

203 Va 781

Record No. 5435

In the
Supreme Court of Appeals of Virginia
at Richmond

UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS
OF AMERICA, AFL-CIO

v.

ROSCOE HUMPHREYS

FROM THE CORPORATION COURT OF THE CITY OF BRISTOL

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m. : Adjourns at 1:00 p. m.

NOTICE TO COUNSEL

This case probably will be called at the session of court to
be held. **APR 1962**

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5435

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 24th day of November, 1961.

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO, Plaintiff in Error,

against

ROSCOE HUMPHREYS,

Defendant in Error.

From the Corporation Court of the City of Bristol

Upon the petition of United Brotherhood of Carpenters and Joiners of America, AFL-CIO, a writ of error and *supersedeas* is awarded it to a judgment rendered by the Corporation Court of the City of Bristol on the 26th day of May, 1961, in a certain motion for judgment then therein depending wherein Roscoe Humphreys was plaintiff and the petitioner and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of twelve thousand, five hundred dollars, with condition as the law directs.

RECORD

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* * * * *

Filed September 2, 1960.

BERTHA R. DRINARD, Clerk.

MOTION FOR JUDGMENT.

The plaintiff, Roscoe Humphreys, respectfully moves the Court for judgment against the defendants, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Lumber and Sawmill Workers Union No. 3092 of Bristol, Virginia, D. R. Parks, Halvie E. Strouth, H. C. Strouth and Clayton Price, and each of them, jointly and severally, for the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS, upon the following:

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COUNT I.

1. On or about September 2, 1958, the plaintiff, Roscoe Humphreys, was an employee of Bristol Door and Lumber Corporation, a Virginia corporation with its principal office and place of business in the City of Bristol, Virginia. At the same time, the defendant, Lumber and Sawmill Workers Union No. 3092 of Bristol, Virginia, was, and at the present time is, a local union doing business as a voluntary unincorporated association in the City of Bristol, Virginia, having an office, agents and members in said city, all of whom were and are affiliated with and members of the defendant, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, a national and international labor organization, under whose jurisdiction and supervision said local union operates.

2. Most, if not all, of the members of said local labor union No. 3092, including the defendants, Halvie E. Strouth, D. R. Parks, H. C. Strouth and Clayton Price were employees or former employees of the said Bristol Door and Lumber Corporation but were at the time in question out on strike and had been on strike from their jobs at said Bristol Door and Lumber Corporation for several weeks.

3. On Tuesday, September 2, 1958, the plaintiff, who had

also been out on strike, returned to work at his job at Bristol Door and Lumber Corporation primarily because of the dire need to earn a living for himself and his family. At about

5:00 P. M. on that date, plaintiff completed his work
page 4 } day, started on his way to his home in Sullivan County, Tennessee, in an automobile owned and operated by Lee Bentley, a fellow employee. Bentley, who did not live near plaintiff, drove the plaintiff to Webb Service Station located on the corner of Carolina and Hazelwood Avenues on the outskirts of Bristol, Tennessee, where the plaintiff got out of Bentley's car to wait at said service station to catch a bus to his home some distance away. While plaintiff was awaiting his bus, the defendants, Clayton Price, D. R. Parks (also known as Bud Parks), and Halvie E. Strouth drove up to said service station in an automobile operated and driven by Halvie E. Strouth. While the said Strouth remained in the car and kept the engine running, the defendants Parks and Price got out of the car and attacked and assaulted the plaintiff, striking him about his head and face with their fists to the extent that plaintiff was knocked to the pavement in an unconscious or semi-conscious condition, whereupon said two defendants proceeded to strike and kick plaintiff about his head, back, hips, arms and body, severely lacerating, bruising and beating him, and were attempting to strike and beat the plaintiff with a metal chair and would have done so but for the operator of said service station who intervened and prevented said defendants from further beating and assaulting plaintiff.

4. As the direct and proximate result of the aforesaid wilful, malicious and wanton acts of said defendants, Strouth, Parks and Price, plaintiff sustained numerous cuts, lacerations, bruises and contusions over his entire body
page 5 } and particularly about his head, back, hips, ribs, arms and legs, was put in great fear for his life and personal safety, was rendered sore and lame and was caused to suffer great emotional and nervous upset and excruciating physical pain and mental anguish, which he continued and will continue to suffer.

5. Plaintiff charges that at all times hereinabove mentioned the said Halvie E. Strouth, D. R. (Bud) Parks, and Clayton Price were acting as the agents of the union defendants, Lumber and Sawmill Workers Union, No. 3092 of Bristol, Virginia, and United Brotherhood of Carpenters and Joiners of America, AFL-CIO, in the course of their agency and within the scope of their authority as such agents of said union defendants.

COUNT II.

1. The plaintiff, adopting all of the allegations of Paragraphs 1 and 2 of Count I of this Motion for Judgment as though specifically set forth verbatim herein, further alleges that on Wednesday, September 3, 1958, he went to Bristol Memorial Hospital to consult a physician concerning the injuries which had been inflicted upon him by the defendants on the preceding day, and then went to a bus station located on McDowell Street in Bristol, Tennessee, for the purpose of riding a bus to his home in Sullivan County, Tennessee. When plaintiff boarded said bus at 5:50 P. M. on said date, the defendants Halvie E. Strouth and H. C. Strouth also boarded the same bus. When said bus had reached a point approximately one mile from the residence of plaintiff, the
page 6 } said H. C. Strouth signalled the bus to a stop and alighted therefrom and the bus departed on its way. When the bus arrived at plaintiff's residence where plaintiff's wife and infant son were standing outside waiting on him, and while plaintiff was in the act of alighting from said bus, the defendant Halvie E. Strouth wilfully, wantonly and maliciously attacked and assaulted plaintiff, jumping upon plaintiff's back and beating him and knocking him to the ground where he continued to beat, kick and assault plaintiff. At the same time, the defendant H. C. Strouth drove upon the scene in his automobile and got out of the same and joined in the assault upon plaintiff. In addition to beating, striking and kicking plaintiff and knocking him to the ground, said defendants pushed and shoved plaintiff underneath the bus which was pulling away, and into the path of the wheels of said bus in an attempt to cause plaintiff to be seriously injured or killed. Due to the fact that plaintiff's wife and little boy, seeing what the defendants were attempting to do to plaintiff, intervened on his behalf, plaintiff was able to extricate himself from beneath the bus to the extent that he avoided being killed but one wheel of the bus nevertheless passed over his left hand causing it to be severely crushed, cut and broken.

2. As the direct and proximate result of the wilful, wanton and malicious acts of the defendants, as hereinabove set forth, plaintiff was cut, bruised, beaten and lacerated about the various parts of his body, face, arms and legs, his
page 7 } left hand was badly crushed and permanently injured, he was put in grave fear for his life and personal safety, and he suffered and will continue to suffer great nervousness, and emotional upset, excruciating pain and mental anguish.

3. Plaintiff charges that at all times hereinabove mentioned

the said Halvie E. Strouth and H. C. Strouth were acting as the agents of the union defendants; Lumber and Sawmill Workers Union No. 3092, of Bristol, Virginia, and United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and were acting in the course of their agency and within the scope of their authority as such agents of the said union defendants.

BY REASON WHEREOF, plaintiff moves the Court for judgment against the defendants and each and all of them, jointly and severally, for the sum of \$100,000.00, together with the costs of this proceeding.

ROSCOE HUMPHREYS
By Counsel.

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Filed December 24, 1960.

BERTHA R. DRINKARD, Clerk.

GROUND OF DEFENSE.

1. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, is not informed whether plaintiff was an employee of Bristol Door and Lumber Corporation as alleged in Paragraph Marked 1 of Count 1 of motion. The defendant aforesaid denies the remaining allegations set out in Paragraph marked 1, except it admits that at one time Local 3092 was affiliated with defendant.

2. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, is not informed as to the allegations set out in Paragraph 2 of Count 1 of motion.

3. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, is not informed as to the allegations as set out in Paragraph 3, of Count 1 of motion.

4. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, is not in-

formed as to the allegations set out in Paragraph marked 4 in Count 1 of motion.

5. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, denies that the named defendants in Paragraph marked 5 of Count 1 of the motion were acting as the agents of it and page 17 } were acting in the course of their agency and within the scope of their authority as such.

COUNT II.

1. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, adopts its answers to Paragraphs 1 and 2 of Count I of this motion as though specifically set forth verbatim herein, and in addition states that it is not informed as to the allegations made in Paragraph marked 1 of Count II of the motion.

2. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, denies that it has been guilty of any wilful, wanton and malicious acts toward the plaintiff, or that it has cut, bruised, beaten and lacerated the body, face, arms and legs of plaintiff, or any other part of his body, and that plaintiff has suffered and will continue to suffer great nervous or emotional upset, excruciating pain and mental anguish as alleged in Paragraph 2 of Count II of the motion.

3. Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, denies that the named defendants in Paragraph marked 3 of the motion were acting as the agents of it and were acting in the course of their agency and within the scope of their authority as such.

Defendant, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, denies it is indebted to the plaintiff in any sum or sums as a result of the allegations herein made.

UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS
AMERICA, AFL-CIO
By BEECHER E. STALLARD, p. d.
1223-29 Cen. Natl. Bank Bldg.
Richmond, Virginia.

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Corporation Court of the City of Bristol, on Friday, the 26th day of May, in the year of our Lord, Nineteen Hundred and Sixty-One.

* * * *

This day came again the parties in person and by counsel, and the same jury which was present on yesterday appeared pursuant to their adjournment.

Thereupon, after hearing the remainder of the evidence, receiving instructions from the Court, and hearing the argument of counsel, the jury retired to their room to consider of a verdict, and after some time, returned into Court, having found the following verdict, to-wit:

“We the jury find for the plaintiff in the amount of \$4,000.00 on the first claim jointly against Clayton Price and D. R. Parks, acting as agents of the Lumber and Sawmill Workers Union #3092 of Bristol, Va., and United Brotherhood of Carpenters and Joiners of America AFL-CIO (2) Lumber and Sawmill Workers Union #3092 of Bristol, Va. (3) United Brotherhood of Carpenters and Joiners of America AFL-CIO.

“S/ FRANK GOODPASTURE, JR.,
Foreman.”

“We, the jury, find for the plaintiff in the amount of \$7,000.00 on the second claim jointly against the Lumber & Sawmill Workers Union #3092 of Bristol, Va. and the United Brotherhood of Carpenters and Joiners of America AFL-CIO.

“S/ FRANK GOODPASTURE, JR.,
Foreman.”

Defendants, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by counsel, and D. R. Parks and Clayton Price, by Counsel, moved the Court to set aside the verdict as contrary to the law and the evidence, and without evidence

to support it, and that the amounts are excessive for the damage alleged to be committed against the plaintiff, and upon further grounds dictated into the record.

After hearing the argument of counsel, it is ordered that the motion to set aside the verdict be hereby overruled. Defendants, by counsel, except to the ruling of the page 27 } Court.

Thereupon, it is ordered and adjudged that the plaintiff, Roscoe Humphreys, have and recover jointly and severally of the defendants, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Lumber and Sawmill Workers Union No. 3092 the sum of Eleven Thousand (\$11,000.00) Dollars, with interest at 6% from this date until paid; and that plaintiff have and recover of the defendants, D. R. Parks and Clayton Price, jointly and severally with each other and with United Brotherhood of Carpenters and Joiners of America AFL-CIO, and Lumber and Sawmill Workers Union No. 3092, the sum of Four Thosuan (\$4,000.00) Dollars, being a portion of the aforesaid sum of \$11,000.00 with interest from this date until paid; and that plaintiff recover of all of said defendants his costs in this behalf expended.

A. Copy—Teste :

BERTHA R. DRINKARD, Clerk.

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Filed June 17, 1961.

BERTHA R. DRINKARD, Clerk.

**NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
OF DEFENDANT, UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA, AFL-CIO.**

The Defendant, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, gives notice of appeal from the judgment of the court rendered herein on May 26, 1961, and assigns the following errors as required by Rules of Supreme Court 5:1, sub-section 4:

1. The Court erred in overruling the defendant's motion made at the conclusion of the plaintiff's evidence and renewed at the conclusion of all the evidence to strike plaintiff's evidence as being insufficient in law to sustain a recovery against the defendant.

2. The Court erred in refusing to give defendant's Instructions A, E, F and G and requiring defendant to amend defendant's Instructions A-3.

3. The Court erred in giving plaintiff's Instructions 1-A, 2, 3, 4, 5 and 6.

4. The Court erred in overruling defendant's motion to set aside the verdict in favor of the Plaintiff and entering final judgment for defendant.

page 54 } This is to certify that a true copy of the foregoing was mailed to George M. Warren, Jr., and R. Russell Myers, 714 Reynolds Arcade Building, Bristol, Virginia, Counsel for Plaintiff, and James R. Edmondson, Abingdon, Virginia, Counsel for Defendants D. R. Parks and Clayton Price, in the 16th day of June, 1961.

UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS
OF AMERICA, AFL-CIO
By BEECHER E. STALLARD, p. d.
1223-29 Cen. Natl. Bank Bldg.
Richmond, Virginia.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
OF DEFENDANT, UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA, AFL-
CIO.

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5. The Court erred in overruling defendant's motion to set aside the verdict in favor of plaintiff as excessive and ordering a new trial.

Filed June 22, 1961.

BERTHA R. DRINKARD, Clerk.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR
OF DEFENDANT, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, AFL-
CIO.

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6. The Court erred in permitting the Plaintiff to introduce Plaintiff's Exhibit 1 over Defendant's objection, which was an executed NLRB Form 501 of a charge of an unfair labor practice against Bristol Door & Lumber Company, Incorporated, employer, filed November 18, 1958, by Lumber & Sawmill Workers Union, Local 3092, which was after the strike, and was signed by A. O. McKinney.

7. The Court erred in giving Plaintiff's Instruction No. 7-A.

Filed July 13, 1961.

BERTHA R. DRINKARD, Clerk.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR
OF DEFENDANT, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, AFL-
CIO.

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8. The Court erred in refusing to give Defendant's instruction A-2.

Filed July 18, 1961.

BERTHA R. DRINKARD, Clerk.

Roscoe Humphreys.

• • • • •

page 8 } ROSCOE HUMPHREYS,
the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Warren:

Q. Mr. Humphreys, speak loud enough for Judge Cantwell to hear. Don't look toward me, but look up toward the Judge. You are Roscoe Humphreys?

A. Yes, sir.

Q. Little louder.

A. Yes, sir.

Q. And what is your age, Mr. Humphreys?

A. 35 years old.

Q. Where are you living at the present time?

A. Lenoir, North Carolina.

Q. Are you employed at that place?

A. Yes, sir.

Q. Little louder, please, sir.

A. Yes, sir.

Q. In what way?

A. By Spainhour Furniture Manufacturer.

Q. How long have you worked for that company?

A. Since September 19.

Q. Of 1960?

page 9 } A. Yes, sir.

Q. Are you married?

A. Yes, sir.

Q. And I believe you and your wife are separated, are you not?

A. Yes, sir.

Q. Now Mr. Humphreys, where were you living on September 2, 1958?

A. Booher & Booher's Grocery on Hickory Tree Road.

Q. Is that in Sullivan County, Tennessee?

A. Yes, sir.

Q. Describe to the jury generally where that is.

A. Well, from Bristol you go out Pennsylvania, out 421, turn out to your right about, I guess about four miles out of town and go down two miles down to the store from the main Highway 421.

Roscoe Humphreys.

Q. Is that on what we call the Hickory Tree road?

A. Yes, sir.

Q. And you lived in that store you say?

A. I had been there about two years.

Q. Where in the building did you live?

A. I lived in the far apartment going down on the highway.

Q. Upstairs apartment?

A. Upstairs apartment.

Q. Was there a porch on that apartment?

page 10 } A. There was a porch all the way around the front of the store.

Q. Now with whom were you living in that apartment in Sullivan County, Tennessee on September 2, 1958? Who lived with you there?

A. My wife and step-son.

Q. What is the step-son's name?

A. Billy Gene Brown.

Q. And how old is Billy Gene Brown?

A. He's 16.

Q. At the present time?

A. Yes, sir.

Q. Then he was what? 13 or 14 in September '58?

A. Around 14; going on 14.

Q. Mr. Humphreys, on September 2, 1958, were you a member of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO?

A. Yes, sir.

Q. Were you a member of the Lumber and Sawmill Workers Union No. 3092 of Bristol, Virginia chartered by and affiliated with the United Brotherhood of Carpenters and Joiners of America?

A. Yes, sir.

Q. How long had you been a member of those unions?

A. I don't know exactly how long I had been.

Q. How long had you worked at Bristol Door
page 11 } & Lumber Company?

A. Ever since September 20, 1945 when I first went there. I went to work five or six different times.

Q. On and off you had worked there, is that correct?

A. Yes, sir.

Q. During the early part of July and up until the time that a strike occurred, were you working at Bristol Door & Lumber Company?

A. Yes, sir, working in the shipping department.

Q. Did a strike occur in the latter part of July in 1959?

Roscoe Humphreys.

A. 29th day of July.

Q. Did you go out on strike?

A. Well, I was coming into work and me and Mr. Carrier that I rode with and Avery Mullins and we got going down Goodson and seen some fellow down there walking with signs on their back.

Q. You mean the strike was already in progress?

A. Already on. I didn't know anything; he didn't neither, I don't reckon.

Q. Did you go into work that day?

A. No, sir.

Q. Why didn't you?

A. We was walking there with the picket signs.

Q. Now did you then join the strikers in the strike as a member of the union?

A. Yes, sir, that night I come back; they decided
page 12 } on who was going to work on each shift that morn-
ing before I went back, and they put me on from 11
o'clock to 7 o'clock.

Q. When you say working on shift, do you mean working at Bristol Door & Lumber Company or working on the picket line?

A. Working on the picket line.

Q. And did you for a time work the picket line there at Bristol Door & Lumber Company?

A. 5 weeks.

Q. Did you have any trouble while you were on the picket line with anyone?

A. No, sir.

Q. During that time, the time that you worked with Bristol Door & Lumber Company and were a member of these unions, did you know D. R. Parks?

A. Yes, sir.

Q. How long had you known him?

A. He was working there when I went to work the last time and that is the only time, first time I ever met him when I went back.

Q. Did I ask how long you had worked there the last time up until this strike?

A. Pretty close to 3 years the last time.

Q. And he was working there when you went back?

A. Yes, sir.

Q. Did he work there all that time up until the
page 13 } strike occurred?

A. Yes, sir.

Roscoe Humphreys.

Q. Did you know Clayton Price?

A. Yes, sir. He was there also. From that time we practically had a new crew.

Q. Did you know Halvie E. Strouth?

A. He's been there for several years, him and Chase; they had been there before, the other times when I worked.

Q. When you say Chase, do you mean H. C. Strouth?

A. Yes, sir.

Q. What relation are those two men?

A. They are brothers.

Q. And you knew both of them?

A. Yes, sir.

Q. Did they or not live somewhere in the general vicinity of your home?

A. One of them lived about a mile or a mile and a half this side of me.

Q. Which one was that?

A. That was Chase.

Q. And where did the other live?

A. He lived in town somewheres; I don't know where.

Q. And that was Halvie?

A. Yes, sir.

Q. September 2, 1958, did Halvie Strouth live in town?

A. Yes, sir.

page 14 } Q. And on September 3, 1958, did he live in town?

