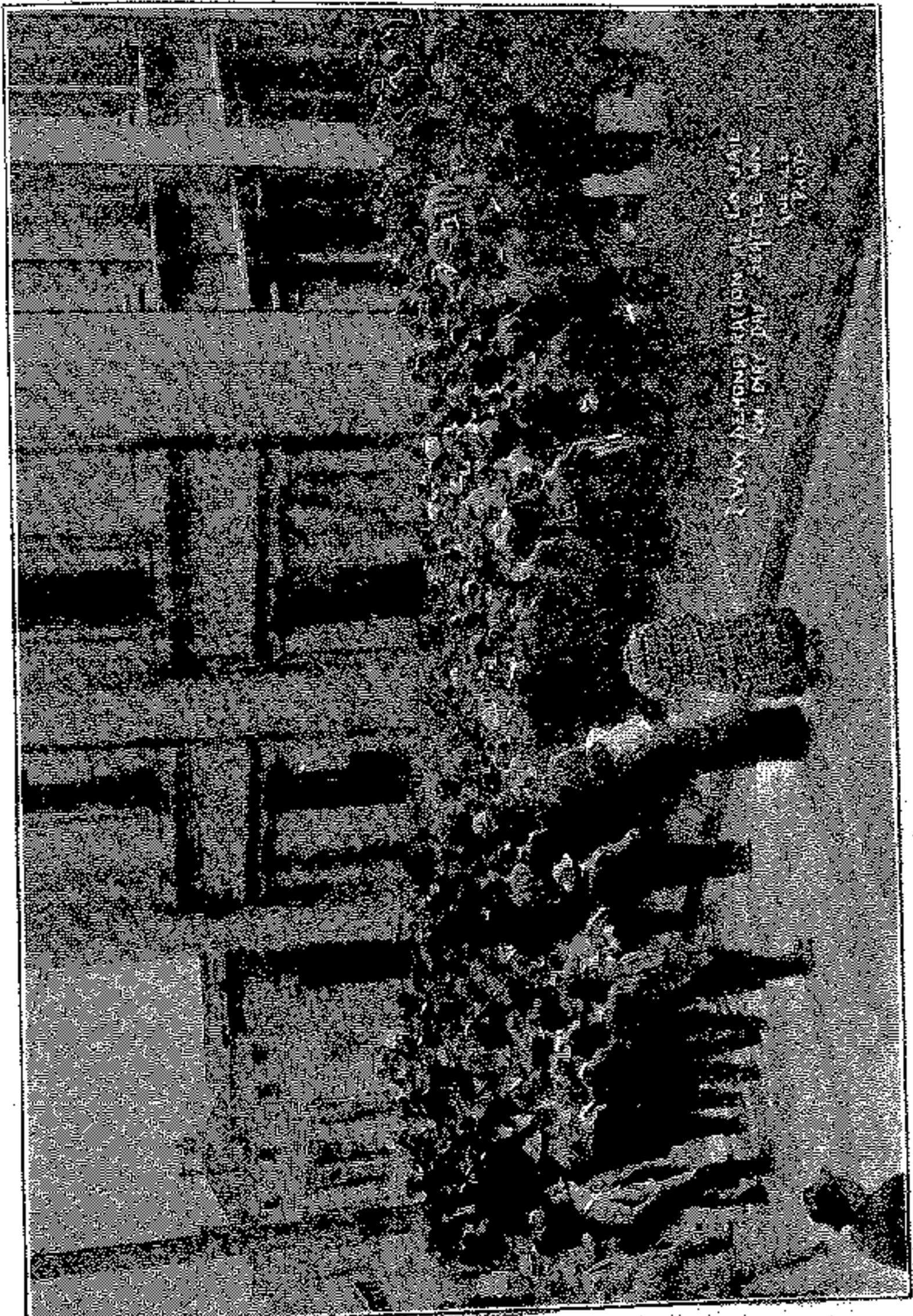
"That is the descriptive adjective, definition and analysis of the character of union informants made by the National Industrial Commission, appointed by President Wilson, and composed of nine men, all men of national standing, three representatives of labor, three representatives of capital and three representatives of the general public. That is their definition, description and classification of that character of testimony.

