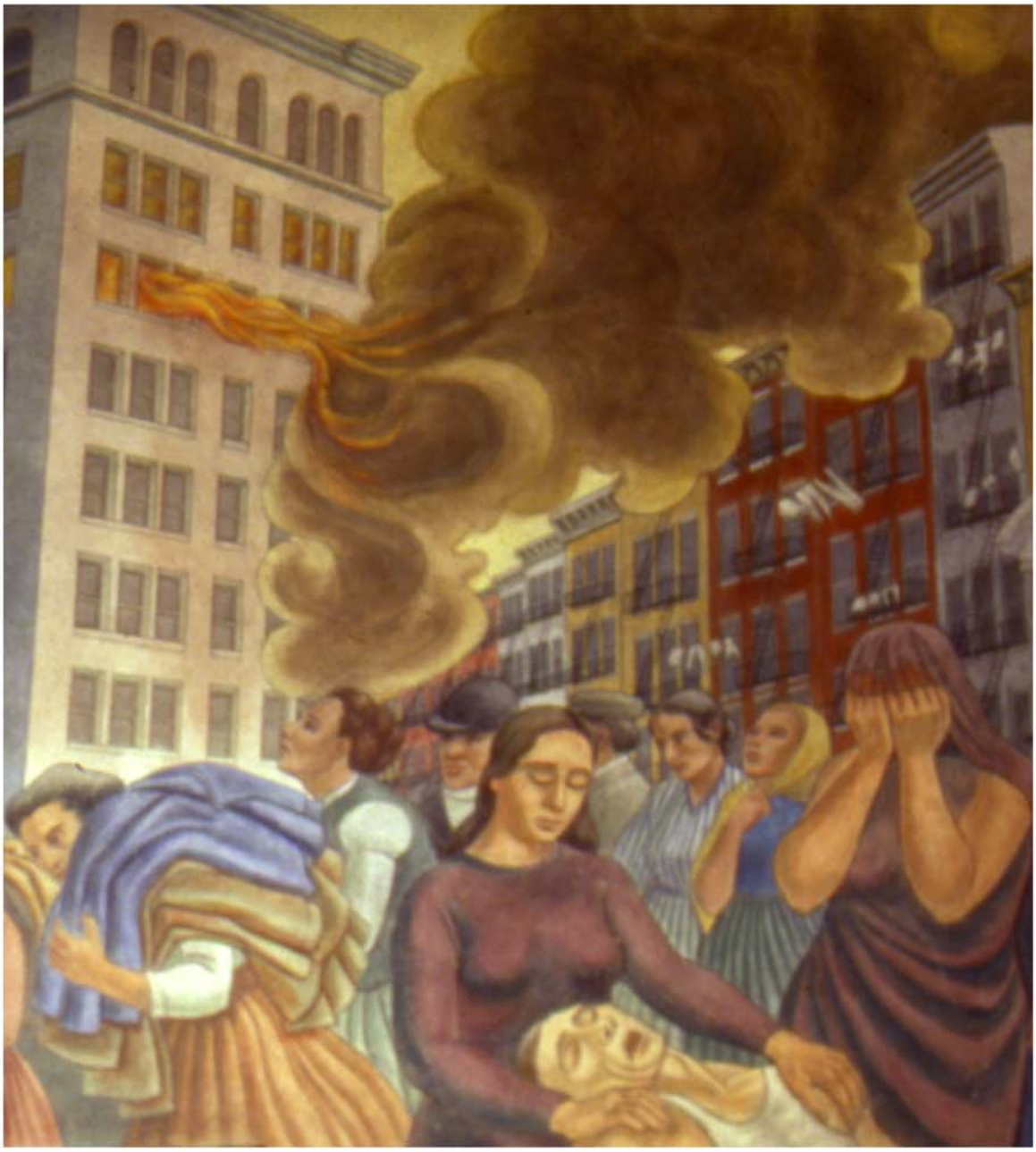
The Triangle Shirtwaist Factory Fire: The Legal Legacy



The Historical Society of the Courts Of the State of New York

The Triangle Shirtwaist Factory Fire: The Legal Legacy[1]

Just east of Washington Square Park, currently the center of New York University's Manhattan campus, stands the Brown Science Building. Rooms filled with chemistry and biology students were once bustling with hundreds of factory workers and became the scene of one of the worst industrial disasters in American history. In 1911, it was known as the Asch Building and the Triangle Shirtwaist Company was located on the top three floors. In the late afternoon of Saturday, March 25, fire broke out on the eighth floor. Six hundred workers were in the factory at the time. Many became trapped inside the burning building and succumbed to fire and smoke, while others fell to their deaths through the windows and elevator shafts. One hundred and forty-six people—almost all of them young women in their teens and early twenties—lost their lives.[2] In response to the International Ladies Garment Workers Union (ILGWU) call for an official day of mourning, huge crowds gathered to express grief and outrage at the workplace conditions that caused the tragedy. This led first to a statewide and then later a nationwide movement to ensure workplace safety, the benefits of which endure to this day.

Horses draped in mourning pull a carriage bearing coffins in the rain-soaked funeral procession for unidentified victims of hte Triangle Waist Company fire. Barbara Wertheimer Collection, Kheel Center, Cornell University

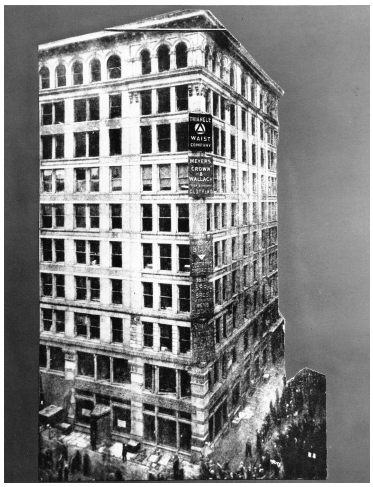
---

[1] Text by Frances Murray. Graphics by Lisa Bohannon.

Cover Illustration: *History of the Needlecraft Industry* (1938), by Ernest Fiene, The mural was commissioned by the International Ladies Garment Workers Union (ILGW) and was painted on a wall of the auditorium in the New York High School of Fashion and Industry. http://fashionhighschool.net/, a collection of the New York City Department of Education. Photo credit: Public Art for Public Schools, NYC School Construction Authority.