A. Yes, sir.

Q. Now you say that you have known these men prior to September 2, 1958. Had you ever had trouble with them?

A. Not a word with anyone.

Q. With neither of them?

A. No, sir.

Q. Had you known the Strouth brothers other than on the job?

A. I had known them. I had been around them, with them several places with them.

Q. In other words, you had known them outside of your work?

A. Yes, sir.

Q. For how many years?

A. Halvie was working there on the yard in 1945 and he got transferred. I knowed he was there when I first went to work.

Q. That is where you first got to know them?

A. Yes, about '45.

Roscoe Humphreys.

Q. Now Mr. Humphreys, do you know a man named A. O. McKinney?

A. Yes, sir.

Q. How long have you known him?

A. I had knowed him about a week or two before the strike.

Q. Do you know what his business or occupation
page 15 } was in 1958 in July and on through September?

A. He was International Representative of the Brotherhood of Carpenters and Sawmill Workers.

Q. You mean, are you referring to one of the defendant unions here in this case that he was a representative of?

A. No. He was a representative of the International.

Q. Of the International?

A. From Atlanta, Georgia.

Q. Is that the United Brotherhood of Carpenters and Joiners of America?

A. Yes, sir.

Q. Did you in July or 1958 know a man by the name of D. Arcil Dishner?

A. Yes, sir.

Q. How long had you known him?

A. About two weeks.

Q. You mean two weeks prior to what?

A. To the strike.

Q. Do you know what his business or occupation was at that time?

A. International representative.

Q. Of what?

A. Of the Brotherhood of Carpenters and Joiners and Sawmill Workers.

Q. Is that the International union in this case?
page 16 }

A. Yes, sir.

Q. Now I'll ask you if either or both of those two men were in Bristol during the strike and between July 29, 1958 and September 2?

A. The first time that I ever saw Mr. Dishner, we have a recess at Bristol Door and I come out on the bench in the lobby to smoke a cigarette and we were talking about there being something hot and I said, "I guess the union caused it," and that's the first time I ever talked to him.

Q. To get to know him?

A. Yes, first time I ever seen him.

Q. Did you talk to him from time to time thereafter?

A. I talked to him a lot on the picket line.

Roscoe Humphreys.

Q. The incident you just referred to, that was prior to the strike, I take it?

A. Yes, sir.

Q. Now at the time the strike occurred and the day you came to work on the 29th of July and the strike was in progress, was Dishner around?

A. No, I didn't see him.

Q. Did you see McKinney at that time?

A. No, sir.

Q. When did you next see them later on?

A. In a meeting.

Q. One or more meetings?

page 17 } A. Well, that was the first one was that night. It was just part of us could come down and part of them stayed.

Q. The night of July 29?

A. Yes, sir.

Q. Where was that meeting?

A. On Lee Street.

Q. Thrift Supply building?

A. It was upstairs over there.

Q. Now was Dishner there that night?

A. Yes, sir.

Q. Was McKinney there that night?

A. Every meeting I was ever in they was there.

Q. Both of them?

A. Yes, sir.

Q. How many times were you in that during that period of time between the strike and September 2?

A. We had one and two a week. I don't remember just how many I was in.

Q. Who conducted those meetings?

A. Well, Mr. Dishner and Mr. McKinney.

Q. What were the meetings concerned with? Have anything to do with the strike?

A. Yes, sir, they were fully about the strike.

Q. Now did there come a time in September, 1958 when you returned to work at Bristol Door?

page 18 } A. Yes, sir.

Q. What day was that?

A. That was on September 2, 1958.

Q. How did you happen to go back to work?

A. Well, it was around on the picket line and a lot of them wanted to to back to work, and I wanted to go back to work,

Roscoe Humphreys.

and a lot would say they would go in and wouldn't go in, and several of them said they was going in when I went in, and I needed to go back to work because I owed bills, rent and food for my wife and kid and myself. I told them Thursday night, the last night I worked I couldn't work any more and some of them called me a dirty name and said it wouldn't do for me to go back.

Q. That was on Thursday night?

A. That was on Thursday night. That was the last night I worked. I didn't work no more.

Q. Let's stick to that. On that particular night, was there a union meeting?

A. Yes, sir, on Thursday night.

Q. And where was that meeting held?

A. Over on Lee Street upstairs.

Q. The same place as the others?

A. Yes, sir.

Q. Was A. O. McKinney at that meeting?

A. Yes, sir.

page 19 } Q. Was D. Arcil Dishner at that meeting?

A. Yes, sir.

Q. I will ask you if A. O. McKinney had anything to say to the meeting that night?

A. Yes, sir, he did.

Q. What did he say with reference to non-strikers?

A. Well, he said, 'Fellows, I hear they's some talk that some of you wants to go back in to work up there,' Said, 'If you happen to break over the picket line and go back to work, if that company finds out we are weakening, we won't get a thing,' and said, 'If any of them does go back into work, all I can tell you is to entertain them on the way backwards and forth,' and said, 'Watch what you say when you entertain them; some of them might have a bug planted on them.'

Q. Did he enlarge on that?

A. Directly he said, 'Maybe some of you don't know what I mean, but that will be a recorder. Be careful what you say when you are entertaining them.'

Q. Who made that statement to that meeting?

A. McKinney.

Q. And who were the persons present at the meeting? I don't mean the names. Who was that meeting of? Who were the people that came?

A. Just about all strikers. Some of them couldn't be there.

Roscoe Humphreys.

Q. And of course, again for the record, you are page 20 } talking about the strike at Bristol Door?

A. Yes.

Q. Were all the persons at that meeting members of the local union, Lumber and Sawmill Workers Union?

A. Some say some of them didn't belong; they didn't, but after they come out on strike, they let them walk in the strike and let them, showed as maybe they had been a member when they come out on strike but they weren't members when they come out on strike.

Q. But they were members at the time you were talking about?

A. They took them in, in the union.

Q. Were all of those persons likewise members in the United Brotherhood in the International?

A. Yes, sir; there was a few couldn't be there.

Q. I am talking about the ones who were there. Were they all members of the union?

A. There wasn't but very few that wasn't members after they come out on strike. Most come in and come out on strike

Q. Was that or not a union meeting?

A. It was a union meeting.

Q. Was it or not held in the union hall, the regular place of meeting?

A. Yes, sir.

Q. Now Mr. Humphreys, that was on Thursday night you say? page 21 }

A. Yes, sir.

Q. How long after that night was it that you went back to work at Bristol Door?

A. It was on Tuesday.

Q. The following Tuesday?

A. Yes, sir.

Q. What time did you go to work that morning?

A. 7 o'clock.

Q. And did you work that day?

A. I worked 9 hours that day.

Q. What did you do in the plant that day?

A. Loaded out cars in the shipping department.

Q. Same job you had had before?

A. Yes, sir.

Q. And what time did you get off from work that day?

A. 5 o'clock.

Q. How did you leave the plant?

A. Well, I knew I couldn't catch a bus out till 6 o'clock,

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little bus on Pennsylvania off of McDowell, and Lee Bentley, he was going; I told him, "I'm through, I'd like to go out with you." He said, "I go through by Webb's Service Station." So I went out and got off there. I went in and got a Coco-Cola.

Q. You say you went out there where?

A. Webb's Service Station on 421.

Q. Is that station owned by Earl Webb?

page 22 } A. Yes, sir, it was at that time.

Q. Sinclair Station?

A. Yes, sir.

Q. Is that in Virginia or Tennessee?

A. Tennessee.

Q. Now you say you got out there to get a drink. Did your bus pass there?

A. Yes, sir, it passes there.

Q. Did you intend to catch the bus?

A. That is the only way I had home.

Q. When Lee Bentley let you out at the service station, did he stay there with you?

A. No, he didn't even go in. He didn't go across 421 to the station. I walked across.

Q. Suppose you go ahead and tell the Court and jury just exactly what happened after you got out there on September 2nd.

A. I went inside and got cigarettes; there wasn't too many people around the place, three or four or maybe five, and I went out and sat on a lawn chair. I was waiting on the bus.

Q. A lawn chair?

A. Yes, and I were pretty tired. I sat down in this chair and I looked across 421 about two minutes after I sit down and I seen Halvie Strouth pull up in his car.

Q. Just a minute there. Describe exactly where it was, where he pulled up?

page 23 } A. Just across 421, I don't know what the name of that street is.

Q. Go ahead.

A. And Mr. Price and Mr. Parks were in the car.

Q. When you say Mr. Price and Mr. Parks, are they in the court room?

A. Yes, sir.

Q. Point them out.

A. Right here (indicating).

Q. Those two men over there?

A. Yes, sir.

Q. Go ahead and tell what happened.

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A. I was sitting there and I seen them getting out of the car. Halvie Strouth, he didn't come on across at that time. He stayed in the car. They walked over.

Q. Who's they?

A. Bud Parks and Clayton Price. Parks were on my left; Price were on my right; Mr. Price walked up, walked right on straight to me sitting there in the chair, said, "What did you go back to work for today?" And I started to explain about my expenses; I didn't have a chance; he swatched me one under the chin and when he swatched me one under the chin, Bud Parks grabbed me. He's the one that done the kicking.

Q. What did Price do?

A. He jerked me out on that concrete and he
page 24 } kicked me up behind the shoulder blade in the
back of the head and along somewheres during
that time Mr. Webb got out there and got them off of me some
way or another and picked me up and put me in Halvie's car.
He had done pulled across 421 and was having water put in
his car.

Q. He had pulled across 421?

A. They was walking toward me. He wasn't in there when they started on me, and when I come to myself, kinda to myself, why Mr. Webb had picked me up and put me in Halvie's car and I come to myself and saw who it was and I got out as quick as I could; he never said nothing; wasn't nobody said anything except he just asked, 'What did you go back to work for?'

Q. Was Earl Webb still there when you got out of the car?

A. Yes.

Q. Did he have anything to say about getting you out?

A. He said, "I ain't going to have nothing like that going on around here."

Mr. Edmondson: That is hearsay. We object to admission of that testimony.

The Court: Overruled.

By Mr. Warren:

Q. Was that in the presence of D. B. Parks and Clayton Price? Were they there when Earl Webb said that? Was he speaking to them or not?

A. He must have been; when he come out they were 30 or

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40 feet away; they didn't ride; they left walking.
page 25 } Q. They left walking?

A. And then Strouth pulled right out immediately.

Q. Strouth did?

A. Yes, sir.

Q. You talked about the knot on your neck there. Describe to the jury just what they did to you and where you were struck and kicked?

A. Well, I had a knot on my jaw and skinned place up under my left shoulder blade and a big blobber on the left side of my head.

Q. Now the injury to the side of your head and to your neck, do you know how you got those injuries?

A. I got them during them two times being jumped—

Q. I am talking about the injuries you got that day other than that.

A. Yes, sir.

Q. What struck you?

A. Parks kicked me right there in the back of the head (indicating) and kicked me right under the left shoulder.

Q. Were you standing up or lying down?

A. I were on the concrete trying, scrambling to get away and couldn't.

Q. Now up until that morning when those two men walked from Halvie Strouth's car over to Earl Webb's filling station, had you had any difficulty with Price or Parks?

page 26 } A. Not a bit.

Q. Over the strike?

A. Not a bit. They were on duty at that time. They come to work at 3 o'clock.

Q. You say that Lee Bentley took you out to Earl Webb's station?

A. Yes, sir.

Q. Where was Lee Bentley's car parked?

A. It were parked just off of Williams Street.

Q. Near the main office?

A. Yes, sir, it's on the end of the main office.

Q. Did you drive up Goodson Street?

A. No; he went up Williams Street towards Willie Boom.

Q. As you and he left the plant in his car, did you see Halvie Strouth or Parks or Price?

A. I saw them sitting in Halvie Strouth's car.

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Q. Where?

A. Off to the right of Williams Street.

Q. Were they facing you as you went by?

A. Well, they could see me getting in the car and their car was headed one way and that's the way we went.

Q. Now what did you do after these men left Earl Webb's filling station?

A. There was a guy come along and stopped to get some gas. I knew he lived back this way at some other
page 27 } store as he turns there. I was talking to him and told him I was waiting for the bus—

Q. Don't relate what was said. Did you get a ride?

A. Yes, sir, I got a ride; took me within three or four blocks of the house and I walked on down to the house.

Q. That was September 2, 1958?

A. Yes, sir.

Q. Now on September 3, 1958, the following day, did you go to work?

A. Yes, sir.

Q. What time did you go that day?

A. 7 o'clock.

Q. How did you go?

A. I got the bus and then I had to catch a guy on Pennsylvania and ride down to the job.

Q. Did he also work at the job?

A. He went back to work the morning I did, Carnell Wilson.

Q. You say you got there at 7 o'clock on the 3rd?

A. Yes, sir.

Q. Was anything done that day relating to any injuries you had gotten the day before?

A. Yes, sir; me and Carnell Wilson got out of the car and I started to step off into the back of the railroad to walk up to the office and punch the clock, and Sonny Walls and Bill VanHook and Jack Snyder was working the picket line.

Q. Were they union members?

page 28 } A. Yes, sir.

Mr. Stallard: I don't know what he's going to say but it is not in this fight at all, something up in the picket line not alleged in the pleadings.

The Court: Are you leading up to some statement on the part of someone other than parties to the pleadings?

Mr. Warren: Members of the local union voluntarily to show their knowledge of what had taken place the night before.

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The Court: Wait just a minute. Let's let the jury go out.

(Thereupon, the jury retired and the following proceedings were had in the absence of the jury.)

The Court: Go ahead with the examination, subject to the objection.

By Mr. Warren:

Q. Now you have described the men as you started to go in and punch the time clock. You go ahead and finish your statement as to what occurred.

A. Well, they were working the sidewalk up there. Johnny Johnson from Abingdon looked at me and he said, 'How does your head feel this morning?' I said, 'My head feels all right. Would you like to have some of it?' And I went on and punched the time clock and went to work.

page 29 } Q. I'll ask you again for the record, were those members of both of these unions, the local and the International?

A. Yes, sir.

Mr. Stallard: My adversary asks if he was both members of that International union. He can't make that statement. He wasn't a member of the International; he was a member of the local affiliated, but he asks as a conclusion of law if he was a member of the International.

Mr. Warren: That is a statement of fact, if he knows.

Mr. Stallard: If he has a card, I would like to see it.

The Court: The Court will overrule that objection.

Mr. Stallard: Exception.

The Court: Of course, I assume that there will be further proof and it will be a matter for the jury to determine under all the evidence. The charter and by-laws, and so forth, of the various associations, that will be determined by their own evidence.

Does that complete the evidence along the line that you are wanting to offer about what some other employees said about what occurred the night before?

Mr. Warren: Yes, sir.

The Court: You gentlemen want to object?

page 30 } Mr. Stallard: On the ground anything they say would be hearsay and we don't know what that could be. They might have cursed him and we are

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not responsible for what they said. We don't know anything about it.

Mr. Warren: If he knows what he paid himself, he was a member of the union.

The Court: I've already ruled on the question of whether or not he was a member. The Court is ruling now on these statements that these others made who seemed to be members of the union, made to him the next day, what they were. What is the purpose in offering that, Mr. Warren?

Mr. Warren: Simply to show that they all knew what was going on, that it was a planned and deliberate thing, well-known among all the members of the union pursuant to the instructions at the meeting to which we have referred.

The Court: The Court will sustain the objection at this stage. If it becomes material from the evidence, you may offer it again by other evidence.

Mr. Warren: We save exceptions to the ruling of the Court.

(Thereupon, the jury returned to the open courtroom and the following proceedings were had.)

By Mr. Warren:

Q. Mr. Humphreys, you talked about on the 3rd of September that you came back and went into the office.
page 31 } Go ahead from there. What happened after you
went into the office and punched the time clock as
a result of your injuries from the day before?

A. Well, I went in and the superintendent told me to get a broom and sweep.

Mr. Stallard: Your Honor, I object.

Mr. Warren: I think that is proper.

By Mr. Warren:

Q. Were you taken to a doctor that day?

A. Yes, sir. I worked until about 9 o'clock and they took me to the doctor.

Q. Who took you?

A. Mr. Jim Breeding.

Q. Did you see a doctor at the hospital?

A. Not that morning. I had to go back that evening.

Q. How did you get to the hospital?

A. Mr. Jim Breeding took me.

Q. Did you see a doctor then?

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A. Dr. Harkrader.

Q. And after seeing Dr. Harkrader, where did you go with Mr. Breeding? Where did he take you to then?

A. I come back to the bus station. He brought me back to the bus station on Pennsylvania and McDowell.

Q. Was it already quitting time or past quitting time at the plant?

A. Yes, it was done past quitting time. I thought page 32 } I wasn't going to catch the 6 o'clock bus because the doctor wouldn't finish.

Q. But you did get back in time?

A. Barely did.

Q. You caught the bus?

A. Pennsylvania Avenue.

Q. Hickory Tree Bus line?

A. Yes, sir.

Q. And that is within the City of Bristol, Tennessee, of course?

A. Yes, sir.

Q. Did you pay your fare there and get on the bus?

A. I bought tickets, cost me \$2 a week for 6 rides. I give him a ticket.

Q. You got on the bus?

A. Yes, sir.

Q. I will ask you if you saw anybody else on the bus?

A. There wasn't nobody but the bus driver and Halvie Strouth and Chase Strouth, they was sitting on the second seat back on the right.

Q. Where were you?

A. I got about three seats behind them, three seats behind them on the same side.

Q. Did they get on before or after you did?

A. They got on before. They were already on page 33 } there when I got there.

Q. Let me ask you, did you usually ride the bus home?

A. That is the only way I had to get backward and forwards to work.

Q. Now you refer to Halvie Strouth as being on the bus. Is he or not the same Halvie Strouth that drove the car on the previous day?

A. Yes, sir.

Q. All right, sir. Tell what happened as the bus pulled out of the station.

A. After I got on the bus we picked up original passengers

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as we made the round through town and went on out and got out where Chase's house is and Halvie's car was parked there.

Q. Did you recognize the car?

A. Chase, he got off; Halvie stayed on.

Q. How far from your place?

A. About a mile and a half.

Q. Go ahead.

A. When we got down to the store I got off, started to get off, another lady got off, me and her. I started to get off of the bus and when I made my first step I had to catch hold the rail. I was stepping and going out pretty steep and Halvie come down on my shoulder with his hands and just as I hit the ground he hit me on the nose. He knocked me around under the wheel of the bus. I was laying flat of my
page 34 } stomach on the highway; my head was laying there and the bus was fixing to roll right up across my face like that (indicating), and I placed my hand to the side of my head and got enough lever until the bus fuzzed up the side of my jaw and my hair and it stopped right on my hand. The bus stopped right on my hand, and I heard Chase holler, 'Let me have him.' I didn't see him. I heard him holler, "Let me have him." Halvie said, "That's all right. I can take care of him." And by that time my wife and step-son had got over there. I could see my wife push at him.