"Mr. Vanderveer closed yesterday by saying that this struggle, whatever your verdict is, will win. If yours is a verdict of 'not guilty,' Tom Tracy must take up again the job of finding a job, the endless tragedy of marching from job to job, without home, wife or kindred. His offense consists of being a migratory worker. I beg of you to render a verdict that has due regard and consideration for the tragedy of our twentieth century civilization that does not as yet measure out economic justice.

"Your verdict means much. The wires tonight will carry the word all over this land, into Australia, New Zealand and thruout the world. Your verdict means much to the workers, their mothers, their children, who are interested in this great struggle. We are not in this courtroom as the representatives of one person, two persons or three persons; our clients run into five or six hundred thousand. We are here as the mouthpiece of the workers of America, organized and unorganized, and they are all behind our voices.

"Tom Tracy stands here in your control. You are the ones to determine whether or not he shall walk out free, whether or not he shall be branded for all times with the most serious felony known to the law, namely, that of a murderer. Can you find it in the evidence to bring in a verdict of guilty in this case?

"In conclusion, ladies and gentlemen, we want no compromise here. When you retire to your jury room I beg of you not to compromise with any ver-



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Singing to the Prisoners.

dict other than not guilty. We don't want manslaughter in this case, we don't want second degree murder in this case; it is either first degree murder or an acquittal, one or the other. Allow none of those arguments that we, as lawyers, know are made in the juryroom to influence your honest verdict in this case. We ask at your hands, and we believe with all the sincerity of our souls, that the evidence warrants it, we ask a verdict of not guilty for the defendant, Thomas H. Tracy!"

If the speech of prosecutor Black was a whine, that of prosecutor Cooley was a yelp and a snarl. Apologies, stale jokes, and sneers at the propertyless workers followed one another in close succession. The gist of his harangue was as follows:

"In this case I am going to try simply in the closing argument to select a few of the monuments that it seems to me stand out in this case and that point a way to a proper verdict.

"Now, in the first place, a whole lot has been said here as to the nature of the controversy that existed for a number of months before November the 5th, 1916, between two classes of individuals there at Everett. Upon the one side were the people who were living in the city of Everett, who had made their homes there, who had come there for the purpose of carrying out their future destiny in that city. It was their home. Their interests were there. Their families were there. And upon the other side were a class of people who did not claim Everett as their home, who did not come there for the purpose of amalgamating with the citizenship of the city of Everett. They were not coming there because they had work there, nor because they were seeking work there; they were not citizens of Everett, nor were they seeking to become citizens of Everett, and there arose a controversy between the citizens of Everett on the one hand and these people from the four corners of the earth upon the other. The first thing we want to inquire into to find out if we can from the testimony in this case exactly what was the nature of that trouble that existed between them.

Why was it that upon the one hand there was a band of people congregated down here in the city of Seattle from all over the land and making one excursion after another, attempting to break into the city of Everett? Why was it that there were citizens of Everett up there seeking to do only one thing, asking only one thing, that these people keep away from Everett?

“Was it a fight to win the right of free speech on the one hand? Was it a fight on the other hand of a group of individuals who were simply seeking to force the open shop? Or was it a fight of a more serious nature on either hand?

“I grant you that the origin of the trouble arose because a man was seeking to speak upon the streets of Everett and he was stopped. But long before November 5th that original incident was lost sight of and forgotten. The controversy had grown to a magnitude that overshadowed the original incident. It was necessary in order that you might understand the situation with which the people of Everett were confronted that you should be apprised of the nature of the organization to which those people belong, that you should be apprised of the nature of the place in the world that they had attained, and that you should be apprised of the nature of their propaganda that they were seeking to inject into the city of Everett and that locality.

“I want to say right here and now that I have the highest regard for organized labor. Labor has the right to organize. There is not any question about it; there is not any dispute about it. Labor has organized and it has made a manful fight, and all down the pages of history you will find that labor, thru its organization and thru its lawful methods pursued under its organization, has gradually bettered its condition.

“It is not a question, and never has been in this case, as to the right of the labor men to organize; the right of the laboring man to use all of the lawful methods for the purpose of bettering his condition. The question in this case is as to whether any

organization, whether it be a labor organization or any other, has the right to use unlawful methods; whether it has the right, because it may have the power, to use unlawful methods.