[2] The tragedy would have been worse if not for the efforts of a law professor and his students who were in class in an adjoining NYU building at the time the fire broke out. Using ladders, they bridged the space between the buildings and rescued workers from the roof of the Asch building. (Leon Stein & William Greider, *The Triangle Fire*, 49-49 [2001]).

In the early part of the 20th century, huge numbers of poor immigrants poured into the United States from Europe. Upon arrival, these families had few options—they crowded into the slums and eked out an existence by working long hours in unsanitary and unsafe factories, mines and mills. Child labor was common, and many families needed the income earned by their children to survive. The 1900 census counted 1.75 million children aged 10 to 15 who were employed totaling 6 percent of the labor force.[3] They worked very long hours–twelve hour days, seven days a week, in terrible working conditions. Workers in garment factories throughout the nation were aware of the dangers they faced, and many had joined the International Ladies Garment Workers Union (ILGWU) to combat these conditions. In 1909, just over a year before the fire, ILGWU workers at the Triangle Shirtwaist Company had gone on strike over workplace safety issues, wages and hours.[4] In response, the factory owners fired 150 union sympathizers and replaced them with newly-arrived immigrants who spoke a variety of languages and were unable to communicate clearly with their fellow workers.[5]



The Asch Building. International Ladies Garment Workers Union Archives, Kheel Center, Cornell University

Fighting the fire in the Triangle Shirtwaist Factory. International Ladies Garment Workers Union Archives, Kheel Center, Cornell University

At the time that the fire broke out, Frances Perkins, a young labor rights activist was having tea with a friend in a town home near the scene of the fire. When they heard the sirens both women rushed out. They arrived

---

[3] U.S. Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970, at 134.

[4] Arthur F. McEvoy. *The Triangle Shirtwaist Factory Fire of 1911: Social Change, Industrial Accidents, and the Evolution of Common-Sense Causality*. 20 Law & Social Inquiry 621, 631.

[5] http://www.nyc.gov/html/lpc/downloads/pdf/reports/brown.pdf

at Washington Place in time to see many young women falling to their deaths from the eighth floor windows.

Frances Perkins recalled:

> *We could see this building from Washington Square and the people had just begun to jump when we got there. They had been holding until that time, standing in the windowsills, being crowded by others behind them, the fire pressing closer and closer, the smoke closer and closer. Finally the men were trying to get out this thing that the firemen carry with them, a net to catch people if they do jump, there were trying to get that out and they couldn't wait any longer. They began to jump. The window was too crowded and they would jump and they hit the sidewalk. The net broke, they [fell] a terrible distance, the weight of the bodies was so great, at the speed at which they were traveling that they broke through the net. Every one of them was killed, everybody who jumped was killed. It was a horrifying spectacle*.[6]

The Asch Building, 9th Floor in the aftermath of the fire.
International Ladies Garment Workers Union Archives, Kheel Center, Cornell University

[6] Lecture delivered by Frances Perkins at Cornell University, School of Industrial and Labor Relations, 30 September, 1964, (http://www.ilr.cornell.edu/trianglefire/texts/lectures/perkins.html).

The Aftermath of the Fire

Two days later, Fire Marshall William Beers issued the preliminary conclusions of his investigation. He found cans containing waste oil and large piles of fabric clippings in the vicinity of the cutting table where the fire started. Although there was a "no smoking" policy in the factory, he also found several cigarettes cases. Triangle Shirtwaist Company employees informed him that smoking on the premises was commonplace. The Fire Marshal suggested that the fire might have been started by a lighted match or cigarette thrown amid the oil cans and debris under the cutting table.[7] Fire Chief Edward Croker reported that the firefighters were unable to open the doors to the factory and that they had to chop through them to get to the fire.[8] The public outcry was immediate and overwhelming. Lax enforcement of New York City's building code, ineffective fire-safety regulation, and corruption in the fire insurance business were all blamed for the tragedy. But most of all, public outrage focused on owners of the Triangle Shirtwaist Company and the dangerous working conditions in their factory.

The Grand Jury

On March 26, 1911, the *New York Times* reported that the New York District Attorney, Charles S. Whitman (later Governor of New York), intended to commence a grand jury proceeding into the working conditions in the Triangle Shirtwaist Factory immediately preceding the disastrous fire. Whitman had personally witnessed the Triangle Shirtwaist Factory fire tragedy, arriving on the scene around 5:00 PM, just as the firefighters were getting the blaze under control.[9] He was horrified by the loss of life, and

Charles S. Whitman
Library of Congress Collection

[7] Douglas Linder. *The Triangle Shirtwaist Factory Fire Trial* at 2 (2007). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1024289.

[8] Id.

[9] David Von Drehle, *Triangle: The Fire That Changed America* 178-18 (2004).

immediately began gathering information to identify who was responsible for the tragedy. He thought that the city building department might be responsible if it had failed to insist on adequate safety measures. Alternatively, the factory owners might be culpable if their actions transgressed the law and prevented the workers from escape from the burning building.[10]

Juanita Hadwin Lantern Slide Collection, Kheel Center, Cornell University

A grand jury was empaneled and District Attorney Whitman appeared before it to present evidence and interrogate witnesses.[11] Survivor after survivor told of doors that could not be opened and of people trapped inside the building, unable to escape the smoke and fire. Seeking evidence that would confirm the testimony, the District Attorney sent his chief detective to oversee the

---

[10] Id.

[11] The grand jury has the authority (under both the United States and New York State Constitutions) to decide whether someone should be formally accused of a crime. Composed of a cross-section of the community, the grand jury is a key part of our criminal justice system. It is designed both to uphold the law by indicting those individuals believed to have committed crimes and to protect the rights of others against unfounded accusations. The prosecutor presents evidence to the grand jury and also instructs the jurors on the law. The members of the grand jury make a decision based on evidence presented to it and may decide as follows: (1) The grand jury may vote to formally accuse someone of a crime; this accusation is called an "indictment," also known as a "bill" which is short for "bill of indictment;"(2) the grand jury may vote to dismiss the charges, also known as a "no-bill,"or (3) the grand jury may direct the prosecutor to file an information accusing the person of an offense less serious than a felony.