Q. Pushing at who?

A. Halvie Strouth, and the boy was throwing rocks, and finally Mr. Carrier rolled on off of my hand. I jumped up and ran up the steps and upstairs. I went in and my rifle was sitting in the corner. I got my 22 rifle, come back out and my hand were broken up until I could not shoot. I fired toward the car and hit the back end of the car. The bus pulled off and the car started following and went around the bus right after the bus pulled out.

Q. Why did you shoot and fire towards the car?

A. I didn't know but what he might come on up the stairs after me.

Q. The car that you refer to that drove off there, whose car was it?

A. Halvie Strouth.

page 35 } Q. Was it the same car you had seen parked there at Chase Strouth's home when the bus went by there?

A. Yes, it was the same car.

Q. Now you have described lying flat on your stomach with

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the bus wheel coming toward your head. Where was Halvie Strouth at that time?

A. He was working me over from behind on the back of the head and wherever he could work it.

Q. What do you mean, "Working me over?" For the record, what do you mean, striking you?

A. Yes.

Q. Where all did he strike you or hit you?

A. Well, I was hit several places over the head and mostly in the nose. My nose were broken.

Q. Was it bleeding?

A. Yes, sir.

Q. Do you know whether anyone was holding you down as that bus wheel came toward you?

A. Halvie Strouth.

Q. How was he doing that?

A. Well, all the buttons were tore off of my shirt. He had me by the back of the shirt, shirt collar. (Indicating)

Q. You put your two hands up there. What does that mean?

A. Had me by the collar and back of the shirt.

Q. What was he doing having you in that fashion?

A. Pushing me towards the bus.

page 36 } Q. What did you do, Mr. Humphreys, following that incident?

A. My wife went down to the store and called the County Sheriff.

Q. Did the Sheriff come?

A. Yes, sir.

Q. Without going into any of the details of the conversation, did you attempt to get a warrant?

A. Mr. Waldo Miles and the Sheriff brought me—I went to the Virginia Police Department and got hold of Bob Tauscher.

Q. Is he an official at your company?

A. Yes, sir, and he got Mr. Miles and Mr. Hamlin and they come to the Virginia Police Department and got me and took me to the hospital.

Q. About what time of day or night?

A. 10 or 10:30.

Q. Did a doctor see you at the hospital?

A. Dr. Stringfellow.

Q. What did the doctor do to you out there?

A. Well, he patched my fingers up and put some Mercurochrome and stuff on the side of my jaw where it was skinned.

Q. Did they X-ray your hand?

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A. Yes, he X-rayed my hand that night.

Q. When you say patched your fingers, what do you mean?

A. Put a splint.

page 37 } Q. Were any of your fingers broken?

A. Yes, they were broken right there (indicating) he said, the doctor.

Q. He put some Mercurochrome on your face?

A. Alcohol or something; burned pretty bad.

Q. Were you in any pain at that time?

A. I sure was.

Q. Where were you suffering from pain?

A. All over.

The Court: Mr. Warren, would it be satisfactory to you and opposing counsel to suspend the testimony of this witness and hear Dr. Harkrader?

Mr. Warren: I would be delighted.

Mr. Stallard: We would like to.

(Witness excused temporarily.)

CHARLES J. HARKRADER, JR., M. D.

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Warren:

Q. You are Charles J. Harkrader, Jr.?

A. I am.

page 38 } Q. I believe you are a practicing physician in
Bristol, Virginia and Bristol, Tennessee, are you
not, Doctor?

A. I am.

Mr. Warren: Will you gentlemen admit Dr. Harkrader's qualifications?

Mr. Stallard: Yes, sir.

By Mr. Warren:

Q. Dr. Harkrader, on or about September 2, 1958, did you have occasion to see and examine Roscoe Humphreys?

A. I examined him on September 3 and September 4, 1958.

Q. And what did your examinations reveal, please, sir, on each and every occasion around that period of time?

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A. I saw him on September 3 and he had a lump on the back of his scalp and had considerable spasm, limitation of motion of his back, considerable apparent soreness and he had also considerable tenderness in his left chest.

He also complained of soreness of his eyes, but I didn't see any objective evidence of injury there.

Q. Speaking of objective evidence, Dr. Harkrader, was the condition on his neck, was that plainly obvious to view?

A. On the back of the scalp, yes, that was obvious. There was one other thing, I don't think I mentioned. For instance—

Q. I beg your pardon.

A. His urine contained a few red blood cells.

Q. What would that indicate medically, Dr. Harkrader?

A. It indicated probably had a bruise of his
page 39 } kidney.

Q. All right, sir. Will you go ahead and tell what else you did on any other subsequent occasion?

A. I told him to return the next day to get some X-rays made. He came back the following day which was September 4, 1958, having been re-injured apparently in the meantime, and at that time his left hand also was sore. He had been seen by Dr. Harr and his left middle finger had been splinted. At least he said he had been seen by Dr. Harr. We obtained X-rays on that day of his ribs, spine, skull, chest and his left hand. The only fracture which was apparent was in his left middle finger.

Q. Now that was, I believe you said September 4?

A. September 4.

Q. Dr. Harkrader, did you see Roscoe Humphreys there afterwards at any time according to your records?

A. I have no records of having seen him subsequent to September 4.

Q. What treatment or medication, if any, did you prescribe?

A. He had splinted the finger. I don't have a record of having given him any other specific treatment.

Q. You've indicated that on the 3rd of September when he was seen by you there was tenderness about his chest, back and neck, perhaps other places, I believe his eyes you said he complained of. The objective symptoms that you could find

such as on his neck or back or wherever they were,
page 40 } and considering the type of wounds that you saw,
or conditions that you saw, what is your opinion
as to what caused those conditions. Dr. Harkrader?

A. Well, he told me he had been beaten and kicked the

Charles J. Harkrader, Jr., M. D.

first time I saw him and his injuries were certainly consistent with that.

Mr. Stallard: I object.

The Court: Sustained as to what he told him as a source of the injuries and not responsive to the question.

By Mr. Warren:

Q. Could you determine what apparently caused his injuries?

A. His injuries were consistent with having been involved in an altercation.

Q. On the following day, the 4th of September, was the patient complaining of any pain or discomfort at that time?

A. Yes, he was complaining a little more than he was the previous day. In addition to other things, he was complaining of his hand.

Q. Dr. Harkrader, in your opinion, were any of the injuries that this man sustained permanent in nature?

A. No.

Mr. Warren: That is all.

Mr. Stallard: No questions.

Mr. Edmondson: No questions.

The Court: Are you all willing to excuse Dr. Harkrader?

Mr. Warren: Do you happen to know, without
page 41 } consulting your secretary, what the amount of your
charges were, Doctor?

The Witness: Yes, sir. The charge was \$15.

Mr. Warren: Dr. Harkrader, do you recall or do your notes indicate any abrasions on the face of this man, side of his cheek or head?

The Witness: I have no record of that.

Mr. Warren: You have no personal recollection of whether or not—

The Witness: No personal recollection of it.

Mr. Warren: Does that mean that it necessarily did not exist or—

Mr. Stallard: Your Honor, I object to that.

The Court: Sustain the objection.

Mr. Warren: Thank you, Dr. Harkrader. May he be excused?

The Court: Thank you, Doctor. You may go.

(Witness excused.)

Roscoe Humphreys.

Mr. Warren: May we proceed, your Honor?

The Court: Yes, sir.

Mr. Warren: Come back around, Roscoe.

page 42 } ROSCOE HUMPHREYS,
the plaintiff, resumed the stand and was further
examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Warren:

Q. I believe you said that Mr. Miles took you to the doctor at the hospital and then took you on home?

A. No, he went down to Bluff City, Tennessee.

Q. He went down there with you?

A. Yes, he took me down there.

Q. Did that have anything to do with filing criminal charges against these men?

A. Yes, sir. He got Mr. Sams out of bed; it was getting around 12 o'clock. He was pretty fussy at him, and got a warrant for Halvie and Chase.

Q. Did Mr. Miles then take you on home?

A. Yes, sir.

Q. Mr. Humphreys, what pain or discomfort or disability or inability to perform your normal activities, if any, did you experience after that September 3rd incident?

A. Well, only thing my hearing and my left kidney and my finger.

Q. Were you sore or stiff?

A. For two weeks I didn't put my shoes on.

page 43 } Q. Why not?

A. I couldn't get to them. My back and legs were stiff.

Q. Going back for a minute to the union meeting to which you referred on Thursday night before you went back to work on Tuesday, was D. R. Parks at that meeting?

A. Yes, sir.

Q. Was Halvie E. Strouth at that meeting?

A. Yes, sir.

Q. Was Chase Strouth, H. C. Strouth at that meeting?

A. They were all there.

Q. Was Clayton Price at that meeting?

A. Yes, sir.

Q. Were they present at that meeting when the statements

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which you have attributed to Mr. McKinney were made at the meeting?

A. Well, there was special word went around that we all should be there.

Q. I didn't ask you that. I asked you whether or not they were present when Mr. McKinney made the statements that he made to that meeting?

A. Yes, sir.

Q. Were the statements made in a voice that could be heard throughout the room?

A. Mr. McKinney has a pretty loud voice.

Q. Mr. Humphreys, you spoke of attending a page 44 } union meeting on the night of July 29th or the day the strike was called and other meetings thereafter, is that true?

A. Yes, sir.

Q. And I believe you said that Mr. McKinney and Mr. Dishner were at those meetings?

A. They were there every time that I were there; I was at all of them.

Q. Now did they, in addressing any of those meetings, have anything to say about any pay that you would receive while you were on strike, not just you, but strikers in general?

A. Yes, they told us there was some kind of treasurer here before the money got here from International, Indianapolis, Indiana, but if we had to have some we could get it, but nobody could get pay until—

Q. Until what?

A. Until the money got here from International, Indianapolis, Indiana.

Q. Who made those statements?

A. McKinney.

Q. A. O. McKinney?

A. Yes, sir.

Q. Do you know whether or not the strikers were in fact paid some money?

A. They got little slips like I did to take to Barker's Grocery to cash, was the only place you could take them.

Q. Was any mention ever made by Mr. McKin-
page 45 } ney at any of these union meetings having refer-
ence to a bonding committee?

A. Yes, sir.

Q. When was that and what statement did he make?

A. Well, he made a statement for none of them to get in

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no trouble, not unless it was necessary, but if it was necessary they had a bondsman committee to take care of it.

Q. A bondsman committee?

A. To take care of getting them out of jail.

Q. I will ask you when was that? Was that before the meeting on Thursday that you've described?

A. Well, that was when the strike first started.

Mr. Warren: All right, sir. That is all. You may take the witness.

CROSS EXAMINATION.

By Mr. Stallard:

Q. Mr. Humphreys, were you a member of Local 3092 during the years of '55, '56, '57 and '58?

A. No, sir.

Q. When did you become a member?

A. I don't remember.

Q. You voted to strike, did you not?

A. No, sir.

Q. You did not vote to strike?

A. No.

page 46 } Q. Didn't your union call a meeting and have a strike vote?

A. Yes, sir.

Q. That's required under the law, isn't it?

A. Yes, sir.

Mr. Warren: I object to asking this witness what the law is, if your Honor please.

Mr. Stallard: He said he knew.

The Court: Overruled.

Mr. Warren: Exception.

By Mr. Stallard:

Q. You began picketing on the first day of the strike, did you not, the 29th day of July, 1958?

A. That night at 11 o'clock.

Q. You carried a sign?

A. Yes, sir.

Q. You were a friend of Parks, Price, Halvie Strouth and H. C. Strouth?

A. Yes, sir.

Q. When you were picketing?

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A. Yes, sir.

Q. You received benefits from the United Brotherhood of Carpenters, did you not?

A. Yes, sir.

Q. You were also insured by them, were you not, life insurance?

page 47 } A. Not as I know.

Q. Weren't those the only two benefits that you really got from the union?

A. I never had anything to show I was insured by anybody.

Q. You were not an agent of any United Brotherhood of Carpenters at any time? You never were agent to represent—

A. No, sir.

Q. You were just a member of the local union?

A. Yes, sir.

Q. You've stated you were a member of the United Brotherhood. You mean a member of the local union which had a charter from the United Brotherhood, were you not? You do not have any card to show you are a member of the United Brotherhood of Carpenters which is an International Union, do you?

A. I don't remember what my card showed.

Q. You've made the statement two or three times that you were a member. You don't have anything to show that you are a member of the United Brotherhood?

A. No, sir.

Q. You were a member of the local union though and had a card, is that correct?

A. Sure.

Q. Did you pay dues?

A. \$2.50 a month.

Q. Were you ever an agent of your local? Did
page 48 } you become an agent of the local union?

A. No, sir.

Q. You never were on any negotiating committees or an officer?

A. No, sir.

Q. Now you took a warrant for Price, Parks, H. C. Strouth and H. E. Strouth?

A. Yes, sir.

Q. And H. E. Strouth took a warrant for you?

A. Yes, sir.

Q. Did you fire a gun upon them?

A. Yes, sir.

Roscoe Humphreys.

Q. Now I'm going to quote what you said a few minutes ago and see if you are correct making that statement. You said, I jumped up, got rifle, came back but my hand hurt so I could not have shot." Did you make that statement?

A. Yes.

Q. Then you said, "I fired toward the car."

A. I said I couldn't shot anybody.

Q. But you shot a hole in the car?

A. Yes, I shot a hole in the car.

Q. You were mistaken then when you said you couldn't shoot?

A. Well, I was able to pull the trigger with my right hand.

Q. When you took that warrant out, you appeared in the court, did you not, the preliminary hearing?
page 49 } A. Yes, sir.

Q. They sent the matter on to the Grand Jury, both your case and the other man's?

A. Yes, sir.

Q. You took an oath to appear before the Grand Jury?

A. No, sir.

Q. You did not take an oath to appear before the Grand Jury. You were not recognized?

A. Not as I know of.

Q. You never appeared before the Grand Jury?

A. No, sir.

Q. And your case was dismissed, wasn't it?

A. I guess it was. I don't know.

Q. Did you have an agreement with these boys that you wouldn't appear and they wouldn't?

A. No, sir, I've never spoken to none of them boys.

Q. I am going to show you what purports to be an order dismissing the case because you didn't appear and taxed the costs against you for not appearing, and see if you will identify it.

(Paper passed to counsel for plaintiff.)

Mr. Stallard: It is a certified copy of an order, your Honor, under seal of the Court.

The Court: Certified according to the Act of Congress?

Mr. Warren: No, sir, it is not. And it also has
page 50 } some markings that are intended to give emphasis.

I will agree that Roscoe Humphreys did not appear. Is it a fact?

Roscoe Humphreys.

The Witness: I did not appear. I was over in North Carolina.

Mr. Warren: We will stipulate that is a fact.

The Court: Is that stipulation sufficient to cover the evidence you want to present?

Mr. Stallard: No, your Honor, I would like to introduce the order to assess the costs.

Mr. Warren: We will agree that is the case.

The Court: Does that meet your desires?

Mr. Stallard: I want to ask if the Strouth boy appeared. I want to introduce this showing the Strouth boy didn't appear either against him.

The Court: You can ask him. It doesn't sound like your order is being introduced to speak for itself. Go ahead and put the question.

By Mr. Stallard:

Q. Did your case, State of Tennessee vs. Roscoe Humphreys for felonious assault go to the Grand Jury?

A. I don't know.

Q. You were at the preliminary hearing?

A. I was at the preliminary hearing.

Q. They certified it on and you gave bond to appear?

A. I give bond and every time I would go down
page 51 } there for the hearing Chase Strouth were out with
heart trouble. He never did appear.

Q. He's been in bed ever since then?

A. No, he hasn't. I've seen him.

Q. Have you talked to him?

A. No, sir, I haven't spoke to him.

Q. If you went to the Grand Jury why didn't you go in and tell your story?

A. I wasn't around I told you—

Q. You just testified you went before the Grand Jury because you were under bond—

Mr. Warren: I object to not giving the witness an opportunity to answer.

By Mr. Stallard:

Q. You were over there?

A. I were over here in Tennessee and under bond, \$500.

Q. And you were also recognized in the Law Court to appear before the Grand Jury—

Roscoe Humphreys.

A. Never been nothing done in the State of Tennessee. It was always put off.

Q. The Grand Jury met periodically, didn't it?

A. I don't know.

Q. You did bring a warrant against them and they brought a warrant against you?

A. That is right.

Q. And you did shoot a gun at them?

page 52 } A. Yes, sir, at the car.

The Court: I believe all that has been gone over.

By Mr. Stallard:

Q. Now the court papers show that you filed this suit on September 2, 1960; two years had elapsed. Why didn't you bring the suit before the two years?

Mr. Warren: Now, if your Honor please, two years hasn't elapsed in the first place, and in the second place, I brought the suit and will take full responsibility.

Mr. Stallard: I want to ask where he was.

The Court: You may ask where he was.

By Mr. Stallard:

Q. Where were you for the two years first preceding this suit?

A. I was here in Bristol part of the time.

Q. Weren't you up in Ohio?

A. No, I was not up in no Ohio.

Q. You were over in North Carolina?

A. Yes, sir.

Q. Is that when you got a divorce, in North Carolina?

A. I don't have no divorce.

Q. Just separated from your wife.

A. (No response.)

Q. You say you knew Mr. McKinney about two weeks before the strike?

A. Yes, sir.

Q. Did you ever hear Mr. McKinney say that
page 53 } he didn't like to see you on strike?

A. No, I never did hear him say it.

Q. Were you present at all the meetings of your local union?

A. I was out one shift during five weeks; might have had one that night.

Q. You attended all of them?

Roscoe Humphreys.

A. I attended all of them.

Q. I understand your difficulty is with a fellow member of the union, is that correct?

Mr. Warren: I think he is asking him for a conclusion there.

The Court: Let him answer. Overruled.

Mr. Warren: Save exception.

Q. Your difficulty here is with a fellow union member, isn't it?

A. Sure, the guys that belong to the union just like myself.

Q. You alleged in your notice of motion they were agents of the International Union. Were you an agent of the International?

A. No, sir.

Q. Why did you allege they were agents of the International?

Mr. Warren: That is objected to.

The Court: That is a matter of law for the page 54 } Court to determine who is or is not an agent, so the objection is sustained to the question.

Mr. Stallard: Exception.

The Court: I should have mentioned question of law and fact to be submitted to the jury.

FURTHER CROSS EXAMINATION.

By Mr. Edmondson:

Q. Mr. Humphreys, when the strike occurred, you said to one of the meetings, 'We are going to kill anybody who walks across.' You were all in favor of it, weren't you?