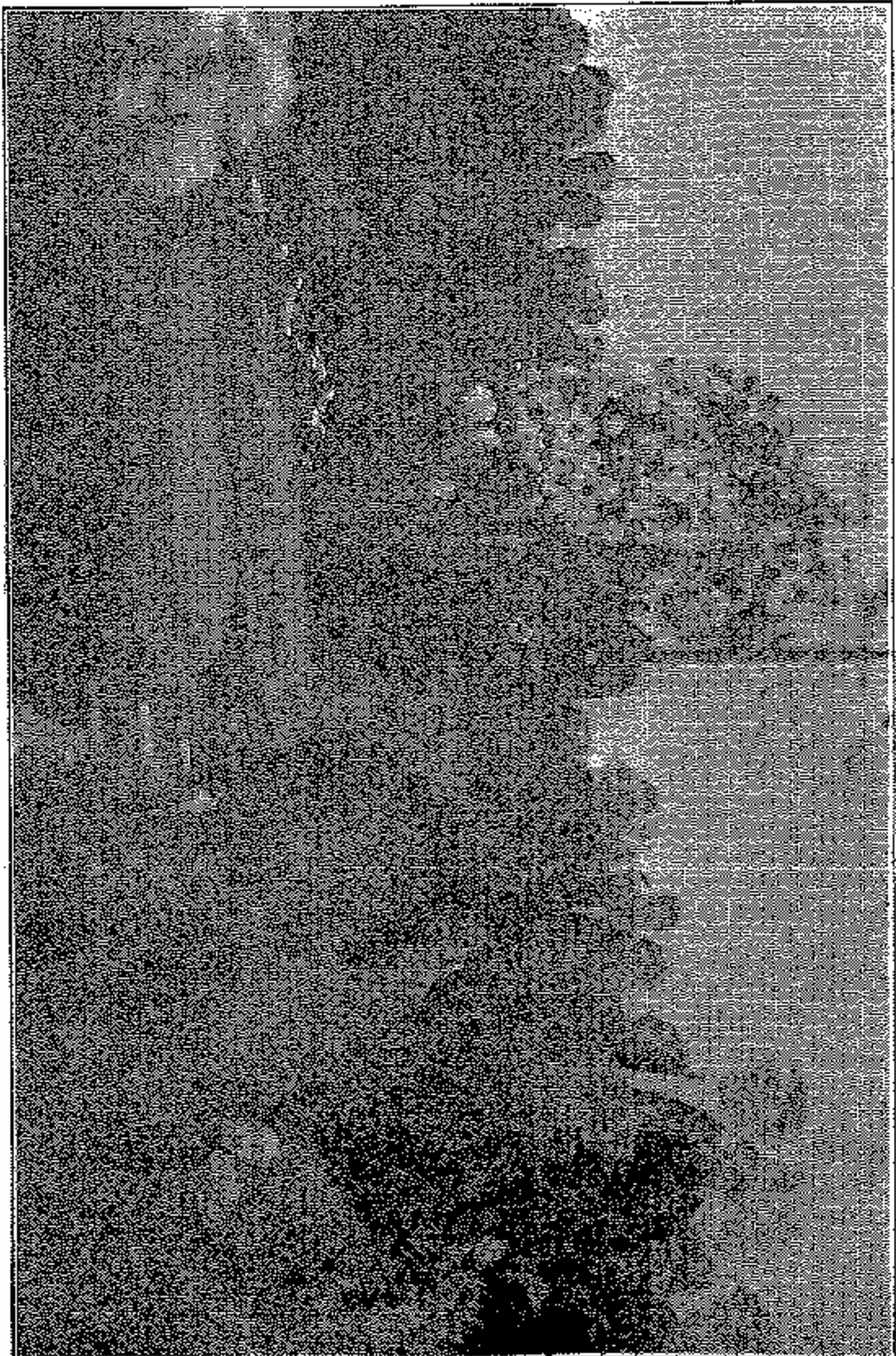
“Now there were coming into the city of Everett people representing this organization known as the Industrial Workers of the World. What was the propaganda that they were seeking to introduce there? They put upon the stand their chief exponent in this part of the country, to tell you what their purpose was in coming to the city of Everett, and what the doctrines were that they were teaching to the people that congregated there in the city of Everett. Mr. Thompson was upon the stand for about two days, and he delivered to this jury a lecture, which he says was a resume of three lectures that he gave up there in the city of Everett. He was asked whether or not he talked on sabotage and he told you what he had to say about it. He said sabotage was ‘a conscious withdrawal of efficiency, a folding of the arms.’ But Thompson says it is never the destruction of property, and yet the organization that sends him out to talk on sabotage puts out right along with him the literature that has been adopted by the I. W. W. as a part of their propaganda, defining what sabotage really is and it gives the lie to Mr. Thompson. It may mean working slow; it may mean poor work; it may mean folding of arms; it may mean conscious withdrawal of efficiency. So far sabotage is legal and anyone has a right to use it. But it may mean the spoiling of a finished product, it may mean the destruction of parts of machinery, it is the destruction of property. ‘Sabotage is a direct application of the idea that property has no rights that its creators are bound to respect.’ It does not say that certain kinds of property has no rights, but that there is no property that has any rights that are bound to be respected. But Thompson says that is not sabotage.