A grand jury panel is composed of twenty-three jurors, at least sixteen of whom must be present when the grand jury hears evidence or deliberates. An accused person is not required to testify before the grand jury and may not even be aware that he or she is being investigated by one. Sometimes the accused person chooses to testify before the grand jury. At least twelve grand jurors who have heard the evidence and the legal instructions must be present for a vote. Everything that happens in the grand jury room is secret—this allows the grand jury to obtain the full cooperation of the witnesses who appear before it, permits grand jurors to make decisions free from outside interference, and protects an innocent person who may be investigated but never indicted. Grand jurors may ask questions about the law and may question witnesses about the evidence. As they listen to all the evidence presented, they decide which evidence and which witnesses are credible. The grand jury's conclusion is a group decision; it is not the decision of any single person. An accused person who is indicted (formally charged with a crime) becomes a defendant in a criminal case.
(Chief Judge Lippman. Grand Juror's Handbook. http://www.nyjuror.gov/users/wwwucs/pdfs/hb_Grand.pdf)

examination of the debris at the Washington Street exit on the ninth floor. There, a blackened fragment of a door with the bolt protruding was found.[12] The burn marks supported the accusation that the door had been locked.[13] The grand jury investigating the Triangle Shirtwaist Factory fire handed down seven indictments against the factory owners. Isaac Harris and Max Blanck were arrested on Wednesday, April 12, 1911 and charged with seven counts of manslaughter in the first and second degrees. The charges alleged that by their criminal and negligent conduct, control and supervision of their factory, Harris and Blanck caused the death of their employees. The attorney for Harris and Blanck, Max D. Steuer, one of the most famous (and perhaps most notorious) litigators in New York history, entered pleas of not guilty on their behalf, and they were then released on $25,000 bail.

Challenging the Indictment

Isaac Harris and Max Blanck
International Ladies Garment Workers Union Archives, Kheel Center, Cornell University

Defense attorney Steuer immediately challenged five of the seven indictments in the Court of General Sessions. Although procedurally different, the challenge was the equivalent of the modern day "motion to dismiss." On November 11, 1911, Court of General Sessions Judge Thomas C. O'O'Sullivan issued his decision.[14] The first count charged the defendants with common law manslaughter in the first degree. It alleged that the defendants willfully and feloniously choked, suffocated and strangled the deceased by means of fire and the smoke causing the death of the deceased. Judge O'Sullivan did not allow a challenge on this count.

[12] Von Drehle, *supra* note 9, at 220.

[13] Id. at 188

[14] People v Harris, 74 Misc. 353 (Court of General Sessions, New York County, 1911)

The second count charged the defendants with manslaughter in the first degree. It alleged that the defendants while engaged in the commission of a misdemeanor willfully and feloniously killed the decedents. Section 80 of the Labor Law provides that "all doors leading in and to any such factory shall be so constructed as to open outwardly where practicable, and shall not be locked, bolted or fastened during working hours." Under Penal Law section 1275, any person who violates section 80 of the Labor Law is guilty of a misdemeanor. Under section 1050 of the Penal Law, a person who kills another in the course of committing a misdemeanor is guilty of manslaughter in the first degree. The factory owners claimed that they were not the owners of the building and therefore not subject to these laws. Judge O'Sullivan stated that:

Judge Thomas C. O'Sullivan,
Court of General Sessions
Empire State Notables 1914
http://www.archive.org/

> *Every consideration of the law on the subject convinces me that the owners of a factory are liable for a violation of the provisions of section 80 of the Labor Law.*

Defendants also argued that these sections of the Labor Law deprived them of their property without due process of law. In response, Judge O'Sullivan stated that:

> *A well-recognized function of the police power, however, extends to the protection of the lives, health and quiet of all persons. The courts have frequently said that the mere fact that the legislation is harsh and that hard cases might arise under the law affords no ground for declaring it invalid. Here, the end in view is the protection of factory employees and it is not a harsh or unreasonable provision of law which requires that owners of a factory shall keep the doors thereto unlocked during working hours, nor is the enforcement of such law any invasion of constitutional rights.*

Again, the Judge disallowed the challenge to this count.

The third count charged the defendants with manslaughter in the first degree. It alleged that the failure of defendants to keep their factory in a safe condition for their employees constitutes a public nuisance which is a misdemeanor by the provisions of the Penal Law. Specifically, the count alleges that the defendants allowed great quantities of flammable remnants and cloth clippings, dirt, lint and rubbish to

remain in the factory and that these materials also obstructed the passageways to the doors of the factory, and that these actions constituted a public nuisance that resulted in death. Judge O'Sullivan stated that:

> *The generally accepted idea of a public nuisance is one which has come down to us through the common law. While the commonly accepted theory of a public nuisance has been that it affected the community at large, it was nevertheless a nuisance if it affected any considerable portion of a community . . . . But the common law in its progress has been applied to new conditions as they present themselves. It is not an inflexible instrument which will not bend to correct a wrong because precedent is lacking.*

Judge O'Sullivan then went on to describe a factory as a public place. This was a distinct departure from prior thinking that had considered factories as private spaces. It brought the condition of the factory within the ambit of section 1530 of the Penal Law and as Judge O'O'Sullivan wrote:

> *If in that way the defendants rendered a considerable number of persons insecure in life, they maintained a public nuisance according to the terms of section 1530, which provides that a public nuisance consists in unlawfully doing an act which in any way renders a considerable number of persons insecure in life. The Penal Law provides that one who maintains a public nuisance is guilty of a misdemeanor. The allegations of this count charge that the defendants, while engaged in the commission of a misdemeanor, feloniously caused the death of the decedent.*

Accordingly, Judge O'Sullivan did not allow the defendants challenge to this count.

Examining the Bodies at the Scene of the Fire
International Ladies Garment Workers Union
Archives,

The fourth count of the indictment charged the defendants with manslaughter in the second degree. Judge O'Sullivan held that this count merely stated general allegations of negligence and legal conclusions and he allowed the defendantss challenge. The fifth and sixth counts charged the defendants with manslaughter in the second degree and alleged that by reason of the defendants' gross and culpable negligence, the deceased was prevented from leaving the factory in safety when the fire broke out. The last count alleged that through defendants' culpable negligence, the fires spread with great speed and violence throughout the factory, killing

the deceased. The Judge held that whether the decedents were burned to death through the culpable negligence of the defendants was a question of fact for the jury and he disallowed the defendants' challenges to these counts.