A. No, sir.

Q. You were not in favor of it?

A. No, sir. I was asked to raise trouble. I told them for no job, I wasn't getting myself in trouble for no job.

Q. How long were you out on strike?

A. Five weeks.

Q. You went back to work. How long did you work after you went back to work at Bristol Door & Lumber?

A. It was in March when we got laid off after I went back to work in September.

Q. Were you laid off or fired?

A. I was laid off and more besides me.

Roscoe Humphreys.

Q. Mr. Humphreys, did you ever carry a gun on that job?

A. Afterward; after they jumped on me, yes, sir.

Q. You were a pretty big man down there?

page 55 } Mr. Warren: I object to that as argumentative.
The Court: Sustain the objection.

Mr. Warren: You don't have to answer.

By Mr. Edmondson:

Q. Mr. Humphreys, how many altercations have you been in in the last five years?

Mr. Warren: I'm going to object to that. It is highly improper.

The Court: Sustain the objection.

Mr. Edmondson: I think I am entitled to ask that.

The Court: I don't think you are entitled to go into other episodes which would require an independent trial and hear evidence on both sides trying an independent issue not involved in this case.

By Mr. Edmondson:

Q. Mr. Humphreys, have you ever been convicted of a felony?

A. No, sir.

Q. Now exactly where were you sitting out at Webb's Service Station?

A. I was sitting on the right of the door in a lawn chair.

Q. How long had you been there?

A. I had been there about 10 minutes; not no more than that; maybe not that long.

Q. Do you mean to tell the jury that Mr. Parks and Mr. Price followed you out to Webb's Service Station?

A. They certainly did. They were on duty from 3 to 11.

Q. How did they know where you had gone?

page 56 } A. I don't know how they knowed where. I had done gone but they found me. I know that.

Q. Now just what damage was done to you, did you say?

A. My head kicked up in the back.

Q. How was your head injured?

A. There was a big blobber right there on the side (indicating), right there where a big shoe had went.

Q. Did you see the shoe?

A. I seen the man that used the shoe.

Roscoe Humphreys.

Q. I didn't ask you that. Did you see it?

A. I saw the shoes.

Q. Did you see him kick?

A. Sure, I seen him kick.

Q. In the back of the head?

A. Sure.

Q. What were you doing all this time?

A. I were laying on the concrete. That were what I were doing.

Q. You weren't defending yourself?

A. I was doing the best I could. There wasn't much I could do and two a hold of me.

Q. How many people were there in the filling station?

A. I would say three or four or five around. I never counted them.

page 57 } Q. They all saw this?

A. I guess they did.

Q. They just came up there in front of all these people and jumped on you, is that right?

A. That's right.

Q. Why did you trip Mr. Price?

A. I never tripped Mr. Price. Mr. Price was not even close to the place. Mr. Parks, which did I trip?

Q. I am asking you.

A. Which do you say I tripped?

The Court: Don't ask him a question. Just answer the question.

Mr. Warren: Don't argue with him.

The Court: What is the next question?

By Mr. Edmondson:

Q. What did they do? Did they jerk you out of the chair?

A. Mr. Price was on the right and Parks on the left. Price first asked why did I go back to work and hit me under the chin; Parks grabbed me and jerked me onto the concrete and Price were working me over with his fists.

The Court: Which did you say was on your right?

The Witness: Price were on the right and Parks on the left, would have been on the left the way I was sitting, coming in that way, and Price on the right the way I was sitting facing.

Roscoe Humphreys.

page 58 } By Mr. Edmondson:

Q. Now you didn't go to the doctor that night, did you?

A. I went the next morning.

Q. What time was this altercation supposed to have taken place?

A. You mean out there?

Q. Yes.

Q. I'd say it was about 20 after five.

Q. You went back to work the next morning?

A. Sure, I come in to work; they took me to the doctor.

Q. You didn't complain of anything else that night, did you?

A. Yes, I had to go back to the hospital the same night.

Q. I mean the night that the altercation took place at Webb's Service Station, you didn't go to a doctor or anything that night?

A. That night, no.

Q. In fact, you weren't even hurt, were you?

A. Sure, I was hurt.

Q. You didn't get a warrant?

A. Yes, I got a warrant that night, right straight on that night.

Q. Which night?

A. The night that Parks and Price jumped on me.

Q. I thought you went on home?

page 59 } A. I did, but I hired a fellow to take me from home to get a warrant.

Q. You got a warrant for H. C. Strouth and Halvie Strouth?

A. Not that night, I didn't. Chase Strouth and Halvie hadn't jumped on me yet.

Q. You went to Blountville?

A. I went to Bluff City.

Mr. Edmondson: I believe that is all.

Mr. Warren: That is all, your Honor. Come down, please, sir.

(Witness excused.)

The Court: Are you ready for your next witness?

Mr. Warren: Call Mr. Earl Webb, please, sir.

EARL WEBB,

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Warren:

Q. You are Earl Webb?

A. Yes, sir.

Q. And what is your age, Mr. Webb?

A. 45.

Q. And your business or occupation?

A. Real estate.

page 60 } Q. Where do you live, Mr. Webb?

A. 906 Beechwood Road, King College Park, Bristol, Tennessee.

Q. Mr. Webb, I'll ask you if you operated a service station in Bristol, Tennessee, at one time?

A. Yes, sir.

Q. For how many years?

A. About 13.

Q. Where was that station located?

A. At 1500 Carolina Avenue, corner of Hazelwood and Carolina.

Q. What was the name of your station? What was it generally known as?

A. Webb's Sinclair Service.

Q. Is that in addition to being at the corner of Carolina and Hazelwood also on Route 421 going out to the Lake or Hickory Tree?

A. Yes, sir.

Q. In 1958 did the Hickory Tree Bus Line come by your place of business?

A. Yes, sir.

Q. Mr. Webb, do you recall an occasion in September, 1958 when some difficulty took place at your service station between Roscoe Humphreys right here (indicating) and two other men?

A. Yes, sir.

page 61 } Q. About what time of the day according to your recollection did that occur?

A. Well, I really don't know exactly but it was in the range of the time that most of the industries dismiss their employees. I would say somewhere from 4 to 5, somewhere along there.

Q. In the afternoon?

Earl Webb.

A. Yes.

Q. Were you there in your station that afternoon?

A. Yes.

Q. Were you inside or outside when this trouble first came to your attention?

A. I was standing outside.

Q. And what is the first you knew about it?

A. We had four metal lawn chairs sitting on a little raised place up back of the building, and Charles Lowry and Jimmy Hawthorne and one or two other fellows was sitting in the chairs. I was standing in front talking to them. There were two other chairs over on the right side of the door as you came out. I heard a scuffle. It sounded like metal against concrete.

The first thought seemed to me was that children were playing around and we tried to discourage that on account of so much traffic in and out there, and when I looked I saw it was adults. I immediately went over and broke it up
page 62 } and told them I didn't allow anything like that.

Q. You saw it was adults. Tell the jury just what you saw, where those adults were and what they were doing at that particular moment.

A. Well, I won't say for sure but I believe that Roscoe here was sitting in the chair, one of the chairs, and this car drove in headed south and parked on the right hand side of the pumps, between the pumps and the building. I didn't notice who it was. I just noticed a car. I didn't notice who was in it or who got out of it and when I saw this scuffle, he was down and these two fellows were over him. I don't know whether they were kicking him or hitting him or what, but when Humphreys got up, there was a big red blotch kind of like it had been recently struck, and I pulled a stupid trick, I guess. I thought Humphreys had driven up in the car, and I got Humphreys by the arm and put him in this car and this car belonged to Strouth. Of course, he didn't resist, but when he realized he did get out of the car immediately, Humphreys did, and the two walked off down northeast from the service station, down toward Carolina Avenue.

Q. What happened to the car?

A. Someone drove it off, but I couldn't truthfully say who did.

Mr. Warren: I believe that is all I want to ask him.

Earl Webb.

CROSS EXAMINATION.

page 63 } By Mr. Edmondson:

Q. Mr. Webb, did you see anybody hit anybody or kick anybody?

A. I really don't believe I could conscientiously say that I did. You see this has been so long and I've been summoned two or three times, once to Blountville, once to Tennessee Court, and I more or less dismissed it from my mind; I thought it was over. But really I couldn't definitely say that. I maybe did, but I couldn't say I did or didn't because it will be three years in September and that is a long time to remember a little incident that you thought was over and past and forgotten.

Q. You didn't think too much about it at the time, did you?

Mr. Warren: I object to that. Whether he thought too much about it is immaterial.

The Court: Sustained.

By Mr. Edmondson:

Q. Mr. Webb, did Mr. Humphreys seem unconscious or anything of that nature or dazed or semi-conscious when you grabbed him by the arm?

A. If he did I wasn't aware of it. Now he certainly didn't resist, as I stated, when I got him by the arm and put him in their car. He didn't resist in any way.

Q. How many people were around at that time, do you remember? Not their names but just the approximate number?

page 64 } A. I would say there was about 7 or 8 people.

Mr. Edmondson: That is all.

Mr. Stallard: I don't have any questions.

Mr. Warren: May this witness be excused?

Mr. Stallard: Yes, he may.

The Court: All right, you are excused.

(Witness excused.)

The Court: A juror wants to ask a question.

A Juror: Are there two separate actions here, one involving these two gentlemen and one involving the International?

Burt Smith.

The Court: No, there is only one suit being tried against all of the named defendants.

Mr. Edmondson: If your Honor please, there are two counts to that, one involving my clients so far as they are concerned and one involving the Strouths later on.

The Court: In order that you may more fully understand the pleadings, there are two counts in the plaintiff's declaration. One covers the occasions at Webb's Service Station and the other covers the occasion out near the plaintiff's home.

Of course, according to the pleadings the individuals involved in each one of those episodes were different. The pleadings show and the evidence will determine who was present

at which of those, but it's all included in in one page 65 } suit, in the first instance alleging that the individuals were acting as agents of the named unions and that in the second instance two other individuals were alleged agents of the International union.

The Juror: The reason I was asking, I understand Mr. Stallard is representing the International and Mr. Edmondson representing the individuals.

The Court: Who is the next witness?

Mr. Warren: Your Honor, that he may get back to work, I'm going to call one witness a little out of order if I may, Burt Smith.

BURT SMITH,

the next witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Warren:

Q. You are Mr. Burt Smith, are you?

A. I suppose.

Q. What is your age, Mr. Smith?

A. 55.

Q. Where do you live?

A. 306 E. State Street.

Q. In the summer of 1958 were you working at Bristol Door & Lumber Company?

page 66 } A. Yes, I was.

Q. How long had you worked there?

A. I don't know exactly. Around 13 or 14 years.

Q. Around 13 or 14 years?

A. Somewhere along there.

Burt Smith.

Q. In the summer of 1958 were you a union member?

A. Yes. I joined the union about 4 or 5 or 6 months after I got a job.

Q. About 4, 5 or 6 months after you got a job?

A. Something like that.

Q. Did you go out on strike in July of 1958?

A. Yes.

Q. Did you thereafter go back to work?

A. Yes.

Q. Before the strike was over?

A. I did.

Q. Now did you know a man by the name of A. O. McKinney?

A. No, I don't.

Q. You are not personally acquainted with him?

A. No, sir.

Q. Are you personally acquainted with a man by the name of C. Arcil Dishner?

A. No, sir.

Q. Not personally acquainted with him?

A. No, sir, I didn't know him.

page 67 } Q. Did you attend meetings of the union while the union was on strike?

A. A few of them.

Q. A few?

A. A few, not many.

Q. Who was in charge of those meetings? Who conducted them?

A. I don't know. Sometimes Mr. Hinkle would be there and some others.

Q. Were those some others, were those members of the local?

A. Most of them had better clothes than we did.

Q. Most of them had better clothes. You mean better clothes than the sawmill union have?

A. That is right.

Q. Were they boys from in town or out?

A. I couldn't say. They were strangers to me.

Q. They didn't work at Bristol?

A. (No response.)

The Court: The question was they didn't work at Bristol?

By Mr. Warren:

Q. They did not work at Bristol?

Burt Smith.

A. No, sir.

Q. Do you know the names that I've mentioned, not talking about acquainted, are you familiar with the name McKinney and Dishner?

page 68 } A. I've heard them talking about them.

Q. Who?

A. Different ones.

Q. In the union?

A. Yes, sir.

Q. Now at these union meetings that you attended during the time the strike was going on, were any statements ever made by the persons in charge of those union meetings concerning entertaining non-strikers or those who went back to work?

A. Well, these men, I reckon they was the head of the union or whatever it was.

Q. The same two men we have been talking about?

A. That's right; told us fellows that was there on the sidewalk when walking to say nothing to nobody, anybody who asked, where we had any outsider come up, say nothing to nobody and if anybody commenced asking questions for them to tell them to join the union and find out what it was all about.

Q. Was anything said about what would be done to non-strikers and persons who went back to work?

A. First one and then another would get up and ask a question and these men said, "Don't bother nobody on the strike while you are walking. If you see anybody coming on the sidewalk, give them room." Then it went on and they divided it up and one walked by himself and would turn and come back. They said, "Don't block the street. Have nothing to say to nobody."

page 69 } Q. What else did they say about between home and work, if anything?

A. Well, there was one man and another there, I can't say who, said, "What about these here men coming in over the yard and can't bother them?" Said "All that works, these new scabs went in, all works, whenever the job is over and strike, there will be a new contract and we will bring them out; not one of them will have a job." Some asked questions, you know kinda how one fellow is and another what to do, and this fellow said, "Don't bother nobody while it is on now. Later they can be entertained."

Q. Did he go any farther than "later they could be entertained"? Did he say where?

A. No, he didn't.

Burt Smith.

Q. Was that one of the two men you are referring to who made that statement?

A. That is right.

Q. Men who were not members of the local union of the Bristol Door?

A. No, they didn't work at the Bristol Door. I imagine union men, I don't know.

Q. It was a union meeting?

A. Yes, sir.

Q. In a union hall?

A. That's right.

page 70 } Q. Union members present?

A. That's right.

Q. I believe you are back at work at the Bristol Door?

A. Yes, sir, I have been back a week ago, yes, sir.

Q. You have been off sick?

A. Been off since the 30th.

Q. But you did work other than your sickness since the time you went back?

A. That's right.

Q. You went back to work before the strike—

A. I did.

Q. You said these two men said not to do a thing to these strangers?

A. Yes, sir.

Q. Until the strike was off?

A. That is it.

Q. Did you ever hear anybody tell them to go out and beat them up?

A. No, sir.

Q. And you were there at most of the meetings?

A. No, I worked mostly at night. Sometimes I arranged for it down there at night. I didn't attend all the nights but some few.

Q. I didn't understand. He said not to do anything during the strike or picket line?

page 71 } A. Not to do it until after everything was over; then they could be entertained; not to bother nobody on the strike; clear the streets.

Q. What do you mean on the strike?

A. After it was all over, they said be a new contract and all them men would come out and have no work.

Mr. Warren: I want to cross examine. I want the privilege of cross examining this witness.

Burt Smith.

The Court: All right, sir.

By Mr. Warren:

Q. Mr. Smith, did you talk to me up at Bristol Door day before yesterday?

A. Yes, sir.

Q. Didn't you talk to me out here in the hall this morning?

A. Yes, sir.

Q. Didn't you tell me the statement of one of these two men to whom you referred was to the effect not to bother anybody on the picket line but to attend to them at some other place, entertain them?

A. Said they could be entertained after the strike was over.

Q. You never said anything about after the strike was over, did you?

A. Yes, sir, said to not bother nobody while they was walking and not block the street.

Q. Didn't you go further and tell me the reason
page 72 } he said not to bother them on the picket line is
because they might have a bug on them?

A. Yes, sir.

Q. Didn't he say that?

A. Yes, sir.

Q. Didn't he say, 'Watch them before you work them over and entertain them because they might have a bug on them?'

A. He said, "Watch what you say before anybody. They might have a bug in their pocket, and if any of you don't know what a bug is," he said, "It's something when you get up close by talking and record what you are saying."

Mr. Warren: All right, stand aside.

(Witness excused.)

The Court: Unless you have a very short witness that you could dispose of in a few minutes, do you have one?

Mr. Warren: No, sir, I don't have.

The Court: Take a recess. Observe the same precautions which the Court gave you earlier about talking or making any private investigation of your own regarding the case and come back at one-thirty.

(Thereupon, the Court recessed at 12 o'clock, noon.)

Burt Smith.

page 73 }

AFTERNOON SESSION.

(Thereupon, the Court reconvened at 1:30 p. m.)

The Court: Go ahead with the evidence when you are ready, Mr. Warren.

Mr. Warren: Sergeant, call Billy Gene Brown.

Mr. Stallard: I did not cross examine Mr. Burt Smith.

Mr. Warren: I beg your pardon. Sergeant, call Mr. Smith back.

The Court: I thought you were through with Mr. Smith.

BURT SMITH,

was recalled, and was further examined and testified as follows:

CROSS EXAMINATION.

By Mr. Stallard:

Q. Mr. Smith, I believe you testified here this morning, did you not?

A. I did.

Q. You stated, among other things, that the two strange men that you did not know were dressed up told the members of the union not to do anything to anybody, is that correct?

A. Yes, sir.

Q. Have you ever seen me before?

A. No, sir.

page 74 } Q. Has anybody talked to you about this case from the union?

A. No, sir.

Q. Is Mr. Warren the only man who talked to you?

A. That's right.

Mr. Stallard: That is all.

Mr. Warren: Just a minute, please, sir.

REDIRECT EXAMINATION.

By Mr. Warren:

Q. Concerning your conversation with me, you said this morning you had one with me day before yesterday at Bristol Door and one out in the hall this morning, isn't that right?

A. Yes, sir.

J. Barney Hinkle.

Q. And the conversation in the hall this morning which I have examined you about, Mr. Roscoe Humphreys was present during that conversation, was he not?

A. Yes.

Mr. Warren: That is all, sir, Thank you.

(Witness excused.)

* * * * *

J. BARNEY HINKLE.

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Warren:

Q. Mr. Hinkle, your name is J. Barney Hinkle, is that right?

A. Yes, sir.

Q. Mr. Hinkle, in September and particularly page 93 } on September 2 and 3, 1958, were you an officer of Lumber and Sawmill Workers Union, No. 3092 of Bristol, Virginia, chartered by and affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO?

A. Yes, sir, I was an officer in the local.

Q. What office did you hold?

A. President.

Mr. Warren: Now if the Court please, we ask the Court for permission to call this witness as adverse.

The Court: Proceed.

By Mr. Warren:

Q. Mr. Hinkle, at that time was Halvie E. Strouth a member of your union?

A. Yes, sir, so far as I know he was. I would have to check the records to see, but so far as I know he was of the local.

Q. And H. C. Strouth was a member also, was he?

A. Yes, sir.

Q. And D. R. Parks was a member?

A. Yes, sir.

Q. And Clayton Price?

A. Yes, sir.

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Q. Now in answer to that question about Halvie you added he was of the local?

A. Local union; that is what I meant, all of them a member of 3092.

Q. And they were not members of the International union?

A. They were not members of the International
page 94 } union. We were affiliated with the International,
not a member of them.