“Sabotage is what? Where is that old song book? Let us see whether it means simply the folding of the arms. (Cooley dived into a mass of pam-

phlets, but being unable to locate the song book he came up with Elizabeth Gurley Flynn's pamphlet on Sabotage, reading from it as follows:) 'Sabotage itself is not clearly defined. Sabotage is as broad and changing as industry, as flexible as the imagination and passions of humanity.' Why, if it consisted simply of a folding of the arms, if it consisted simply of the withdrawal of efficiency, there would not be much flexibility to it, would there, and the passions of humanity would have nothing to do with it? That language means that sabotage means anything that the imagination can devise and the passions of men adopt, if they had the power to use it and get away with it. Oh, it is not wrong! No matter what form it takes it is not wrong, because they say so in their official publication. 'The tactics used are determined solely by the power of the organization to make good in their use. The question of 'right' and 'wrong' does not concern us.' Put the two together. Legality and illegality, those terms have no meaning to a man of the Industrial Workers of the World. Why? Because there is no law that they are bound to respect except the law that is made by them in their own union hall. It is in the song book, 'Make your laws in the union hall, the rest can go to hell.' That is the class of people that we had to deal with, who were coming there to Everett.

"In Spokane there were twelve hundred convictions upon a valid ordinance, and yet, after they had convicted a hundred of them they didn't stop coming, and two hundred, and two hundred and fifty, and five hundred, and they continued coming there until the city jail of the city of Spokane was filled, until the county jail of Spokane county was filled, until an old deserted school house was filled, and then until an army post jail was filled. A species of sabotage! They weren't willing to accept the verdict of one jury, or ten juries, or of a hundred juries, that they were violating the law. They had made their laws in their union halls and they were going to speak at a certain place, upon a certain street of Spokane; and they were going to compel the citiz-

Charles Ashleigh speaking at the funeral, of Looney, Baran and Gerlot.



ens of Spokane to let them speak when they pleased, where they pleased, and say what they pleased; and they kept it up until after Spokane had the expense of a thousand trials and had upon its hands a thousand defendants it began to think it had better yield and let them speak when they pleased, where they pleased and say what they pleased. And Spokane was licked!

“Is it any wonder that the citizens of Everett said ‘If you have no regard for law we will meet you on your own ground; we are not going to be bankrupted; we are not going to be hammered into defeat as they were in Spokane; we are not going to have you sabotage us in that manner by your numbers; we are not going to have your people coming from the Dakotas, from Montana, from Oregon, and from all over the various parts of the state of Washington, and camping down on us until we surrender to you. We are going to keep you out of here.’ Now, that may not have been strictly legal, but it was human nature.