The Trial

Now that the indictment had withstood the defendants' challenges, the case went to trial on the first indictment, relating to the death of Margaret Schwartz, a young woman who died while trying to exit through the Washington Place door. Judge Thomas C. T. Crain presided, and a jury[15] of twelve men was selected.

---

[15] The Constitutions of the United States and the State of New York guarantee defendants in criminal trials and litigants in civil trials the right to a trial by jury. The New York State Judiciary Law states that all litigants have the right to juries selected from a fair cross section of the community and that all eligible citizens shall have both the opportunity and the obligation to serve. A criminal trial is a process for establishing whether the prosecutor has proved beyond a reasonable doubt that an individual is legally guilty of a crime. Juries are selected through a questioning process known as "voir dire." The lawyers, and sometimes the judge, ask questions to decide whether or not each juror should serve on a particular case. The questions are intended to learn whether an individual has any bias or personal knowledge that could hinder his or her ability to judge a case impartially. In a criminal trial, the voir dire questioning is always recorded by the court reporter. For a criminal felony trial, there are 12 jurors plus up to six alternates. Alternate jurors are necessary in case a juror must be excused due to an emergency. After the voir dire is completed, the jurors selected to try the case will be sworn in. Each juror pledges to act fairly and impartially and follow the law that is explained by the judge. The trial judge then explains the jurors' responsibilities and some of the legal concepts that apply to the case. The judge's explanations are called preliminary instructions and include the requirements that jurors not read or listen to news accounts of the trial, not visit the scene of an alleged offense, not conduct any research about issues in the case including use of the Internet, and not discuss the case with anyone (including other members of the jury) until all the evidence has been presented and the jury retires to deliberate.

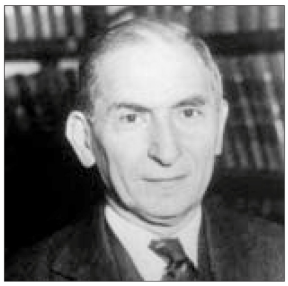
After the judge's preliminary instructions, the lawyers make opening statements to the jury. The opening statement presents the issues in the case from one side's point of view. In a criminal trial, the prosecutor's opening statement outlines the charges and evidence that will be offered. Because the burden of proof in a criminal trial is on the prosecution and the defendant is presumed to be innocent, the defense is not required to make an opening statement, but may choose to do so. The judge may allow jurors to submit written questions for witnesses. The judge decides whether or not to ask each question submitted by a juror. Each side has an opportunity to present witnesses, to cross-examine the witnesses presented by the other side, and to present other evidence. Additionally in a criminal trial, the defense is not required to put on witnesses or to present any evidence at all. Usually, each lawyer will make a closing argument—a summation of that side's point of view about the evidence and the decisions the lawyer would like the jury to make.

Following the closing statements, the judge explains the laws that apply to the case and the issues the jury is to consider. These remarks by the judge are called the jury instructions and after receiving the instructions, the jurors go to a jury room to deliberate. The jury reviews the evidence which was presented. The jurors discuss their views about this information. If questions arise during


INVESTIGATORS ON ROOF OF ASCH BUILDING—From left to right Coroner Holzhauser, J. R. Rubins and C. F. Bostwick.

International Ladies Garment Workers Union Archives, Kheel Center, Cornell University

Under the law at that time, all jurors were male. The prosecutor was Charles F. Bostwick, a former Assemblyman and Columbia Law School professor, a formal man of old New England ancestry. He sought to prove that Harris and Blanck were guilty of homicide, primarily because a first conviction for breach of the Labor Code at that time would result only in a fine of $50. Conditions in the Triangle Shirtwaist Company did not differ materially from conditions in other factories and were in line with "industry standard." Thus, it was necessary to show some more egregious conduct on the part of Harris and Blanck. Accordingly, the prosecution set out to prove that Harris and Blanck caused the victims' deaths by locking the door to the factory while the workers were still on the premises.


Max D. Steuer

The defendants were represented by Max D. Steuer. A Jewish immigrant from Eastern Europe, he had worked in the garment industry when he first arrived in New York. By the time of the Triangle Shirtwaist factory fire, he was considered the most brilliant, controversial and feared defense attorney in New York.[16] His cross-examination in the Triangle Shirtwaist factory fire trial was considered one of the greatest of his career. The *New Yorker* magazine described him as neither unvirtuous nor unjust but as *the spirit of partisanship, ruthless, mechanical, passionately cold. And morality is quite outside the matter*. He is reputed to have had a photographic and phonographic memory. In the Triangle Shirtwaist factory fire case,

---

deliberations, or if there is a need for further instructions or to have testimony read, the foreperson may send a written request to the judge through the court officer. The judge will ask all parties to return to the courtroom to be present when a jury's question is addressed. In a criminal case, a finding that the defendant is guilty or not guilty must be by unanimous vote of the jury.
(New York State Unified Court System. Trial Juror's Handbook [2009]. http://www.nyjuror.gov/users/wwwucs/pdfs/hb_Petit.pdf)

[16]Von Drehle. *supra* note 9, at 222.

these traits came to the fore: sensing that the prosecution's principal witness's testimony was too polished for a young immigrant girl who spoke English as a second language, he set out to prove that the prosecutor had told the witness what to say.[17] The prosecution countered by asking the witness, Kate Alterman, why her testimony (which she was required by Steuer to repeat over and over again) was repetitious and she replied, "I tried to tell him the same thing because he asked me the same thing over and over."[18] Still, Steuer managed to play on the gender and class biases of the time and raised questions about Alterman's credibility. Through the testimony of several defense witnesses, Steuer also actively sought to prove that Harris and Blanck did not know that the doors were locked and had not ordered them locked. Furthermore, he claimed, the death and injuries resulted from the girls' panic rather than from unsafe conditions.[19]

The trial lasted over three weeks and 155 witnesses testified. The trial judge, Thomas C. T. Crain, a descendant of Mayflower settlers, was closely allied with Tammany Hall. Earlier in his career, he had been the Tenement House Commissioner. The purpose of that commission was to ensure the safety of New York's slums. A fire broke out in a tenement in which twenty people, many of them children, died. The coroner's jury censored the Commission for safety violations and Commissioner Crain was forced to resign. Now, he presided over a trial in which the fact pattern was strikingly similar. This would not be acceptable today.