Q. Mr. Hinkle, don't you know the only membership that the International has other than officers and paid agents is the memberships of its local unions?

A. No, sir.

Q. Isn't that correct?

A. No, sir.

Q. What other members do they have?

A. You mean the local?

Q. The International?

A. I couldn't tell you; general staff. The local union is governed by the body membership in its own jurisdiction. The International does not come in and tell a local how to operate its business.

Q. And you are not bound by the International Constitution and By-Laws?

A. Just what do you mean, Mr. Warren?

Q. Aren't you bound entirely by the Constitution and Laws of the United Brotherhood of Carpenters and Joiners? Is not a local union chartered by them absolutely bound by the Constitution and Laws of the International?

A. To a certain extent.

Q. Isn't it a fact that a portion of the dues paid by the
membership of the local is required by the Con-
page 95 } stitution of the International to be sent to the
International?

A. No, sir, not the dues. There is a per capita tax paid on each member in the local to the International.

Q. That is not money of the local. That is just paid by the member to the International?

A. The local pays a certain amount per capita tax on each member it has.

Q. And that doesn't make those members of the International union?

A. I don't think so.

Q. Suppose you want to become a member of the International union, in this case the United Brotherhood of Carpenters and Joiners, how would you have to go about it?

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A. You would have to go to the General President of the International, I suppose. I never tried it.

Q. In other words, you couldn't do it by joining the local union?

A. No, sir.

Q. Now have you ever read the Constitution and Laws of the United Brotherhood of Carpenters and Joiners of America?

A. Yes, sir, I've read practically all of them and some probably I haven't read, and a lot of them probably I've forgotten; wouldn't even contend that I know them by memory.

Q. Have you read this? 'Section 6. The jurisdiction of the United Brotherhood of Carpenters and Joiners of page 96 } America shall include all branches of the Carpenter and Joiner trade. In it shall be vested the power through the International Body to establish and charter Subordinate Local and Auxiliary Unions, District, State and Provincial Councils in all branches of the trade, and all other employes working in the industry, and its mandates must be observed and obeyed at all times.

"The right is reserved to the United Brotherhood through the International Body to regulate and determine all matters pertaining to fellowship in its various branches and kindred trades."

Did you know that that provision was in the Constitution?

A. Yes, sir, I certainly did.

Q. Do you still say that the International does not control the local?

A. Yes, sir. I still say that the International does not control the local directly.

Q. Any order, Mr. Humphreys, that the International sends to the local, the local necessarily obeys without further question, doesn't it?

A. Not necessarily. The local—I've never in the five years that I served as President of Local 3092 I had never had orders issued to me whatsoever that I must obey.

Q. And during this strike you had no orders issued whatever?

page 97 } A. No, sir, I did not.

Q. Talking about qualifications for membership, did you know this provision was in the Constitution?

"Beneficial members are those who are admitted as prescribed by the Constitution and Laws of the United Brotherhood for beneficial members, and who pay the dues provided

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in the Laws of the United Brotherhood, also the By-Laws of the Local Union.”

Did you know that that provision was in there?

A. Yes, sir, I knew that that provision was in there.

Q. Did it come to your attention, Mr. Hinkle, following September 2 and 3, 1958, that the two incidents complained of here by Roscoe Humphreys had occurred? Did you know that they had happened?

A. Afterwards, yes, sir. I heard about it.

Q. How soon afterwards?

A. I believe that Mr. Webb told me about the first one. I don't know—it was sometime—I don't remember—it was the next morning early or sometime that afternoon I stopped by there as I went in and he asked me if some of the boys had been into a racket, scuffle or something. I said, “I'm sorry I had been in at that time and I didn't know about it.

Q. You didn't know anything about it?

A. Not until he told me about it.

Q. Didn't have a thing to do with it?
page 98 } A. No, sir, I knew nothing about it.

Q. I take it you weren't pleased with it?

A. No, sir. I am not pleased with no kind of violence.

Q. And you were the highest officer in the local union?

A. Yes, sir.

Q. And the local union has authority to discipline its members for this kind of misconduct?

A. Yes, sir, it certainly does.

Q. Was any disciplinary action received by the four men, Parks, Price and the two Strouths?

A. No, sir, they hadn't at that particular time.

Q. Well, at any time on account of that occurrence, has there ever been?

A. May I say this?

The Court: You can answer the question and add any explanation you want to.

The Witness: No, sir.

By Mr. Warren:

Q. You wanted to explain. Go ahead.

A. But the local failed to exist within September, October, within I'd say 6 to 7 weeks it failed to exist which that nobody had any authority whatsoever to make any restitution towards this incident that happened, no way, shape or form.

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Q. You were still President 6 or 7 or 8 weeks until it ceased to exist?

A. Yes, sir.

page 99 } Q. How did it cease to exist, Mr. Hinkle?

A. Well, they just—I went to the hospital. I'll have to explain the whole thing to get you to understand. I was sick, taken sick and had to go to the hospital. They decided to go back to work during the time while I was in the hospital and I don't know personally just exactly how they went about it, but the first thing I knew some of the boys came to the hospital and decided to go back to work.

Q. What happened the International boys by that time had pulled out and left you all holding the bag?

A. No, sir.

Q. Isn't that what happened?

A. No, sir, that is not what happened.

Q. Those jobs had already been filled, for instance Bill Curtis, and they were just out of a job?

A. They didn't have a job.

Q. The only reason you went back, your particular job hadn't been filled?

A. I couldn't tell you. You'll have to ask Mr. Hamlin or Mr. Maupin, Superintendent of the plant.

Q. You went back to your job?

A. I went back on the job.

Q. Same job, but Bill Curtis' job was filled?

A. I suppose.

Q. And Bill Curtis still isn't working?

page 100 } Mr. Edmondson: This is pretty nice but he is going far afield. It has nothing to do with the issues.

The Court: He is going far afield. Sustain the objection.

By Mr. Warren:

Q. Now you never did give us the amount of dues that went to the International or per capita tax, whatever it is, as you called it. Do you know what that amount is?

A. If I recall, I could be a little off, either \$1 or \$1.25 per person per capital tax went into the International.

Q. Per month?

A. Per month, yes, sir.

Q. And out of \$2.50 total dues?

A. Yes, sir.

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Q. Do you know what you paid that for if you weren't members of the International, why you were paying that to them?

A. It was an insurance and an old age benefit. After a certain—well, kind of retirement plan and a death benefit. You see now there is two types, a beneficiary or semi-beneficiary. The sem-beneficiary does not have the opportunity to get those benefits that you get by full membership into the local, and we were full membership union, a local into the International in which we were allowed the death benefits; also at the age of retirement a monthly pension, and they went in for that.

Q. What were Dishner and McKinney doing down here, protecting their investment or what?

page 101 } A. No, sir. On negotiations of a contract agreement I was President of the local and I always called or wrote and asked them to send a representative from the International to come down and help guide me along in negotiations, and so this particular time I had written for an International man to come to help me represent the local and they had sent Mr. Dishner.

Q. That was before the strike, wasn't it?

A. Yes, sir, that was when we started *neogitations*.

Q. Getting back to this insurance you are talking about, did you get any kind of a policy, certificate of insurance? Have you got one?

A. No, sir, I don't have one.

Q. Do you know how much you paid in?

A. It's a thing that is set aside by the International alone and they've never issued to my knowing any policies.

Q. Is it under any state insurance company or administered by anybody or do you know where it is?

A. It's got to be bonded some way, but I couldn't answer that.

Q. But of course, as you say, when this union died, I guess the insurance died?

A. Yes, sir, as far as I know.

Q. Did you get any return of the premium?

A. No, sir, I haven't.

Q. Did anybody else?

page 102 } A. Not to my knowing.

Mr. Edmondson: Your Honor please, I don't see what that has to do with this case, the insurance.

The Court: Are you objecting?

Mr. Edmondson: Yes, sir, I am.

J. Barney Hinkle.

The Court: It seems you are just about at the end of this line as far as determining what connection there is between the local and International and local worker?

Mr. Warren: Yes, sir.

The Court: I overrule it.

Mr. Warren: I believe that is all right now, Mr. Hinkle.

CROSS EXAMINATION.

By Mr. Stallard:

Q. Mr. Hinkle, were you summoned here by the plaintiff?

A. I was summoned by both.

Q. Who summoned you?

A. I have to look and see here. I have the summons. One of them is on behalf of the plaintiff and the other is on behalf of the defendant.

Q. What defendant was that?

A. D. R. Parks and Clayton Price, and the other is Roscoe Humphreys.

Q. I didn't summons you then, did I?

A. No, sir, not to my knowing.

page 103 } Q. Now you stated here that you paid a per capita tax to the International. What else did the International do for the local union?

A. I don't believe I understand.

Q. Did the local union receive certain monies to pay to your members when they are out on strike known as strike benefits?

A. Yes, sir, we did receive strike benefits.

Q. Is that incorporated in your agreement, in your charter?

A. Well, I just can't recall.

Q. Tell me this. How many officers of the local union did you have?

A. Well now, let's see if I can name them correctly. You got the President, a Vice-President, a recording secretary and a financial secretary and a treasurer and three—well, I can't think—

Q. Do you have committees?

A. Yes, sir, we have committees that's appointed for different things by the local, the body of the local.

Q. Do you have a negotiating committee to negotiate a new contract for the local?

A. Yes, sir.

Q. Does the International union negotiate any of the contracts that you may have had with the manufacturer?

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A. No, sir, they never had.

page 104 } Q. You testified, I believe on direct examination, that you sent for the two representatives of the International?

A. Beg your pardon. Didn't I say I wrote for a representative and they sent Mr. Dishner in here?

Q. Now why did you send for them?

A. Well, for guidance in things and probably questions that I wanted to ask that I didn't know and for guidance in negotiating a contract.

Q. Could the local union sign a contract without even sending a representative?

A. Yes, sir, they can sign a contract without sending for anybody.

Q. It is local prerogative, so to speak?

Mr. Warren: I am going to object. If he wants to show us the local by-laws to support it, I don't fight the local's authorization to this man as to the legal status of the local union.

Mr. Stallard: Your Honor, this man is President of the local and he ought to know something about his local.

The Court: You asked the preliminary question, Mr. Warren, to determine if the charter and by-laws of the local are in written form and available that would be admissible.

Mr. Warren: I would like to ask.

page 105 } The Court: You may.

Mr. Warren: Do you have the written charter or by-laws of the local union or did you sent those back to the International?

The Court: The only question is while they were in operation.

The Witness: We had one while we operated, we certainly did.

Mr. Warren: Do you still have one?

The Witness: Well, I probably do at home, yes. I don't have it with me.

Mr. Warren: We submit that would be the best evidence, your Honor please.

Mr. Stallard: You had your local Constitution and By-Laws?

The Court: Charter was the word I used.

Mr. Warren: Did you have a charter or something hung on the wall?

The Witness: Yes, sir, we did. I don't have it. I returned

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that back when the union failed to exist. I returned that back to the International.

The Court: You say you did have local by-laws. Did you also have a local Constitution? Is that included in the same booklet? Was it in booklet form?

The Witness: Yes, sir, they were all combined page 106 } together, but each local was allowed to make their own by-laws.

The Court: Do you have it printed or typewritten, the local by-laws?

The Witness: No, sir, we just had written long-hand and some typed.

The Court: But you did keep them in record form?

The Witness: We kept some, yes.

The Court: Well, I think that would be the best evidence of legal procedure.

By Mr. Stallard: You couldn't have anything in your by-laws inconsistent with the International Constitution?

A. No, sir.

Q. Or anything inconsistent with the laws of this country?

A. No, sir, nothing whatsoever.

Q. You were asked if Mr. Price, Mr. Parks, Mr. Strouths were members of the local union. Was the plaintiff over there a member?

A. Yes, sir, he was.

Q. Did he picket?

A. Yes, sir.

Q. I believe you went back also just like plaintiff to work before the strike was over?

A. No, sir, I never went back. I was in the hospital when they decided. I went back in November, along to page 107 } wards the last of November when I returned to work.

Q. Did you attend the meetings that were held when they took the strike vote by the local union?

A. Yes, sir.

Q. Do you recall approximately how many members were present?

Mr. Warren: If your Honor please, I suggest that he is making the witness his own witness, exceeding the scope of our examination.

The Court: Well, unless something to the contrary deve-

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lops, I think you are making him your own witness on any matter not covered by the other direct examination to him?

Mr. Stallard: Will you read him the question.

(Question read by reporter.)

By Mr. Stallard:

Q. When they took the strike vote?

A. I couldn't say exactly without going back there but we do have a recording secretary who should have a record of that and if I remember correctly, it was somewhere around 70 to approximately 12 or 15, if I recall right. I could vary on it. That's been over three years ago and that's a long time to remember.

Q. How did the people vote? Did they vote by written ballot?

A. They voted by written ballot yes and no.

page 108 } Q. Was it a secret ballot?

A. Yes, sir.

Q. Did you all preserve that ballot?

A. We did for awhile but I don't believe it exists now.

Q. Doesn't the law require you to preserve that ballot?

A. It does.

Q. If you had gotten a vote they didn't want to strike, could the International made you strike?

A. No, sir.

Q. Did you employ Parks, Price, Strouth and Strouth to represent the local union?

A. No, sir.

Q. If they did strike the plaintiff were they authorized as far as the local union was concerned?

Mr. Warren: I object to that. The local union is in default as to that issue as to this case and has already been so adjudged.

The Court: It won't affect the liability of the local union which will be established by the defendant's evidence if the Court finds it sufficient, but he can inquire as a matter of evidence, not as a matter of law, what was said or done in the meetings, whether it was or was not specifically directed.

Mr. Warren: Save exception.

The Witness: Would you read that back, please, ma'am.

page 109 } (Question read.)

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By Mr. Stallard:

Q. Was any question of violence ever discussed in your meetings?

A. Yes, sir, it was.

Q. What were the discussions?

A. The discussion was on behavior on the picket line and how for the men to conduct themselves.

Q. Were you on a negotiating committee?

A. Yes, sir.

Q. Were you elected by the members of the negotiating committee?

A. Yes, sir.

Q. You weren't on there by virtue of your office as President?

A. No, sir.

Q. Who was on the negotiating committee?

A. Myself, George Washington, E. K. Montgomery, D. R. Burns, and W. H. Niffer.

Q. Were any members of the International officers on this negotiating committee?

A. No, sir.

Q. Did you confer with the attorney for the company in negotiating a new contract?

A. Yes, sir, he was with us on each meeting.

Q. Where did you go to meet the attorney and page 110 } the representatives of the company?

A. In the office of the Bristol Door & Lumber Corporation.

Q. Did you ever go anywhere?

A. Yes, we met at the hotel after we were into the strike and we also met over here in the office at Ralph Brumet's; I don't recall whether it is once or twice there, once in Mr. Miles', Waldo Miles' office, and I believe twice in the General Shelby, if I am correct. I believe it was twice we met there.

Q. And Mr. Hinkle, you testified here you know Mr. Humphreys?

A. Yes, sir.

Q. Have you known him?

A. Yes, sir. I first met him as a Deputy Sheriff on a call to come and pick him up on a charge of being drunk.

The Court: Wait just a minute. You gentlemen will not consider it. The witness has taken opportunity to inject something not responsive to the question.

J. Barney Hinkle.

By Mr. Stallard:

Q. It has been testified here by Mr. Hinkle that he heard Mr. McKinney state in a public meeting to not do anything on the picket line, but to go out on the street and homes and see these people, who might be going into work.

Mr. Warren: Your Honor, please, again, I insist he is making him his own witness.

page 111 } By Mr. Stallard:

Q. Did you ever hear any statement—

The Court: Just a minute. Of course, it's so intertwining, there is no use for the Court to decide whose witness it is on a given time. The jury can consider the whole testimony.

By Mr. Stallard:

Q. I'm going to give you the exact words that Mr. Humphreys used. These are the words. He said that McKinney said, "I understand some of the men are talking about going back to work. If anybody does, don't do anything on the picket line. Catch them down town or on the way home." Have you ever heard Mr. McKinney say that?

A. I don't recall any statement made in the union hall to that effect. The only statements in the union hall was that pickets say nothing, harm nobody nor do nothing to nobody, watch their language on the street about the people passing and especially when there were ladies coming.

Q. Did you have any knowledge or did you have any prior knowledge that Parks, Price and the two Strouth boys were going to have an encounter with the other member, Mr. Humphreys?

A. No, sir, I knew nothing about no violence of no kind at no time.

Q. You say you heard it from Mr. Webb?

A. Yes, sir, first I knew about it Mr. Webb told me after it done happened; I was coming back into town. I was at home. You see, I live oh, I'd say a quarter of a
page 112 } mile below Mr. Humphreys right on the bank of
the river, and I was just back and forwards. I was at home I would say well 50 per cent of the time, I was at home just back and forwards.

Q. You are working now up at the Bristol Door & Lumber Company?

J. Barney Hinkle.

A. Yes, sir.

Mr. Stallard: That is all.

REDIRECT EXAMINATION.

By Mr. Warren:

Q. You say you had no idea there was going to be an encounter as Mr. Stallard asked you?

A. No, sir, I had no knowledge whatever of any violence.

Q. Barney, you even had a bonding committee to bond them out of jail?

A. There was a committee for everything to look—

Q. I am not talking about everything. I am talking about a bonding committee. You even had that to bond your “goons” out of jail?

Mr. Edmondson: Your honor please—

A. Always is.

Q. That is standard practice?

The Court: Do you want to pursue the objection?

Mr. Stallard: Mr. Warren used the word “goon”. I don’t know what it is, something disrespectful. I don’t think it is a proper question. There is no evidence of any page 113 } goons. They were all members of the union and had some difficulty. I object.

The Court: Sustain the objection. There is no evidence defining a goon or indicating that anyone came within the definition. The jury will disregard the use of that word. Confine the examination to cross examination and not some other.

By Mr. Warren:

Q. To get back to that question, you had the bonding committee to bond your members out of jail that got in trouble though, is that right?

A. Yes, sir, there was.

Q. And that was announced at the meeting that you had a bonding committee, wasn’t it?

A. It didn’t necessarily have to be announced. They were there. They elected them and voted on them and appointed them, the members of the local.

Q. Mr. McKinney was at that meeting when that occurred?

A. I couldn’t say whether he or Dishner.

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Q. One or the other?

A. I could not truthfully say which one was there but they was one.

Q. They were both representatives of the International?

A. Yes, sir, they were both representatives of the International.

Q. You had nothing to do with violence. As page 114 } you say, the instructions were against any violence of any kind?

A. So far as I know or my instructions was to the local to keep their nose clean and stay out of other people's business.

Q. You didn't know of Brunson, another man, going to George Rogers' home and threatening his wife?

A. No, sir.

Q. Had nothing to do with it?

A. Had nothing to do with it.

Mr. Stallard: I think I will object.

The Court: Sustain the objection unless it's brought in more definitely and connected to this suit.