“There is not hint anywhere in the argument of either counsel for the defense in this case as to what was ever done in the city of Everett by the I. W. W. that would constitute new methods and new tactics. Do you remember the testimony over a period of time there before Labor Day that they allowed them to speak without interference and a meeting was held there and every time they went up with a chip on their shoulder and were not satisfied when no one interfered with them. When they were there speaking on the corner of Hewitt and Wetmore somebody was going around the city of Everett distributing a nasty stinking chemical in the theater building, into the store buildings, into the business houses, into the automobiles. And the paper in the next issue gloats over it and intimates that the reason the officers did not arrest Feinberg was because they were evidently too busy chasing a cat of malodorous tendencies. When Thompson was upon the stand and was being questioned about sabotage and about cats; he could tell you what a cat was, he got a bit halting in his speech when he was asked what

it meant when they said that the claws of the cat had been sharpened, when he was asked what a 'sabcat' meant, but when he was asked as to what a cat of 'malodorous tendencies' was he said he didn't know unless it was a skunk. But by that was meant that the skunk accomplishes sabotage. You never heard of a skunk that did sabotage by simply a withdrawal of efficiency, never!

"Now as to incendiary and phosphorous fires. Fire Chief Terrell tells you that up to the date of September 28th, the date of the first known phosphorous fire in Everett, that up to that time, in all of his experience upon the fire force of the city of Everett, it never had come to his knowledge or observation in any way that a phosphorous fire had ever occurred in the city. It occurred there, known to be a phosphorous fire, and within a period of two months at least two other fires occurred, mysterious, the origin unknown because the fire had progressed to such an extent that no one could tell how it did start."

Mr. Vanderveer: Didn't your detective go to work September 21st?

Mr. Cooley: Yes sir, he did.

"And they would have you believe that the detective was up there setting those fires. That, I know, is an insinuation not supported by any evidence in this case, and the detective wasn't working up there, he was operating down here in the city of Seattle. He was sending his reports to Blain before the Wanderer started out, before the men started out on October 30th, and that goes a good way to explain how it happened how these people were met on these different excursions and were not permitted to come within the city of Everett. They were trying to get into the city of Everett, to use their own judgment, to act on their own initiative, according to instructions that had gone out. And the officers stopped the thing before it started.

"What were they coming to Everett for, these forty-one men who were met? Were they coming to hold a street meeting? Forty-one men, enthused

with the enthusiasm of the belief in their grand and glorious doctrine that they are teaching, forty-one men starting out as crusaders to carry the gospel of their organization to the benighted of Everett, forty-one going up there to be martyrs, to be beaten for the cause, and nothing else!

"I have told of the tactics and methods advocated, used and encouraged, by this peculiar, particular organization, so you can judge the character, purpose and intentions of the individuals that were seeking from time to time to force themselves into the city of Everett, in order that you may judge the two hundred and sixty that left on the Verona on November the 5th.

"But there is another matter you should likewise take into consideration in determining the character of the individuals of that crowd. Regardless of all environment, regardless of the effect of all legislation, regardless of all social conditions, men are born—not all with the same propensities, not all with the same natural ambitions, not all with the same qualifications, and out of the entire mass of humanity there is a certain percentage that were born without any ambition, born without any incentive; they go thru life without any incentive, constantly tired. Now I am not here to say that all the I. W. W.'s are that kind of people. I am not here to say that because a man is a member of the I. W. W. he is a tramp or a hobo. But there is a class that has been recognized in this country ever since the country existed, a class that don't want to work, that would not work if you gave them an opportunity. These are a percentage, I don't know how large, and I say that every one of these people are members of the I. W. W. organization or should be. Why? Well, in the first place, you don't have to show any qualification for any line of work. You don't have to make proof of anything whatever to become a member of that organization. And is there any inducement for a man who has been drifting here and there, walking the ties, counting the mile posts as he walks from one place to another, to join

that organization? It gives him a pass upon every freight train that travels the length and breadth of the land. One of the best inducements in the world.

"There is another class of people in this country that are born with criminal instincts implanted in their very natures; they are scattered all over this land and we have them with us and we will always have them with us. There are men who are driven to crime thru misfortune; there are men who commit crime under the influence of environment; but there is a percentage of men who are habitual, natural and instinctive criminals. Now I don't say that because a man is a member of the I. W. W. he is necessarily and instinctively a criminal, but I do say that every habitual, instinctive criminal, who knows that he intends to violate the law upon every opportunity to satisfy his own criminal desire, has every inducement to become a member of that organization.