In the early decades of the twentieth century, it was common for New York trial court judges to make extensive use of jury instructions and directed verdicts to preserve the traditional common law employer's

---

[17] Otto Obermaier, *The Golden Years*. 16 Litigation 47 (Fall 1989).

[18] Douglas Linder, The Triangle Shirtwaist Factory Fire Trial at 4. http://ssrn.com/abstract=1024289

[19] Richard A. Greenwald, *The Triangle Fire, the Protocols of Peace, and Industrial Democracy*, at 151 (2003).

defenses against the rising tide of worker's claims for compensation for workplace accidents.[20] Judge Crain instructed the jury as follows:

> *You must be satisfied from the evidence, among other things, before you can find these defendants guilty of the crime of manslaughter in its first degree not merely that the door was locked, if it was locked, but that it was locked during the period mentioned under circumstances bringing knowledge of that fact to these defendants*.

On Wednesday, December 27, 1911, the jury retired to deliberate. The judge's instructions effectively required that the jurors find that Harris and Blanck knew that the Washington Place door was locked at the specific time of the fire, on the date of the fire, and that had it been unlocked, the victim, Margaret Schwartz, would have lived. In the jury room, the foreman immediately suggested that they take a vote: eight voted for acquittal, two for conviction and two abstained. Less than two hours later, on the fourth ballot, the jurors in favor of conviction changed their vote resulting in a unanimous decision to acquit. Later, one of the jurors, Victor Steinman, stated:

> *I believed that the door was locked at the time of the fire but we couldn't find them guilty unless we believed that they knew the door was locked*.

The verdict caused outrage, as reflected in this excerpt from a *New York Tribune* story:

> *The monstrous conclusion of the law is that the slaughter was no one's fault, that it could not be helped, or perhaps even that, in the fine legal phrase which is big enough to cover a multitude of defects of justice, it was "an act of God!" This conclusion is revolting to the moral sense of the community*.

Judge Samuel Seabury
Court of Appeals Collection

Double Jeopardy

Bowing to public pressure, the prosecutors, with the support of District Attorney Whiteman, appeared before Justice Samuel Seabury (later a judge on the New York Court of Appeals, candidate for Governor and chair of the Seabury Commissions on corruption in government) in the Criminal branch of the Supreme

[20] Randolph E. Bergstrom, *Courting Danger: Injury and Law in New York City, 1870-1910 (1992)*.

Court on March 7, 1912, and moved for another trial. This time, the charge was the manslaughter of another victim of the fire, Jake Kline. A special jury was empaneled, and the second trial commenced. However, Judge Seabury, citing principle of double jeopardy, instructed the jury:

> *The court has neither the right nor the power to proceed with the present trial. These men are to be tried for the same offense again and under our constitution and laws, this cannot be done. I charge you, gentlemen of the jury, to find a verdict for the defendants.*

The jury found as Justice Seabury had directed without deliberating. Double jeopardy is an ancient legal concept found in Roman Law and, from the 13th century onward, in the English common law. It is enshrined in the United States Constitution (5th Amendment) and in the New York State Constitution (Article 1, section 6). It provides that no person shall be prosecuted or sentenced twice for the same offense. As applied to the Triangle Shirtwaist factory fire, it barred the prosecution from pursuing a second trial based on the deaths of different victims of that same fire.

The Civil Suits

Twenty-three civil suits were filed against Harris and Blanck by the victims' families claiming, in total, some $500,000.[21] Without a guilty verdict in the criminal case, the civil litigation became more difficult. Again, Harris and Blanck hired Max Steuer to defend them. Steuer raised a host of common law employers' defenses, such as claiming that the workers assumed all the risks and dangers of their employment and that whatever injuries they suffered were caused by the negligence and carelessness of their fellow workers.[22] As pointed out by Crystal Eastman (a young labor activist) in an article related to her 1907 study of workplace injury and death, the courts at that time had concluded that there were implied terms in an employment contract under which the worker

Juanita Hadwin Lantern Slide Collection, Kheel Center, Cornell University

[21] Greenwald, *supra* note 19, at 152.

[22] McEvoy, *supra* note 3, at 639.

assumed the ordinary dangers of the work, extraordinary dangers of which the worker was aware, and dangers resulting from the actions of fellow workers.[23] Thus, employee litigants had to prove "direct, individual, mechanical causal connection between the employer and the injured worker."[24] In the case of Margaret Schwartz, her heirs would have had to prove that it was the locked door and not the panic of her co-workers that caused her death.[25] The only case that went to trial was brought by Anna Gulla, a survivor who claimed compensation for "nervous disease" she suffered as a result of the fire. The trial lasted two days; the jury did not agree on a verdict and the case was dismissed. The families, most of them poverty-stricken, were overwhelmed by the necessities of earning a living and could not afford the cost of litigation. Shortly after the Gulla verdict, all settled with the Asch Building owners for $75 for each life lost. But Harris and Blanck had insured the factory against loss, and the amount paid by the insurance company to Blanck and Harris amounted to about $400 per victim.[26] None of that money was paid to the survivors or the heirs of those who had perished in the fire. In 1913, Blanck was once again arrested for locking the door in his factory during working hours. He was fined $20.

These cases illustrate clearly the ongoing dynamic between the common law and social change. In Judge O'Sullivan's opinion, we see how the principles of law can be extended to cover new situations. Judge O'Sullivan, relying on existing case law, logically extends existing precedent to cover the dangerous working conditions that developed in the factories and mills at the turn of the twentieth century. Conversely, Judge Crain adhered strictly to existing precedent on employer liability and rejected arguments that would have acknowledged that employers control the workplace and should have ameliorated the dangerous conditions

---

[23] Crystal Eastman. Work-Accidents and the Law, at 170 (1910).

[24] McEvoy, *supra* note 4, at 641.

[25] Id. at 640.

[26] John M Hoenig, *The Triangle Fire of 1911*, History Magazine, (April/May 2005).