By Mr. Warren:

Q. I'll re-ask the question. Isn't it a fact that you knew, counselled and advised with a fellow named Brunson, a member of your union, going to the home of George Rogers out near Bristol Memorial Hospital near the strike and tell him if he didn't get out of that plant—

A. I didn't catch the first part.

Q. Didn't you know that, council it and advise with them?

A. No, sir, I did not.

Q. And didn't you yourself contact a man names Les Hockett and tell Les Hockett words to this effect? You knew where he could get \$50 if he would take care of George Rogers. Didn't you tell Les that?

A. Why, no, sir, I did not. No use—I'm man enough to take care of my own difficulties, if I had them, but I didn't.

Q. It is a fact that George Rogers took the page 115 } place of a striker here in Bristol Door?

A. Yes, and some others.

Q. And they jumped him, your union men who were supposedly under your control, did it during the strike?

A. Well, there were no charges.

Q. Subject to an injunction suit in this court, wasn't it?

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A. Injunction. They never filed no charges against none of the men.

Q. You knew that happened?

A. I knew after they brought an injunction.

Q. But you didn't know anything about it before?

A. No, sir, Mr. Warren, I couldn't be on the picket line at one time and I couldn't tell you what happened—

Q. Let me ask you this. Isn't this a fact that you said in the presence of Dishner and others at the union meeting, "Don't get in trouble in Virginia because I cannot help you, but I used to be a Deputy Sheriff in Tennessee and I can take care of things. Do your work in Tennessee."

A. No, sir, I did not.

Q. And that's just exactly what happened to Roscoe Humphreys, isn't it?

A. No, sir, not to my knowing.

Mr. Warren: I believe that is all.

The Court: Mr. Edmondson, you haven't had page 116 } your turn at this witness.

FURTHER CROSS EXAMINATION.

By Mr. Edmondson:

Q. Mr. Hinkle, when was it that you say Mr. Webb told you about this altercation or encounter out there?

A. Well, personally as I stated before, I don't recall, the following morning after this taken place or that afternoon, the next afternoon after it happened that night.

Q. What time were you here the next morning after the altercation? Were you at work? I mean, were you in the plant the next morning after this altercation was supposed to have taken place?

A. That is the question I didn't remember. I traded with Mr. Webb, bought gas and oil there, and I didn't remember whether it was in the morning or afternoon as I was coming into town and stopped there and he told me, but it probably must have been the next morning when I stopped to get gas.

Q. Did you see Mr. Humphreys the day after the altercation was supposed to have taken place at Webb's Service Station?

A. Did I see him the day it took place?

The Court: The day after?

Waldo G. Miles.

By Mr. Edmondson:

Q. The day after?

A. I believe that I saw him that afternoon. I believe he was standing on Goodson Street, looking up that way when he came out, approximately from here to the street page 117 } down here if I recall right.

Q. Could you tell that anything was wrong?

A. No, sir.

Q. Did he seem injured in any way?

A. At that distance I couldn't truthfully say. He didn't seem to be from that distance.

Mr. Edmondson: I believe that is all.

Mr. Stallard: No further questions.

Mr. Warren: That is all. Stand aside.

(Witness excused.)

The Court: I believe Mr. Miles is here.

Mr. Warren: Call Mr. Waldo Miles.

Mr. Hinkle: May I be excused to go back to work?

The Court: Are both sides willing to excuse this witness?

Mr. Warren: Yes, sir.

Mr. Stallard: You can go on back.

WALDO G. MILES,

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Warren:

Q. State your name, age and profession, please, sir.

A. My name is Waldo G. Miles. I am an attorney page 118 } and I'm 49 years old.

Q. You are a practicing lawyer in the City of Bristol, Virginia, are you not?

A. Yes, sir.

Q. Sometimes elsewhere?

A. Yes, sir.

Q. Mr. Miles, I will ask you if during the last difficulties and strike which took place at Bristol Door & Lumber Corporation in the summer of 1958 and thereafter you represented Bristol Door & Lumber Corporation?

A. I did.

Waldo G. Miles.

Q. In regard to their labor problems?

A. Yes, sir.

Q. In the course of representing that corporation I'll ask you if you became acquainted with a man named D. Arcil Dishner and another man named A. O. McKinney?

A. I did become acquainted with them. I had known them prior to that time.

Q. Do you know what position McKinney held and with what organization at that time?

A. He was a representative of the International Brotherhood of Carpenters and Joiners of America, AFL-CIO.

Q. To refresh your recollection is it the International Brotherhood or United Brotherhood?

A. United Brotherhood.

page 119 { Q. Do you know whether at that time C. Arcil Dishner held any position with that organization?

A. He was either a representative or an organizer.

Q. Of the International union?

A. With the International union, yes, sir.

The Court: Is that Dishman or Dishner?

Mr. Warren: D-i-s-h-n-e-r.

By Mr. Warren:

Q. Mr. Miles, in the course of your representation of the Bristol Door & Lumber Corporation during the strike were there meetings that occurred between the company and the union at the request of one or the other regarding the strike?

A. Yes, sir, there were meetings. There were 12 meetings beginning April 15, 1958 and ending September 30, 1958.

Q. Let me put it this way. I take it representatives of the union on behalf of the company and on behalf of the union attended those meetings, each of them?

A. Yes, sir.

Q. Now did Mr. McKinney attend any of those meetings or Mr. Dishner?

A. Yes, sir. There were some meetings when they were both present and some when one or the other was present. Mr. Dishner was present at most of the meetings. Mr. McKinney at a lesser number, but I would say approximately half.

Q. And on whose behalf did they appear?

page 120 { A. They appeared on behalf of the United Brotherhood of Carpenters and Joiners.

Q. Were any grievances or unfair labor practice charges filed during the course of that strike?

Waldo G. Miles.

Mr. Stallard: Your Honor, I object to that. That doesn't have a thing on earth to do with this case.

The Court: I sustain the objection unless you can show that they are related.

By Mr. Warren:

Q. Mr. Miles, inquiring as to the interest of the United Brotherhood as a party to those negotiations, I will ask you if the United Brotherhood of Carpenters and Joiners of America or Mr. McKinney on their behalf filed any unfair labor practice charges in connection with that strike?

Mr. Stallard: Your Honor please, that is the same question.

The Court: He's enlarged it as I understand by asking if these two individuals on behalf of the International filed any labor charges.

Mr. Warren: Yes, sir, in connection with the strike and arising out of the strike.

The Court: Wouldn't that be a matter of record and wouldn't the record be the best evidence?

By Mr. Warren:

Q. Do you have any records of any such charges, if any, were filed, Mr. Miles?

A. Yes, sir, I do.

page 121 } Q. Is that the paper you have in your hand?

A. Yes sir.

Q. And what is that, sir?

A. It's entitled "Charge Against Employer." It is on a form provided by the National Labor Relations Board, Form No. NLRB 501.

Q. And on whose behalf is it filed?

A. The charging party is Lumber and Sawmill Workers Local 3092, United Brotherhood of Carpenters and Joiners of America signed by A. O. McKinney and his title is given as Representative.

Mr. Stallard: May I see that?

(Counsel hands paper to counsel.)

Mr. Stallard: Your Honor, I would object to this unless he has the addition. It says "List attached." If he has the list, this is only a part.

Waldo G. Miles.

The Court: Mr. Sergeant, pass it up and let me examine it.

(Paper passed to Court.)

Mr. Warren: If your Honor please, I have not brought in anything as to the substance of those charges. I think they are immaterial. The only reason we are asking about that document is to show the capacity in which this man was acting.

The Court: Overrule the objection. I think it page 122 } would be proper for the Court to limit the introduction in accordance with Mr. Warren's statement. That is the substance of the complaint is immaterial. The fact of the complaint and who made it is all that this jury is concerned with, the name that was signed to the complaint and the capacity which he purportedly had.

By Mr. Warren:

Q. Mr. Miles, as you understand it, what is the full name of the local union of the United Brotherhood that was at Bristol Door & Lumber Corporation?

A. Lumber and Sawmill Workers Union No. 3092 of Bristol, Virginia, chartered by and affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

Q. I notice that in the paper which you've handed here where it has full name of party filing charge it has Lumber and Sawmill Workers Local 3092, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is that right?

A. That is correct.

Mr. Warren: Your Honor please, we would like to introduce this in evidence, but again I say I think it would be improper under all conditions to allow the substance of an unrelated matter to come before the jury and that is the substance of these charges.

The Court: Let it be with that limitation. The jury has heard read the part which is material and unless it becomes necessary for us to see it need not be necessary page 123 } to do anything to the paper. Otherwise, we would have to obliterate the immaterial part. Is there anything, Mr. Stallard, in connection with this before we go ahead with the examination?

Mr. Stallard: Counsel for the defendant objects unless

Waldo G. Miles.

you have the full contents and the names of all the aggrieved parties, that this is only a part of the document filed by the representative, and on the further ground that the representative is not identified as representing who.

Mr. Warren: What is the date, please, sir, of that?

The Court: Just a minute, Mr. Warren. The objection is overruled. Inasmuch as the Court is not permitting the contests to go to the jury, that is the substance of the complaints and unless that goes in, the list of the names referred to in the complaint would be immaterial also.

Mr. Stallard: Exceptions for the reasons stated.

The Court: Go ahead, Mr. Warren.

By Mr. Warren:

Q. What is the date of that paper, please, sir?

A. Dated November 18, 1958.

Q. Is there an address given under Lumber and Sawmill Workers Local?

page 124 } Mr. Stallard: Your Honor please, I further
object. This is November 1958 long after the
strike was over, I understand and this offense was over, subsequent actions certainly.

The Court: The Court will overrule the objection.

Mr. Warren: I have a copy that I can read from if you would like to follow along on that.

By Mr. Warren:

Q. Using this copy, Mr. Miles, you testified a moment ago that under Section 3 and where it has designation of the party filing charge or full name of party filing charge it says Lumber and Sawmill Workers Local 3092, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, does it have an address or telephone number?

A. Under item 4 it has address P. O. Box 642, Bristol, Virginia, and under telephone number Twin City Motel So-4-4145.

Q. Do you happen to know whether or not that is where Mr. McKinney stayed when he was here in Bristol, Twin City Motel?

A. Yes, that is where he stayed.

Q. Then under Section 5 United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as being the full name of the national or International labor organization of which it is an affiliate or constituent unit, what address is given for that address?

Waldo G. Miles.

A. 222 East Michigan Street, Indianapolis 4, Indiana.

page 125 } The Court: I thought you were introducing a new paper. You are still talking about the first paper introduced by Mr. Miles.

Mr. Miles: Yes, sir, and I don't believe we ever designated it.

The Court: It is all related to the same paper?

Mr. Warren: May we identify it as Plaintiff's Exhibit 1?

Will you agree with me, subject to the Court's ruling, that we may later substitute a Verifax copy of that so Mr. Miles can have his copy?

The Court: Is that satisfactory with you?

Mr. Stallard: Perfectly all right.

(Plaintiff's Exhibit No. 1 was marked for identification and is filed herewith.)

By Mr. Warren:

Q. Mr. Miles, the testimony you have been giving here relating to a paper has all been for the purpose of the record in connection with Plaintiff's Exhibit No. 1, has it not?

A. That is correct.

Q. Now you mentioned that there were 12 meetings between union and company growing out of this strike between April 15 and September 22, 1958, and you were asked about Mr. McKinney and Mr. Dishner participating in those meetings. Do you have any way of knowing at which of those meetings those gentlemen were present, or either
page 126 } of them?

A. I have some notes here that I made at the time that indicate the date of the meeting and those present.

Q. They are notes you made when you were present at those meetings?

A. Yes, sir, that is correct.

Q. Can you give us dates or any dates they were present?

A. At a September 25, 1958 meeting there was present Mr. McKinney and Mr. Dishner. At a meeting August 27, 1958 Mr. Dishner was present. At a meeting on September 18, 1958 both Mr. McKinney and Mr. Dishner were present. At a meeting on July 23, 1958, Mr. Dishner was present. At a meeting on July 15, 1958, Mr McKinney was present.

Q. That was July 15?

A. July 15. On July 3, I believe a Mr. Mitchell and Mr. McKinney and Mr. Dishner were present.

Waldo G. Miles.

Q. Who is Mr. Mitchell?

A. I'm not certain, but I believe he is with the United Brotherhood Carpenter's office in Atlanta. I am not sure of that.

Q. Go ahead.

A. On May 6th Mr. Dishner was present; on May 21st Mr. Dishner was present; on April 15, 1958, Mr. Dishner was present. I spent that summer with him, I think. I believe those are the notes I have, Mr. Warren, except page 127 } I do have a list of meetings we had, total number and date on which occurred, but those are the only notes I have showing who was present.

Q. Now, of course, I take it attorneys for the union were present on one or more of those occasions?

A. That's correct. I believe after the strike occurred on July 29th or about that date, 1958, Mr. Ralph H. Brumet was employed by the union and he attended a number of those meetings.

Q. Before the strike occurred—I don't believe there is any dispute about the fact that it occurred on July 29th. According to my notes from what you have said 7 meetings, April 15th through July 23rd, and from your testimony Dishner was present at five of those meetings and McKinney at two. Were any representatives of the local union itself present at those meetings in advance of the strike?

A. Yes, on almost every occasion the negotiating committee of the employees appeared along with Mr. Dishner and Mr. McKinney as the case was. I doubt if there was a single meeting when the negotiating committee was not present.

Q. Was the same true after the strike began?

A. Yes, except Mr. Brumet also was present.

Q. I will ask you if you ever had any telephone conversations with McKinney concerning the strike?

A. Yes, I'm sure I did either in arranging for meetings; I don't know that we talked about anything else page 128 } other than arranging for meetings, for meeting places and time for these.

Q. Did you make arrangements through him or he through you and did he act on behalf of the union?

A. On some occasions.

Q. I will ask you if that was true only before the strike and after the strike or both?

A. Well, both before and after.

Q. Mr. Miles, was the strike ever officially terminated?

Waldo G. Miles.

A. Yes, sir, it was.

Q. When? Do you know, sir?

A. I can't recall the exact date. I think it was about the second week in November, 1958. I received a telegram. I can't recall now who signed it for the union but I received a telegram saying the strike was over and employees would return to work on a certain date. I may have it.

Q. For the purpose of the record, referring to Plaintiff's Exhibit 1, without going into the subject of the complaints with matters which occurred or were alleged to have occurred in September of 1958, September 18 and 22?

A. Yes, those are the dates referred to in the charge.

Q. That was during the time of the strike, was it not?

A. Yes, it was.

Mr. Warren: I believe that is all. You may ask him, sir.

Mr. Stallard: May I have the exhibit, please?

page 129 } (Witness hands exhibit to counsel.)

CROSS EXAMINATION.

By Mr. Stallard:

Q. Mr. Miles, you have been dealing with the local union here over a number of years, have you not?

A. Yes, sir.

Q. Your contracts or your employer's contracts are always with the local union, is it not?

A. You mean with this—

Q. Contract of employment?

A. I am not sure I understand your question, Mr. Stallard.

Q. When you get together with the local union you execute a contract in the name of Bristol Door and the local union 3092, do you not?

A. I believe that is correct. That I'm not certain of, but I think so.

Q. I will ask you somewhat of a personal question, did you ask Mr. McKinney to come down and assist you?

A. No, I didn't need any help from Mr. McKinney.

Q. Did you call him up yourself?

A. Ask Mr. McKinney?

Q. To help the local union negotiating?

A. I don't recall.

Q. Would you deny it?

Waldo G. Miles.

A. Yes, I would deny that. I can't recall talk-page 130 } ing to Mr. McKinney other than so far as I saw him on the street sometime and we exchanged pleasantries and he appeared at these meetings. I knew him and had relations with him with companies that I represented and I cannot recall any such.

Q. Do you know of your own knowledge that he is a representative of the International Union?

A. I know that is what he said he was.

Q. Do you know that is what he was?

A. I know that is what he said he was and I know that he signed various papers in other cases which I appeared prior to the time in which he represented himself to be representative of the International Union.

Q. You have been dealing with the negotiating committee. I believe you mentioned you were present at all times?

A. I believe that is correct.

Q. And you are negotiating with the officers of the local union?

A. I negotiated with those present and Mr. Dishner was present some and Mr. McKinney was present and they actually conducted the negotiations.

Q. Do you think that they were representing the local union or were they representing the International?

A. Well, they didn't discuss that with me. They were there. We were negotiating a contract between Bristol Door and this local which was affiliated with the United page 131 } Brotherhood of Carpenters and they appeared there. As to the spokesmen, they didn't ask me who I represented and I didn't ask them.

Q. As an attorney at law could you not file in behalf of the Bristol Door & Lumber Company a charge under this form charging the union of unfair labor practice, too?

A. I believe, as I think you know, that is a legal question, and I think anybody could charge.

Q. You could file a charge for an individual member of the union or you could file a charge for the employer, could you not?

A. I think that is correct.

Q. Mr. McKinney signs this as representative. Do you know what he is representing?

A. I only know what is shown on the exhibit.

Q. It doesn't indicate who he represents?

A. I only know what is shown here.

Waldo G. Miles.

Q. It doesn't indicate he is representative of anybody locally, does it?

A. It just says: His name is there and the word "Representative" is printed below his signature.

Q. What do you take that to mean?

A. I don't know what it means.

Q. In these forms that is a matter for an investigator of the National Labor Relations Board to come down and make investigation?

page 132 } A. That is the initial step.

Q. They ask the name of the employer, do they not?

A. Let me get one of these things and see what you are talking about. (Witness gets paper.)

Q. The name of the employer is Bristol Door & Lumber Corporation, is it not?

A. Yes, sir.

Q. Number of employees? 140.

A. Yes, sir.

Q. The address—this form calls for the address of the employer, the Bristol Door & Lumber Corporation, does it not?

A. Yes, sir.

Q. It also calls for type of establishment.

A. They have here "Factory."

Q. That is correct, isn't it?

A. Yes, sir.

Q. Identify principal product of service. They say "Wood products?"

A. Yes, sir.

Q. Then No. 2 gives the charges, does it not?

A. Yes, sir.

Q. No. 3 the name, they have got printed full name of party filing charge. Isn't it written Lumber and Sawmill Workers Local No. 3092, United Brotherhood of Carpenters
page 133 } and Joiners of America, AFL-CIO?

A. Yes, sir.

Q. Do you consider the charges by the United Brotherhood or by the affiliated union?

A. Well, I don't really have any opinion except I can read what's said there.

Q. Isn't there a comma between the Lumber and Sawmill Workers Local?

A. Yes, sir, there is.

Waldo G. Miles.

Q. Full name of party filing charge. What do you consider as who was filing charge?

Mr. Warren: Your Honor please, I don't believe he should ask Mr. Miles to construe this exhibit. I think it speaks for itself.

Mr. Stallard: I know that Mr. Miles knows.

The Court: I think the construction of the instrument is a matter for the Court where there is nothing ambiguous about it. I don't think Mr. Miles is called on to give that.