"There are a few uncontested and undisputed facts in connection with the occurrence at the dock. Jefferson Beard was killed on that dock. No doubt about that! The defendant was on the boat. No question about that! There is no question that the conversation between McRae and the people on the boat occurred substantially in the language that you have heard repeated here by witnesses for the State and for the defense, all agreeing that the conversation preceded the shooting. There is no dispute that McRae turned partially away from the boat and that one of the first three shots fired hit McRae while he was turning. The burden of the whole argument of the defense was that when somebody on the boat saw McRae put his hand on his gun he was justified in shooting. It is not material whether Tracy shot Jefferson Beard or somebody else. It is not material whether Tracy fired a gun or not, provided the evidence in this case satisfies you beyond a reasonable doubt that Tracy was a party to the conspiracy to go up to the city of Everett to violate an ordinance of the city of Everett.

"But have you any doubt that Tracy was seen

on the boat? Hogan saw the window and he saw a man with his face at the window shooting in his direction. Hogan wasn't thinking of the exact angle at which the boat was standing to the dock, but he knows he was standing at such an angle to the boat that he could see a man in a certain place on the boat. And he testified he did see him.

"It wasn't Thomas Tracy that was looking out of that window, it was Martin. It wasn't Thomas Tracy dressed for the occasion, it wasn't Thomas Tracy shaven for a picnic, it wasn't Thomas Tracy wearing a Sunday countenance, it wasn't Thomas Tracy gazing placidly out of a mild blue eye! It was Thomas Tracy, alias Martin, with his face drawn down into a scowl of hatred, with his eyebrows lowering over his eyes, gazing at John Hogan, not only gazing at him thru a window, but gazing at him over a gun! And if there is anything that would impress itself into the memory and recollection of a man it is the remembrance of a face filled with venomous hatred, the eyes shooting daggers at you while he is gazing at you over the muzzle of a gun—and you are not going to forget that!

"Counsel for the defense says this is an important trial, that important questions are involved, that the verdict in this case will have a great deal to do with the ultimate future of the working man and organized labor. I don't think that matters of that kind should enter the minds of the jurors in arriving at a verdict, but if it does, I want to supplement what counsel for the defense has said. I want to say that in my mind a verdict in this case will have much to do with the future success and the future advancement of honest labor in every line and in all organizations. It will have much to do with clarifying the situation insofar as this one organization is concerned. Every organization don't preach the doctrines that are preached by this organization, and if this jury by its verdict does not support that kind of method and that kind of procedure it will aid in purifying an organization that otherwise might do a world of good, but as it stands today, uttering the

propaganda that it does, pursuing the tactics that it does it, is a menace not only to society, but is a menace to the welfare of the other labor organizations that believe in pursuing lawful methods, in a lawful manner. This is an important case in that regard.

“I believe that it is a fortune thing that a jury of King County and a jury from the city of Seattle should have been called to try this case. The seed was not planted in Snohomish County! The plot was not hatched in Snohomish County! It was hatched down here in Seattle. The expedition started out from Seattle, not this one alone but many of them. Seattle was the base, the enemy's base, and it was from here that they started. Just down here almost in sight of this court house is the place where we claim the plot was formed, and it has come back here, and we come into court and lay it at your feet. They returned here, they have brought the case here for trial, and we are satisfied. Now we lay it before you and say,—‘As citizens of Seattle do justice to the city of Everett and Snohomish County.’”

With these words ringing in their ears the twelve jurors retired for their deliberations, the court having entered an order discharging from further service the two alternate jurors, Efaw and Williams.

Retiring shortly before noon, the jury consulted for nearly twenty-two hours, taking ballot after ballot only to find that there were some who steadfastly refused to agree to any compromise verdict. Then, shortly after nine o'clock on May 5th, two full calendar months after the start of the trial and just six months to the day from the time of the tragedy of the Verona, Foreman James R. Williams announced the result of their deliberations, and the word sped out to the many hundred thousands who had spent an anxious and sleepless night;

“We, the jury, find the defendant, Thomas H. Tracy, NOT GUILTY!”