Judge Harlan F. Stone
Library of Congress Collection

that existed there. Chief Justice Harlan Stone described the process at the Harvard Law School Conference on the Common Law:

The skill, resourcefulness and insight with which judges and lawyers weigh competing demands of social advantage, not unmindful that continuity and symmetry of the law are themselves such advantages, and with which they make their choice among them in determining whether precedents shall be extended or restricted, chiefly give the measure or the vitality of the common law system and its capacity for growth.[27]

In time, the common law could have adapted to the need to protect workers and, case by case, the new societal challenges could have been accommodated by the common law. However, in those years that we now call "the age of industrial violence," public outrage demanded an immediate solution that was more readily achievable through legislation.

The Reform Movement

The inability of the authorities to hold anyone accountable for the deaths of 146 young men and women led prominent civic and religious leaders, reformers and teachers to form a Committee on Safety. It served as a clearinghouse for information on fire safety and pressed for an investigation into the Triangle Shirtwaist factory fire. The Committee on Safety worked closely with the New York Consumer's League which had experience in promoting worker protection initiatives and in lobbying for better working hours and conditions. The league was headed by Frances Perkins and her role in the reform movement is indeed remarkable. In New York, women did not have the vote until 1917 and, as we have seen, were not permitted to participate in jury service and other civic roles. Yet, Frances Perkins was a major force behind the enactment of legislation to protect working men and women , initially in

Frances Perkins as a Young Woman

[27] Harlan F. Stone. *The Common Law in the United States*, 50 Harv. L. Rev. 4, 10. (1936-1937).

New York in the second decade of the 20th century, and later in Washington, D.C., when she served as Labor Secretary in President Roosevelt's administration.

The Committee on Safety, the New York Consumer's League and other like-minded organizations brought pressure to bear on Governor John Dix, Assemblyman Alfred E. Smith, and Robert F. Wagner, the Democratic Leader in the Senate that resulted in the appointment of a nine-member New York State Factory Investigating Commission in June, 1911.

Assembly Majority Leader
Alfred E. Smith
Library of Congress Collection

Al Smith, who became Speaker of the Assembly in 1913 and later went on to become Governor of New York and the 1928 Democratic candidate for President of the United States, was born in a tenement on Manhattan's South Street. He knew of the hard life of the poor through personal experience–while in elementary school, he worked as a newsboy to supplement the family income and when he was twelve, his father's death forced him to leave school to support his family. At fifteen, his job at the Fulton Fish Market required him to work a 13-hour day, from 4:00 AM to 5:00 PM.

New York Senator Robert F. Wagner
New York Red Book, 1918

Robert Wagner's family immigrated to the United States from Prussia, Germany when he was eight years old. They settled in New York city where Robert attended public school. Like Al Smith, he sold newspapers after school to help support himself. Wagner became Chair of the Factory Investigation and Al Smith became Vice- Chair. The Commission had unusually broad powers and scope: it had the authority to summon witnesses to testify under oath and had a mandate to look into fire hazards, unsanitary conditions, occupational diseases, effectiveness of factory inspection, tenement manufacturing, in addition to many other matters.[28]

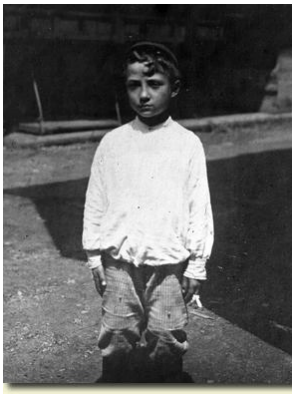
[28] http://www.dol.gov/oasam/programs/history/mono-regsafepart07.htm.

The Commission appointed directors for each investigation (one of whom was Frances Perkins) to carry out on-site inspections of factories and other work sites. It conducted the most intensive study of industry ever undertaken in the United States.[29] In addition to safety problems, the Commission also uncovered widespread violations of the child labor laws. Surprise raids on businesses that denied employing young children often found the employers attempting to evacuate the children from the plant by rear doors or to hide them in sheds and elevators. To show that business was viable without worker exploitation, Perkins took the Commissioners to visit model factories that were profitable while still operating according to high safety standards.[30]


Time Card.

Time card showing hours worked for two weeks by a woman at a fruit cannery. The first week the hours are:
Monday-----15 hrs. Thursday-----19 hrs.
Tuesday----20 " Friday------21-1/2"
Wednesday--21 " Saturday-----21 "
Total for week 117 1/2 hours.
She got for this work 10 cents per hour.

Time card showing 117.5 hours worked in one week.
New York State Archives



Young Boy at Work (New York State Investigation Commission)
New York State Archives
http://www.archives.nysed.gov

Much of the success of the Factory Investigating Commission is attributable to the distinguished and dedicated group of people who served as members or staff. As we have seen, two of the most powerful legislators of the day, Robert Wagner and Alfred E. Smith, were chairman and vice-chairman of the Commission, and they were crucial in ensuring that the Commission's recommendations became law. Also pivotal was Abram Elkus, chief counsel to the Commission and later a judge of the New York Court of Appeals. Through sharp and persistent questioning of witnesses and his commitment to gathering scientific facts, Elkus drew public attention to the dangers workers faced not only from fire but also from *"the less obvious but greater menace of unsanitary conditions*" and industrial diseases. Elkus stressed that these

[29] Id.

[30] http://larouchepub.com/eiw/public/2005/2005_10-19/2005_10-19/2005-12/history.html.

problems needed to be addressed not only because of humanitarian considerations, but also because they diminished the productivity of the economy and caused workers and their families to fall into poverty.[31]

The information collected by the Commission and staff was compiled into several reports, including "The Fire Hazard in Factory Buildings" and "Sanitation of Factories," published in the Preliminary Report of the Factory Investigating Commission (1912). It recommended registration of all factories with the Department of Labor, licensing of all food manufacturers, medical examinations of food workers, medical supervision in dangerous trades, and better eating, washing, and toilet facilities. The Commission recommended an increase in stairwells and exits, installation of fire walls, fireproof construction, prohibition of smoking in factories, fire extinguishers, alarm systems, and automatic sprinklers. The Commission's other reports summarized investigations and made recommendations concerning women factory workers, child labor in tenements, and occupational diseases such as lead and arsenic poisoning.[32]

In all, the Factory Investigating Commission held 59 public hearings around the state. As reported by the U. S. Department of Labor, the Commission

> *took testimony from 472 witnesses, including employers, workers, union officials and technical experts. Their testimony filled over 7,000 pages. Commission staff investigated 3,385 workplaces in industries ranging from meat packing plants, bakeries and clothing manufacturers to the chemical industry and the lead trades. The commissioners personally visited 50 plants. While the bulk of the voluminous reports of the commission was filled with individual testimony, there were also special reports by experts covering fire safety, building construction, machine guarding, heating, lighting, ventilation and other topics. There were also studies on specific industries, such as chemicals, lead trades, metal trades, printing shops, sweatshops and mercantile establishments*.[33]

The Commission concluded that the New York Labor Law needed to be fundamentally changed and that the Department of Labor should be reorganized. Among the recommendations was the creation of a

---

[31] NY FIC 1912, II, 5-10.