By Mr. Stallard:

Q. Underneath party filing charge is there a post office box?

A. Yes, sir, P. O. Box 642, Bristol, Virginia.

Q. Do you know whose box that was?

A. I think it was the box number of this local union but I am not certain of that.

page 134 } Q. Then it asks to give the full name of the
National or International Labor Organization
of which it is an affiliate or constituent unit to be filled in
when charge is filed by a labor organization. What is written
in No. 5 there?

A. United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

Q. Doesn't that tell you as a lawyer that they are the International Union or the local?

A. Your Honor, I think I ought to be able to send him a bill if he's going to ask that.

Q. Would the witness answer the question?

A. Would you mind repeating it?

(Question read by reporter.)

The Witness: In the name of it's International.

Mr. Warren: Your Honor please, I believe that is a matter for the Court to construe, if there is anything ambiguous. Anything else about it, the paper speaks for itself.

The Court: The question has been asked and answered.

By Mr. Stallard:

Q. Giving the address of the International union which is an affiliate, what was the address?

A. 222 East Michigan Street, Indianapolis 4, Indiana.

Waldo G. Miles.

Q. Isn't this information requested on charges against employers and charges against labor organizations the same information asked on all of them?

page 135 } A. I think that is correct.

Q. And they further ask for telephone numbers of all interested parties?

A. Yes, sir.

Q. So that if the International union wants to be represented they may be represented, is that correct?

Mr. Warren: I didn't understand that question. Would you repeat that?

Mr. Stallard: Read that, please.

(Question read by reporter.)

A. I assume so.

Q. Now you folks had 12 meetings over a period from April to September. Did you hear Mr. McKinney directing the employees to go around and assault other employees?

A. No, I didn't hear him say anything except what he said at these negotiating meetings.

Q. Actually he didn't want this union to strike. Didn't he tell you that?

A. I believe he did indicate that he didn't think it wise and I didn't think it was either.

Q. He was most conciliatory and you folks almost got together, did you not?

A. Yes, my dealings with Mr. McKinney were most cordial. ✓

Mr. Stallard: That is all.

page 136 } REDIRECT EXAMINATION.

By Mr. Warren:

Q. You did not attend any meetings at the union hall, I take it, Mr. Miles?

A. No, sir.

Q. You don't know what went on there?

A. No, sir.

Q. I will ask you if in connection with the matters which occurred on September 2nd and September 3rd, 1958, there was an injunction issued in this Court?

A. Yes, sir.

Waldo G. Miles.

Mr. Stallard: Your Honor please, I don't know that that has a thing to do with it. I wouldn't know a thing about it.

The Court: I think it is immaterial. Sustain the objection. We won't go into that. It is an independent matter.

Mr. Warren: Your Honor please, I would like an opportunity to take that up with the Court, please.

The Court: You mean the question the Court has just ruled on?

Mr. Warren: Yes, sir.

The Court: All right. Let the jury go in the jury room.

page 137 } (Thereupon, the jury retired from the open
court room and the following proceedings were
had in the absence of the jury.)

Mr. Warren: Your Honor please, the purpose of going into the phase of the testimony that I was trying to open up there once again was to show that the International Union was a party to this injunction suit, thereby having knowledge of what actually occurred and that Mr. Dishner himself and Mr. McKinney himself appeared in this Court in that suit. I do not want to get any error in this case, and if your Honor thinks it is error, I will not pursue it.

The Court: You gentlemen objected?

Mr. Stallard: Yes, sir, on the ground that the International Union was not a party to that suit. I observed that the representatives were made a party but service was never gotten.

The Court: Sustain the objection. The Court's view is that the fact that they had knowledge, that is bringing in this record in order to show that the International had knowledge of it would be immaterial because the injunction was after the events. That is knowledge alone. They had no more knowledge than an outsider would have by reading the court record and that case, as I recall, was never carried to a
page 138 } conclusion, was never heard on the merits and
the issuance of the injunction might have been
prejudicial to the defendant in this case unless it is followed by proof that the injunction should have been made permanent on the facts. We don't want to try that since it is dead.

For all those reasons, the Court thinks the objection is good.

Waldo G. Miles.

Mr. Warren: I except to the ruling of the Court.
The Court: Off the record.

(Discussion off the record.)

The Court: Call the jury back.

(Thereupon, the jury returned into open court and the following proceedings were had in the presence of the jury.)

The Court: Proceed with your examination.

By Mr. Warren:

Q. Mr. Miles, during the time that the strike was in progress and the pickets were actually walking on the picket line in the vicinity of the Bristol Door & Lumber Corporation plant in Bristol, Virginia, did you ever have any occasion to observe any activities of D. Arcil Dishner in connection with the pickets or in the area where they were working?

A. Yes. Mr. Dishner made it a practice of driving around the area of Williams Street and Goodson and circling the plant from time to time during the time that the page 139 } pickets were there.

Q. Do you recall whether he stopped and talked with the pickets or anything of that sort?

A. Yes.

Q. No, sir, another omitted matter, your Honor.

I take it you came to know Roscoe Humphreys when some difficulty occurred involving him?

A. Yes.

Q. That was in the early part of September, was it not, September 2nd or 3rd, 1958?

A. Yes, that is correct.

Q. Did you see Mr. Humphreys on either of those days or the evenings of either of those days?

A. As I recall I saw Mr. Humphreys on the evening of September 3rd.

Q. Where did you see him and under what circumstances?

A. I am not sure where I first saw him, whether he came to the plant, but I took him to the Bristol Memorial Hospital and then I took him home down in Holston Valley.

Q. What was his condition when you saw him? Was it during daylight hours or evening?

Waldo G. Miles.

A. It was in the evening.

Q. What was his apparent condition?

A. Appearing very nervous and upset and had something
wrong with his finger, one of his fingers appeared
page 140 } to me mbght be broken. I took him to the Bristol
Memorial Hospital. He was a little bit afraid to
go home so I took him home.

Q. You took him home. Did you see him otherwise or have
any other contact with him around that time in connection
with those two incidents, bearing upon the facts of them?

A. Yes, I interviewed him because of the situation that
developed, the company filed unfair labor practice charges.

Mr. Warren: I believe that is all.

The Court: Mr. Edmondson?

RE-CROSS EXAMINATION.

By Mr. Stallard:

Q. You say the company filed it?

A. I believe they did. I think everybody did.

Q. Did you sign them as representative of the company?

A. No, sir.

Q. Did they personally sign them?

A. Yes, sir.

Q. You prepared them?

A. Yes, sir.

FURTHER CROSS EXAMINATION.

By Mr. Edmondson:

Q. Mr. Miles, you say when you saw Mr. Humphreys it
looked like something was wrong with his finger. How long
was he at the hospital? You said you took him to the hospi-
tal?

A. I wasn't there long. He went to the Emer-
page 141 } gency Room to have it examined, to make sure
that it wasn't broken.

Q. When he came out, was he patched up?

A. I can't recall.

Q. That was on September 3rd. What time was that, Mr.
Miles, do you recall?

A. I think it was sometime between say six and eight
o'clock; anyway it was after dinner. I don't remember the
exact time.

Roscoe Humphreys.

Mr. Edmondson: I believe that is all.

Mr. Warren: That is all.

Mr. Stallard: That is all, sir.

Mr. Warren: Thank you, Mr. Miles.

The Court: Do you all want to excuse Mr. Miles?

(Witness excused.)

The Court: Let's take a short recess now and observe the same precautions the Court has heretofore given you.

(Short recess.)

The Court: Let Court come to order please and proceed with your next witness.

Mr. Warren: Your Honor please, by agreement of counsel, it is stipulated that the document which I hold in my hand and would offer in evidence is a correct and true copy of the Constitution and Laws of the United Brotherhood of the Carpenters and Joiners of America which was in page 142 } effect at the time of the occurrence of which we are concerned in this suit.

The Court: All right. Let it be filed.

Mr. Warren: And offer it in evidence.

The Court: Will that be Plaintiff's Exhibit 2?

Mr. Warren: Yes, sir.

The Court: It will be so identified.

(Plaintiff's Exhibit 2 was marked for for identification and is filed herewith.)

The Court: Any further evidence in chief?

Mr. Warren: Mr. Humphreys, come back around here a minute, please, sir.

ROSCOE HUMPHREYS,
being recalled, was further examined and testified as follows:

DIRECT EXAMINATION.

Q. Mr. Humphreys, I omitted asking you this morning, and it is material in this case, did you suffer any humiliation or embarrassment as a result of these two incidents which occurred to you?

A. I sure did. I were ashamed of them.

Roscoe Humphreys.

Q. Did you have any anxiety or fear or were you anxious as a result of it?

A. Well, after it happened, it just seemed like I couldn't stand nobody behind me because I never knowed page 143 } who was going to hit me because I was before the people in the filling station and the people out there at the store, and I don't know how many people seen me at the store before my wife and the boy.

Q. One other matter. Mr. Hinkle testified when examined by Mr. Stallard about the meeting where the strike was called, You've testified that you did not vote in favor of the strike?

A. I did not.

Q. He was talking about the form of ballot that was used. You said it was a secret ballot. What kind of ballot did you use?

A. It was just a little strip of tablet paper, cut or tore off and come around and told us.

Q. What did you put on it there according to the instructions given in that meeting?

A. Well, I didn't look at it, according to what I heard them say, it was all put on yes or no, if you wanted to strike put it where it said yes and if you didn't where it said no.

Q. You said yes?

A. I reckon that is right. What they sign. I didn't put my name, I reckon, on nothing.

Q. Were people signing them?

A. Yes, they were signing them.

Mr. Warren: I believe that is all.

page 144 } CROSS EXAMINATION.

By Mr. Stallard:

Q. Mr. Humphreys, you testified this morning that you didn't know they were going to call a strike?

A. That was after they pulled the strike.

Q. As I understand you went to the meeting of the local meeting and they voted whether or not there would be a strike and you voted?

A. I didn't vote no way.

Q. You didn't vote either way?

A. I didn't vote either way.

Q. Didn't you know they were going to strike?

Roscoe Humphreys.

A. The words that was said, there was seven picked out, the only ones that knew when the strike was going to occur. None of the rest knew anything.

Q. You didn't know the hour and day?

A. No, sir.

Q. You knew there was going to be a strike?

A. No, sir, they didn't say there was going to be a strike.

Q. You picketed the first day of the strike?

A. That night at 11 o'clock.

The Court: Mr. Edmondson?

FURTHER CROSS EXAMINATION.

By Mr. Edmondson:

page 145 } Q. Mr. Humphreys, I notice you have got a
 scar on your forehead. Was that done in this
altercation?

A. Here (indicating)?

Q. Above there?

A. Oh, here. No, that were done in a car wreck in '54.

The Court: Is there anything further?

Mr. Warren: No, that is all.

Mr. Stallard: That is all.

The Court: Plaintiff rests?

Mr. Warren: No, sir, I would like to call this gentleman right here, representative of the union, as an adverse witness, your Honor please. I haven't had the pleasure of meeting the gentleman sitting by Mr. Stallard.

Mr. Stallard: He is an International representative, and I have no objection to calling him, but I think he will be bound by his statements.

* * * * *

page 146 }

* * * * *

Mr. Stallard: Your Honor, I would like to make a motion.

(Witness excused.)

The Court: All right. Let the jury be excluded, please. Close the door.

(Thereupon, the following proceedings were had out of the presence of the jury.)

The Court: All right, proceed.

Mr. Stallard: We would like to move in behalf of the defendant, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, to strike the evidence against this defendant for the reasons they have not shown any agency as required by a statute which is known as the Norris-LaGuardia Act and the statute reads as follows:

It is in the United States Code Annotated, page 147 } Title 29 under Labor, Section 106.

“No officer of any organization participating in a labor dispute shall be held responsible for unlawful acts of individual officers, association members, or association agents except upon clear proof of actual participation in, or authorization of, such acts or ratification thereof after actual knowledge thereof.”

Now, your Honor, that section of the U. S. Code has been construed in a United States Supreme Court case and the style of the case is *United Brotherhood of Carpenters and Joiners of America vs. United States of America, Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America vs. United States of America, Lumber Products Association vs. United States of America, Alameda County Building and Construction Trades Council of America vs. Boorman Lumber Company, et al.*

The case is found in 330 U. S., page 395. It construes the section of the U. S. Code showing that it applies in criminal and civil cases and charges the rule of evidence as far as this case is concerned, and while I hate to read to your Honor in argument now of the motion, I will have to do it because they refer to a question of evidence.

First, the opinion, it is a criminal case under page 148 } the Anti-Trust Act, but then it gets in and gives the history of this section known as the Norris-LaGuardia Act. I want to call the Court's attention to the rules of evidence, and I read:

“When they are going back and bringing up the history, the congressional history of the Act, it was introduced two or

three times and finally it was passed by Congress and they brought it up to the point when they applied the damage cases."

That is what I was interposing, whether this would apply only in criminal cases and the purpose for it would be that any International Union that has members for any members of their local union that is liable of a local lodge which is affiliated with the Grand Lodge of Virginia, and being so many people it was so dangerous that they passed this Act.

Now, the Court says: "There is no provision made relieving an individual from responsibility for his acts, but provision is made that a person shall not be held responsible for an unlawful act except upon clear proof of participation or authorization or ratification." And it applies to corporations the same as it does to labor unions. It is balanced. It was the rule of evidence, not a rule of substantive law of agency.

We need not quote Section 6 but it should be page 149 } called to the Court's attention under the charge of substantive law of agency, where it says, we hold that it's purpose in effect was to relieve organization, whether of labor or capital and members of those organizations from liability for damages of members for unlawful acts in a labor dispute by some individual or member of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization or ratified such acts after actual knowledge of their participation.

In the instant case, your Honor, the only evidence we have that would give Parks, Price and the two Strouth boys is the general statement made by the plaintiff, and one of his own witnesses contradicted him. He said at a meeting he understood Mr. McKinney to say, "Don't you do anything on the picket line; go to their home or see them on the street."

Now your Honor, to start with the plaintiff has not shown that McKinney had any authority to say anything like that. He is an agent. When we admit that he is an agent, but to make a statement like that, or as he said, he didn't say, "Go out and assault anyone." Pick out these people and say, "You are now agents of the International Union." If he did he had

no authority. If he actually did I hereby nullify page 150 } the specific act of assaulting the plaintiff, the authority is not there. He didn't have the authority to give under this statute and there is one more case which I would like to refer to and that is the Supreme Court of the

United States. It is against the United Mine workers and I read from American Jurisprudence, Volume 31, under Civil and Criminal Liability Arising from Labor Relations generally; this is under A in Civil Liability, under Section 136 here, page 493:

“In order to hold a national labor union liable for damages resulting from the unlawful acts of members or officers of a local union, it must be shown that the members or officers were acting as agents or officers of the national union,”

Now, under that, that Court—no, it is not a United States—I beg your pardon. It is the case of *Adamson v. United Mine Workers of America*, 3 Utah 2nd Edition, page 37, 277 Pacific 2nd, 972, “Where it was held that an action may not be maintained against a national union for damages for assault and battery on a picket line in the absence of evidence that those in charge of the picket line and the local union were acting as agents or officers of the national union, even though a contract subsequently entered into was signed page 151 } by the national union president.”

So that would be a stronger case than they had here as to what took place right on the picket line. And later on the National signed the contract. The evidence here by the plaintiff is that the International never signs any contracts at all. Now what has been the Virginia law, this law applies as to Virginia, and it is the law under Agency in Michie's Jurisprudence, Virginia and West Virginia, Volume I, Section 100 under Agency, Crimes by Agent. Assuming that these men who have been named were agents, and we get up and say, your Honor, they are agents, the first thing you would have to prove is that they were agents and they have not proved they were agents. Assuming they were agents and a criminal act of assault was done by an agent without the knowledge and authority of his principal and without subsequent ratification cannot be within the scope of the agent or authority. They quote under the case of *Aetna Insurance Company v. Carpenter*, 170 Virginia, page 312, 196 S. E. 641, so if we came into this court and admitted that Parks was a designated agent, that Price was a designated agent, that Strouths were designated agents, then nevertheless, they would have to prove they were working in the scope of employment, and this case says a criminal act done by an agent without page 152 } knowledge or authority. They haven't proved they had any knowledge of authority and it is presumed to be the acts of the agent himself and unless the

International wrote a letter or ratified and said, "We ratify the act," they could not hold the International Union, and I respectfully submit that my client be dismissed on the ground that nowhere have they proved these people were agents and your Honor well knows but I will mention it only to say agent is by written authority or by implied authority. These other defendants, four of them, no where were vested by any written authority or implied authority from the International to do any criminal act or to act even severally for or in behalf of the local union, even to obligate for \$10 obligation; couldn't do anything because they weren't agents.

The plaintiff says that he heard the International say, "Take care of them," or "Entertain them," or something to that effect, "On the street." But he didn't say what. That is from one fellow and one of the agents said, "Don't do anything until the strike is over," but that does not make them agents of the International Union, and I respectfully submit that the evidence should be stricken as to the defendant, the United Brotherhood of Carpenters and Joiners of America.

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page 156 }

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Mr. Stallard: Your Honor, in replying to my distinguished adversary, he takes the position but it isn't the law of the land. It doesn't say Federal; it says every Court, and it is cited here in Corpus Juris, an exception to an interpretation was not adopted by the Taft-Hartley Act in connection with acts ensued by boycotts and jurisdictional disputes. There is two exceptions but there isn't any exception at all to this section I quoted a minute ago in 31 American Jurisprudence, Section 136, page 493. It makes this bold statement:

"However, a national labor union is not liable for damages caused by unlawful acts of its members performed
page 157 } without its authorization or sanction."

So, let's assume that Mr. McKinney, who is an agent, had come down their street, these people they would have to prove and that calls for the proof in the case of the *United Construction Workers vs. Haislip Baking Company*, the 4th Circuit, Virginia Circuit, 223 Federal, 2nd Edition, page 872, and that

case went on to the Supreme Court of the United States, 350 U. S., page 847, wherein it was held, and I am quoting:

“That a National Labor union, merely because it entered into a collective bargaining agreement with an employer requiring that grievances be settled by the procedures provided in the contract, does not become liable for damages caused by a ‘wild cat’ strike entered upon because of such grievances by local employees, but without the authorization of the national union.”

That case holds that where the International union had signed a contract, was a party to it, that its members went off on a “wild cat” strike damaging the company, and it was argued that they were agents. It held that the International union was not liable even though they permitted a tort and it was a malicious tort, a vile tort that unquestionably damaged the employer.

In that case they held even though the International had signed the agreement they couldn’t be held liable.
 page 158 } It is sound reason where the rule of agency has been charged, this says the law of the land, it doesn’t say it is just applied in Federal Courts, and if your Honor cares to look into it a little further, you will find many other cases right on this. We haven’t cited all the law. It is so hard and so fast for the proof under the State law to forget the Federal law doesn’t involve labor unions. They would certainly have to prove agency. Then they would have agency here, an agent acting in the scope of his employment, and we say these men, were they acting in the scope of authority, and the Virginia law is almost like this law. That case of Aetna Insurance almost says that they’ve got to prove that law. It’s presumed to be the tort of the agent himself unless you prove he was acting in their behalf and there had been ratification.