[32] http://www.archives.nysed.gov/a/research/res_topics_bus_guide_history.shtml.

[33] http://www.dol.gov/oasam/programs/history/mono-regsafepart07.htm.

Bureau of Inspection to centralize inspection work, a Division of Industrial Hygiene, and a Section of Medical Inspection. In 1913, a number of the Commission's recommendations became law, including reorganization of the Department of Labor, prohibition of night work for women, and fire prevention, safety, and health regulations.[34] The Commission's work represented a new level of government involvement in and regulation of labor conditions. Frances Perkins described the influence of New York's Factory Investigating Commission:

> *the extent to which the legislation in New York marked a change in American political attitudes and policies toward social responsibility can scarcely be overrated. It was, I am convinced, a turning point.*

In 1918, Perkins accepted Governor Alfred E. Smith's offer to join the New York State Industrial Commission, becoming its first female member. She became chairwoman of the Commission in 1926 and in 1929, the newly-elected New York governor, Franklin D. Roosevelt, appointed Perkins as the State Industrial Commissioner. Perkins helped put New York in the forefront of progressive reform—she expanded factory investigations, reduced the work week for women to 48 hours, and championed minimum wage and unemployment insurance laws.

Crystal Eastman as a Young Woman
Library of Congress Collection

Another person pivotal to the workers' rights movement was Crystal Eastman. Like Frances Perkins, she was a trailblazer for women's participation in public life. Like Frances Perkins, she started her career at a time when women were subject to considerable social constraint and were unable to vote or be part of a jury. Described as "one of the United States' most neglected

[34] www.archives.nysed.gov/altformats/GuidesHistRecs/factory.txt

leaders,"[35] she was a 1907 graduate of New York University Law School. She immediately found work investigating labor conditions for The Pittsburgh Survey sponsored by the Russell Sage Foundation. Eastman's report, *Work Accidents and the Law*, became a classic, and, in 1909, Governor Charles Evan Hughes appointed her to the New York State Employers Liability Commission. The only woman on the Commission, Eastman was elected its secretary (a very powerful position) and almost singlehandedly undertook the drafting of the Workmen's Compensation Law. The report, of which she was the principal author, *The First Report of the New York State Liability Commission*, was published in 1910. It analyzed workplace deaths and accidents in New York, and led to the introduction of three bills in the Legislature. The first eliminated the common law employers' defenses; a second provided for compulsory compensation for those engaged in dangerous enterprises; and the third provided that workers and employers in other trades could include provisions in their contracts for workers' compensation. The nation's first workers' compensation program was adopted in New York (Laws of 1910, ch 674). In March, 1911, however, New York's highest court, the New York Court of Appeals, held that the statute—"plainly revolutionary" compared to prevailing common law standards—deprived employers of property rights without due process and was therefore unconstitutional.[36] But in November 1913, the people of New York voted to adopt an amendment to the Constitution. This amendment, Article 1, section 18, provides that "[n]othing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health or safety of employees." Eastman's goal had been achieved!

The present-day New York State Workers Compensation Board traces its history back almost a full century and to a tragic fire at the Triangle Shirtwaist Factory in New York City . . . the fire galvanized labor

---

[35] Society of American Historians. *The Reader's Companion to American History*, at 307 (1991).

[36] Ives v South Buffalo Ry., 201 NY 271 (1911).

and led to many reforms in safety, health, and labor laws.[37] More to the point, it helped lead to the workers' compensation system both here in New York and across the country."

The Federal Initiatives

Crystal Eastman continued to work in the field of occupational health and safety but this time at the federal level. In 1913, during the Woodrow Wilson administration, she was appointed an investigating attorney with the U. S. Commission on Industrial Relations, a position she held for two years. The Commission had been created in 1912 during the Taft administration to investigate and report on conditions in industry that gave rise to labor problems, including conflict between employers and employees that often erupted in violence and strikes. Better industrial relations were seen as the solution to labor problems. It produced a report in 1916 that comprised eleven volumes and tens of thousands of pages of testimony, not only from scores of ordinary workers but also from major employers such as Daniel Guggenheim, George Perkins (of U.S. Steel), Henry Ford and Andrew Carnegie, and workers' advocates including Clarence Darrow, Louis Brandeis, Mary Harris "Mother" Jones, Theodore Schroeder and William "Big Bill" Haywood. In the end, though, the Commission could not agree on conclusions to be drawn from the data and issued three "final" reports representing different factions.

When Franklin Roosevelt became President in 1933, Frances Perkins became the U.S. Secretary of Labor,[38] the first woman to hold a cabinet position, and by virtue of her office, the first woman in the presidential line of succession. She held the position for twelve years, and worked to put in place the federal labor legislation of the New Deal era, including laws governing minimum wages, unemployment insurance

---

[37] http://www.wcb.state.ny.us/content/main/TheBoard/history.jsp

[38] The Frances Perkins Building is the Washington, D.C. headquarters of the United States Department of Labor. A Social Security Administration profile of Frances Perkins notes "that she overcame the restrictions and prejudices of her era and established herself as the equal of any person, in areas then virtually dominated by men. She was an outstanding career woman, but more importantly, an outstanding individual and a public official whose work profoundly changed the lives of all Americans."

and the regulation of child labor. In 1934, while serving in the Cabinet, she was made chairwoman of the President's Committee on Economic Security. This committee drew up a report that became the basis for the Social Security Act, aimed at protecting Americans from dependancy and distress.[39] The proposed insurance-based program would provide old age, survivors, and disability benefits. Although it was considered radical, it nonetheless had popular support in a nation scarred by the Depression and a petition in favor of the measure drew 20 million signatories. But the proposal caused consternation in the business community where there was concern that business would end up paying for it.

Justice and Mrs. Stone
Supreme Court Historical Society

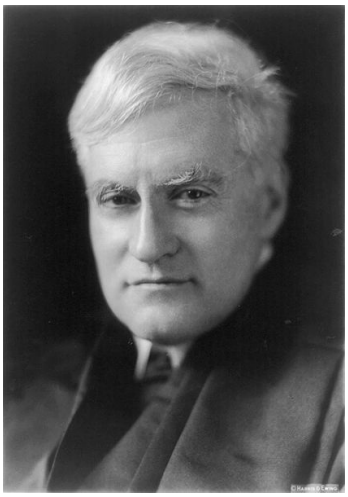
The constitutional basis of the Social Security Act was a cause of concern for the Committee but a social invitation provided a solution to the problem. While Frances Perkins was involved in drafting the legislation, she accepted an invitation for tea with the wife of then-Associate Justice Harlan Stone. She found herself seated next to Justice Stone and took the opportunity to express her reservations. In her memoirs, she describes how Justice Stone leaned over and whispered, "The taxing power of the federal government, my dear; the taxing power is sufficient for everything you need."[40] She told the President of the advice and insisted the Committee use the government's taxing power as the

President Roosevelt Signing Into Law the Social Security Act
Frances Perkins stands behind him.
U.S. Social Security Administration

[39] Statement of the Committee, August 1934.

[40] Matthew C. Price. *Justice Between Generations: The Growing Power of the Elderly in America*, at 28 (1997).

method of building up the fund. The Social Security Act was signed into law on August 14, 1935. The Committee's concerns about the constitutionality of the Social Security Act were realized. By the October 1936 term of the United States Supreme Court, no fewer than three challenges were before the Justices. One case, Helvering v Davis, challenged the old age insurance program and two others, the Steward Machine Company and Carmichael v Southern Coal & Coke Co. and Gulf States Paper, challenged the unemployment compensation program. On May 24, 1937, the Supreme Court handed down its decision in the three cases. Justice Cardozo (formerly Chief Judge of the New York Court of Appeals) wrote the majority opinion in the first two cases. In Helvering, the Court ruled 7-2 in support of the old-age insurance program. In his opinion, Justice Cardozo stated:



Justice Benjamin N. Cardozo
Library of Congress

> *But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.*

The unemployment compensation provisions, however, were more hotly disputed within the Court, and the ruling in Steward was closer, 5-4 in support of the unemployment compensation provisions. Again, the opinion was written by Justice Cardozo, who stated:

> *During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than 10 million; at times a peak was attained of 16 million or more. Disaster to the breadwinner meant disaster to dependents. Accordingly the roll of the unemployed, itself formidable enough, was only a partial roll of the destitute or needy. The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. The nation responded to the call of the distressed.*

Justice Harlan Stone was the author of the opinion in the Carmichael case. Decided by a majority of 8-1, it, too, upheld the constitutionality of the statute. In his opinion, Justice Stone stated:

> *The evils of the attendant social and economic wastage permeate the entire social structure. Apart from poverty, or a less extreme impairment of the savings which afford the chief protection to the working class against old age and the hazards of illness, a matter of inestimable consequence to society as a whole, and apart from the loss of purchasing power, the legislature could have concluded that unemployment brings in its wake increase in vagrancy and crimes against property, reduction in the number of marriages, deterioration of family life, decline in the birth rate, increase in illegitimate births, impairment of the health of the unemployed and their families and malnutrition of their children.*

U.S. Senator Robert F. Wagner
United States Congress Collection

Yet another New Yorker with ties to the Triangle Shirtwaist factory fire reform movement went on to play an important role in federal government. He was Robert Wagner, who you will remember, played such a vital part in the New York Factory Commission. In February 1935, he was a United States Senator. He and Frances Perkins worked together on the bill that would become the National Labor Relations Act of 1935, another piece of the New Deal legislation. The Wagner Bill proposed the creation of a new independent agency—the National Labor Relations Board. Composed of three members appointed by the President and confirmed by the Senate, its mandate was to enforce employee rights rather than to mediate disputes. It gave employees the right to form and join unions, and it obligated employers to bargain collectively with unions selected by a majority of the employees in an appropriate bargaining unit. The measure endorsed the principles of exclusive representation and majority rule, provided for enforcement of the Board's rulings, and covered most workers in industries whose operations affected interstate commerce. It was signed into law by President Roosevelt on July 5, 1935. Described as the law that has most affected the relationship between the federal government and private enterprise, the National Labor Relations Act was perhaps the single most important

legal development affecting labor in this century.[41] By passing the act, Congress sought to address industrial strife by creating a framework in which industrial disputes could be resolved peacefully under government auspices.[42]

The Legacy of the Triangle Shirtwaist Factory Fire.

Perhaps only a tragedy on the scale of the Triangle Shirtwaist factory fire could bring the woeful working conditions in factories and mills to the attention of the general population. Once people realized the dangers to which working people, including children, were regularly exposed, a huge cry for reform was heard, first in New York and later nationwide. Our working lives today are controlled by the legislation drafted in the aftermath of the fire and we, as New Yorkers, can look with pride to the role that New York played in the workers'rights movement.

On March 25, 1961, the 50th anniversary of the Triangle Shirtwaist factory fire, a moving ceremony was held at the Asch Building. With Eleanor Roosevelt accompanying them, Frances Perkins, Rose Schneiderman and 12 survivors of the fire returned to the scene of the tragedy. Now, on the hundredth anniversary, we can read the plaque placed by the survivors in memory of the 146 co-workers who lost their lives.

> *Out of their martyrdom came new concepts of social responsibility and labor legislation that have helped make American working conditions the finest in the world.*

---

[41] Deborah A. Ballam. *The Law as a Constitutive Force for Change, Part II: The Impact of the National Labor Relations Act on the U.S. Labor Movement*. 32 American Business Law Journal 447 (1995).

[42] Id.