I respectfully submit that agency hasn’t been proved, ratification of agency hasn’t been proved nor has it been proved they were acting in the scope of employment. We know it means express written contract or implied contract.

The Court: Let the motion be overruled at this stage. If it is good, I’ll be glad to hear you renew it at the close of all the evidence.

Call the jury back.

page 159 } Mr. Stallard: Exceptions for the reasons stated.

* * * * *

ROY ELKINS,

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Elkins, will you state your full name and address and occupation?

A. Roy K. Elkins, 711½ Portsmouth Avenue, Bristol, Virginia.

Q. Were you a member of Local 3092 affiliated with the United Brotherhood of Carpenters and Joiners of America?

A. Yes, sir.

Q. Were you an officer in that union?

A. Yes, sir.

Q. What was your title?

A. Well, I had more than one. I was President of it one time and at the end of it, why, I was the Treasurer.

Q. How long were you a member of the union?

A. I believe it was about 15 years, I believe is page 160 } how long it run.

Q. Was Mr. Parks who is sitting behind me and Mr. Price, and Mr. H. E. Strouth and H. C. Strouth and Mr. Humphreys all members of the union?

A. Yes, sir.

Q. Were any of those named, including the plaintiff and the defendant, ever officers of the local union?

A. No, sir.

Q. Were they ever appointed to any committees or elected to any committees? Like the negotiating committee?

A. No, sir.

Q. Now, you all, I believe, had a strike which began here on July 29, 1958 and ended November 11, 1958?

A. Yes, sir.

Q. How did the union call the strike?

A. Well, there was a strike vote taken at the hall.

Q. How did the membership find out there was going to be a strike vote?

A. Well, it was just a meeting and someone made a motion on the floor and they was a vote taken on it and it was voted a strike vote. It was voted by the vote of the majority.

Q. Well, when they called the strike did they put pickets on the employer?

A. Did we put out pickets?

Roy Elkins.

Q. Yes, sir.
page 161 } A. Yes, sir.

Q. Now, you say you were Treasurer of the local union?

A. Yes, sir.

Q. What did you do, if anything, there in their behalf as Treasurer of your local union?

A. Well, I don't know just how, the headquarters sent us money here and we paid their grocery bills and coal bills and light bills and things like that.

Q. You say, "We." Who do you mean?

A. I mean the union. In other words, there was a finance committee, bills was put before it and if they was okayed then the bills was paid.

Q. Did Local 3093 have a charter from the International which I have mentioned?

A. Yes, sir, 3092 it is instead of 3093.

Q. Did they have a charter?

A. Yes, sir.

Q. Did you elect all your officers and negotiating committee from the membership?

A. Yes, sir.

Q. Did the International have any control over your membership?

A. No, sir.

Q. Did you have to work within the Constitution of the International?

page 162 } A. We was supposed to, yes, sir.

Q. Did you have a Constitution of your own, to your knowledge?

A. No, sir. If we did, I didn't know anything about it.

Q. Did you have By-Laws?

A. We had International By-Laws.

Q. Did you adopt them as your local by-laws?

A. Yes, sir.

Mr. Warren: If your Honor please, I am going to object that unless they bring some evidence of minutes or something to the effect that—

Mr. Stallard: Will you let me ask a preliminary question?

The Court: Yes, you may.

By Mr. Stallard:

Q. Did you keep the minutes of the meetings?

A. No, sir, I did not.

Roy Elkins.

Q. Who did?

A. The recording secretary.

Mr. Warren: Well then, I object to his testimony on what they adopted.

By Mr. Stallard:

Q. You say you have been President of the organization?

A. I was at one time.

The Court: Overrule the objection.
page 163 } Mr. Warren: Save exception.

By Mr. Stallard:

Q. Now did the International Union send representatives in here?

A. Oh, they came occasionally, yes, sir.

Q. Did you have them when the strike was called to come to Bristol?

A. They was some of them here, but here in town. I believe one was working out here at the Universal at the time.

Q. Who conducted the meetings?

A. Mr. J. B. Hinkle.

Q. What position did he hold?

A. He was the President.

Q. Did you ever hear any representative of the United Brotherhood say not to cause any trouble on the picket line but they could go to the people's homes who were going back into work or go to the street and take care of them?

A. They told us not to have any trouble whatsoever, not to say anything to them and to keep things as quiet as possible, was the only orders ever I heard them give.

Q. Do you know all the defendants here, Parks, Price and the two Strouth boys?

A. Yes, sir.

Q. Do you know Mr. Humphreys, too?

A. I'm slightly acquainted with him. I know him by sight, in other words.

page 164 } Q. Do you know whether they were designated as agents of the local union?

A. Nor, sir, if they ever was I know nothing about it.

Q. Do you know whether they were ever designated as agents of the International union?

A. No, sir.

Roy Elkins.

Q. Could you name all the agents that you've ever met that came from the International union?

A. Well, Mr. Stallard, Mr. McKinney, Mr. Whisman, I believe his name was and there might have been another or so, I can't recall their name, and Dishner; there was Mr. Dishner, too.

Mr. Stallard: That is all.

The Court: The booklet of the Constitution and By-Laws that was filed as Plaintiff's Exhibit 2, doesn't that embrace the by-laws?

Mr. Stallard: No, sir, I think that is the Constitution.

Mr. Warren: That is the Constitution and Laws, your Honor.

The Court: Are those the laws you referred to when you said the local had adopted the by-laws that you say you all adopted? Are they included in that book that you referred to?

The Witness: This is the book I referred to, yes, sir.

The Court: That was the Court's idea on page 165 } passing on the motion for the objection.

CROSS EXAMINATION.

By Mr. Warren:

Q. You say you have been a member of that union 15 years?

A. I believe that is right. I believe it went in there in '43.

Q. Of course, being a member of the local union you were also a member of the International, weren't you?

A. I suppose so.

Q. Sir?

A. I suppose you would be, yes, sir.

Q. That is about the only way you could get to be a member, isn't it?

A. That's about the only way you could get in.

Mr. Warren: That is all.

The Court: Mr. Edmondson?

Mr. Edmondson: I have no questions.

REDIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Elkins, do you have your card of the local you became a member of?

William Nidiffer.

A. I haven't got it with me. It's at home.

Q. Do you know what it says?

Mr. Warren: Your Honor please, the card
page 166 } would be the best evidence.

By Mr. Stallard:

Q. Could you go home and get it?

A. It would take some time.

Q. Would you have it tomorrow?

A. I think I could. I suppose it's still there. I belong to another union at the present time and I don't carry that card.

Mr. Stallard: I would like for him to bring it.

The Court: Yes, sir, you make a search and bring it tomorrow, please.

The Witness: If I can find it, I'll bring it.

(Witness excused.)

Mr. Stallard: Call William Nidiffer.

WILLIAM NIDIFFER,
the next witness, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Nidiffer, will you state your full name?

A. William King Nidiffer.

Q. Were you ever a member of Local 3092?

A. Yes, sir.

Q. Were you ever an officer in that local union?

A. I was Vice President.

The Court: Speak to the jury, Mr. Nidiffer.
page 167 } What did you say?

The Witness: I was Vice President in the
union.

By Mr. Stallard:

Q. How long were you Vice President?

A. About three years.

Q. How did you get to be Vice President?

William Nidiffer.

A. Well, I was elected by the members.

Q. Were you at the meeting of the membership when it voted to strike?

A. Yes, sir.

Q. Did you take a strike vote?

A. Yes, sir.

Q. Who called the strike?

A. Well, the President of the Union.

Q. Were you on a negotiating committee?

A. Yes, sir.

Q. Did you sit with the employer and try to negotiate a new contract?

A. Yes, sir.

Q. Did any member of the United Brotherhood representative advise you how to vote?

A. No, sir.

Q. Do you recall whether they had a representative at your meeting when you voted to strike?

A. How's that now?

Mr. Stallard: Read him the question.

page 168 } (Question read by reporter.)

A. Yes, sir.

Q. Did they in any way participate in voting or in the meeting?

A. I don't believe I caught that exactly.

Q. Did the International people, did they have a right to vote in your meetings?

A. International?

Q. Yes.

A. No, just our local is the one that had the right.

Q. Now, how do the committees of your local union act? How are they formed? Are they elected or are they appointed?

A. They are elected by the membership of the union.

Q. They are elected. Now do you know Mr. Humphreys here who is the plaintiff?

A. Yes, I know him.

Q. How long have you known him?

A. I've known him for about three years at least.

Q. Did he participate in the strike?

A. Yeah.

Q. Did you ever hear any representative of the United

William Nidiffer.

Brotherhood appoint anybody as the agent of the United Brotherhood?

A. Never did.

Q. Did you ever hear any member of the
page 169 } United Brotherhood tell the members that they
might go out and commit assaults on other mem-
bers who might have gone in if they didn't do it on the picket
line?

A. No, I never did hear that.

Q. Did you go to the meetings of your local union?

A. Yes, sir.

Q. Being an officer how often did you attend the meet-
ings?

A. Every time they would have one.

Q. Were you required to be present?

A. Yes, sir.

Q. Were any of the defendants named here, Parks, Price,
Halvie Strouth and H. C. Strouth or Mr. Humphreys on the
negotiating committees or any other committees of the local
union?

A. Not that I ever knowed of.

Mr. Stallard: That is all.

The Court: Cross examine.

CROSS EXAMINATION.

By Mr. Warren:

Q. Mr. Nidiffer, as I understand, you were an officer of the
union during the time this strike was going on, is that right?

A. Yes, sir.

Q. And so as a result you attended all the meetings?

A. Yes, sir.

page 170 } Q. Well, Mr. Nidiffer, you know A. O. Mc-
Kinney?

A. Yes, sir.

Q. Have you seen him here?

A. Seen him before I come up.

Q. Did you talk to him today?

A. I just spoke to him.

Q. You knew at that time Arcil Dishner, didn't you?

A. Yes, sir.

Q. He's with the Teamsters now, isn't he?

A. I don't know where he is.

William Nidiffer.

Q. And you knew this gentleman seated beside you, Mr. Stallard?

A. Knowed him a long time.

Q. You have known Mr. Stallard a long time, and Mr. McKinney and Mr. Dishner were at the meeting when the strike vote was taken, weren't they?

A. I think so, yes.

Q. And one of the other of them or both of them were at every meeting that was had from then on until way up in September sometime?

A. They appointed different committees in all these things and I wasn't in on all them.

Q. You mean Dishner and McKinney appointed some?

A. When negotiating for the contract, they didn't. Part go one time and named some others.

page 171 } Q. Dishner and McKinney would name some?

A. Our President.

Q. What about Dishner and McKinney, they had something to do with it?

A. Not too much.

Q. Mr. Nidiffer, during the time of that strike, what were they there for if they weren't having anything to do with it?

A. They didn't have too much do to.

Q. Weren't they the ones who actually told you how to divide your pickets, how many people to put in a group of pickets?

A. Yes, sir.

Q. Told you how to walk the picket line, didn't they?

A. Yes.

Q. And isn't it a fact that McKinney shortly before within a week before Roscoe Humphreys was beat up made a statement in the union meeting right over here at the hall on Lee Street that he had understood that some people were talking about going back to work and something about not to bother them, but to entertain them on the way back and forth home?

A. I don't know.

Q. Never said anything?

A. Not in my hearing.

Q. Never in a meeting of the union?

A. No, sir.

page 172 } Q. Did you sit up at the front? Were you one of the officers?

A. I sat pretty close.

William Nidiffer.

Q. Where you could hear what was going on?

A. Yes.

Q. What about Dishner?

A. No, they didn't want us to strike.

Q. What about the business of "Watch out what you say, somebody may be bugged?" did you hear that?

A. I don't know exactly what I did hear. That's been a long time.

Q. You are just not sure?

A. There wasn't too much harm said that I ever heard.

Q. There was a considerable amount of harm done?

A. I don't know anything about that.

Q. That wasn't the only incident?

A. That is all.

Q. You don't know about George Rogers?

A. George Rogers.

Q. They were in the Bristol Sawmill Workers Union?

A. I didn't know anything about that. What happened to him. I never heard anything.

The Court: He is asking you whether you heard anything.

By Mr. Warren:

Q. Where are you working now, Mr. Nidiffer?
page 173 } A. I'm kind of working for myself.

Q. How long had you worked at Bristol Door?

A. About 32 years.

Q. And lost your job in this strike?

A. That's right.

Q. Mr. Nidiffer, how much of your union dues went to your International union?

A. Union dues?

Q. Yes, sir, when you paid dues of \$2.50 a month?

A. No, that wasn't that much, I don't think.

Q. Isn't that right?

The Court: How much did you pay?

By Mr. Warren:

Q. Didn't you pay a total of \$2.50 a month?

A. Whatever we paid, I just about forgot what I did pay.

Q. Part of it went to the International each month?

A. Supposed to.

Q. When you got out—by the way, what happened to this union?

William Nidiffer.

A. I don't know what happened. It just (witness threw up hands).

Q. Just blew up?

A. You've heard of things blowing up.

page 174 } Q. Do you know what happened to the Charter?

A. I don't know who's got it.

Q. Do you know whether it was sent back to the International office?

A. I think it has been.

Q. Did somebody get or write a letter and say send it?

A. I suppose somebody came and got it.

Q. Somebody came and got it?

A. I think so.

Q. Did they make any refund to you for anything for all you've paid over the years?

A. No, I didn't get no refund. I got help while I was on the strike.

Mr. Warren: I believe that is all, your Honor. Thank you.

REDIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Nidiffer, did your local union help you by the local?

A. Yes, sir.

Q. Where did they get the money?

A. They sent it from headquarters.

Q. Isn't that under that under the Charter agreement if you strike they will pay you—

Mr. Warren: We object. We think that is the page 175 } best evidence.

The Court: The objection sounds good. Unless the object of the Charter is sufficiently explained, the instrument of whatever kind or character is available under which that agreement exists would be the best evidence.

By Mr. Warren:

Q. Did the International Union send money to your local and the local union disburse it?

A. Yes, sir.

Mr. Warren: That is all.

Mr. Stallard: That is all.

The Court: Mr. Edmondson?

Hubert Bouton.

Mr. Edmondson: I have no questions, your Honor.

The Court: All right. Call your next. Is he asking to be excused?

Mr. Stallard: He can be excused as far as I am concerned?

Mr. Warren: Yes, sir, he can be excused.

(Witness excused.)

Mr. Stallard: Mr. Joe Malone.

Mr. Warren: Your Honor, I may have done my opponent, Mr. Stallard an injustice. I has Joe Malone summoned also and I told him I wouldn't need him about 3 o'clock.

Mr. Stallard: I never had him summoned.

Mr. Warren: He had some people to pick up page 176 } in Abingdon and I told him to go ahead.

Mr. Stallard: I can have him summoned in the morning.

The Court: Tell the Sergeant to get him back in the morning.

Mr. Stallard: Could you call Mr. Hubert Bouton.

HUBERT BOUTON.

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Stallard:

Q. Will you state your full name and occupation?

A. Hubert Bouton, laborer.

Q. Will you give your address?

A. 1014 Russell Street, Bristol, Virginia.

Q. Were you ever employed at the Bristol Door & Lumber Company?

A. Yes, sir.

Q. How long?

A. I was on the payroll 29 years.

Q. Were you ever a member of their local union 3092?

A. Yes, sir.

Q. Were you also an officer of that local union?

A. Yes, sir.

Q. What was your position?

page 177 } A. Financial secretary.

Q. How did you get to be the financial secretary?

Hubert Bouton.

A. I was elected by the membership of the union.

Q. Now as financial secretary, what was your duty?

A. I collected dues and kept the books; sent money to the International.

Q. What did you call that money?

A. It was per capita tax.

Q. Do you remember what the dues were?

A. Well, at the time of the strike it was \$2.50 a month.

Q. Do you know whether the defendants here and also the plaintiff, Mr. Humphrey, and the defendants are Mr. Price and Mr. Parks, Mr. Halvie Strouth and Mr. H. C. Strouth were members of the local union?

A. Yes, sir, they were members of the local union.

Q. Did they participate in the strike?

A. Yes, sir.

Q. Did you ever see Mr. Humphreys at any of the meetings that was called by the local union?

A. Yes, sir.

Q. Did you ever hear him make any comments in the meetings?

A. No, sir, I don't recall any.

Q. Was he ever appointed as an agent to represent the local union either on the negotiating committee or
page 178 } otherwise that you know?

A. No, sir, not that I know.

Q. Were Mr. Parks or Mr. Price or the two Strouth boys ever appointed to your knowledge?

A. No, sir, they were never appointed or elected to any office.

Q. Did you ever hear of Mr. McKinney who is a representative of the International Union? Do you know Mr. McKinney?

A. Yes, sir.

Q. Did you ever hear him make any statements at meetings called by your local union to the effect that no one should do anything on the picket line but they could do it at their home or on the street?

A. All I remember is he told us not to cause any trouble or anything to anybody, keep everything *peaceful*.

Q. Did you hear Mr. McKinney say that you shouldn't *reall* have struck?

Mr. Warren: I am going to object to leading.

The Court: Yes, I will sustain the objection.

Mr. Stallard: I will withdraw the question.

Hubert Bouton.

By Mr. Stallard:

Q. Did Mr. McKinney ever express an opinion on the floor of his own?

The Court: In what regard?

Mr. Stallard: I withdraw that question.

By Mr. Stallard:

Q. Was Mr. McKinney a guest in the meetings page 179 } or was he an outsider?

A. He was just a guest at the meetings.

Q. Could he vote in your meetings?

A. No, sir.

Q. Did you consider yourself a member of the International or a member of the local union?

A. I was a member of the local union. I wasn't a member of the International.

Q. Was your local union affiliated with the International?

A. Yes, sir.

Q. When the International had a Convention could all your local members go to the Convention?

A. No, sir.

Q. How did you elect your delegates?

A. The membership had to vote on it, who to send as delegate to the Convention.

Q. Did the local union defray the expenses of the delegate?

A. Yes, sir.

Mr. Stallard: That is all.

CROSS EXAMINATION.

By Mr. Warren:

Q. The only reason you had to do it that way was because the union had 800,000 members, isn't that right, Mr. Bouton—

A. Which union?

page 180 } Q. Your union, the United Brotherhood of Carpenters and Joiners?

A. I thought we were talking about the local. The local only had 126.

Q. And this International had 800,000?

A. The International?

Q. But it is kind of hard to find a place where you could find them?

A. I imagine.

Hubert Bouton.

Q. You say you weren't a member of the International Union?

A. No, sir, I was a member of the local union.

Q. Who were members of the International? How would a man ever get to be a member of the International Union?

A. We were affiliated with the International.

Q. You were affiliated but you were not part of that 800,000?

A. If you want to count it that way, yes, sir.

Q. You were the only members that had members of the local union?

A. I guess the local unions made up the International.

Q. The local unions made up the International; and regularly what dues or per capita was paid, whatever it was called, but from the money paid in every month a regular amount was regularly paid to the National each month?

page 181 } A. Yes, sir.

Q. And I guess that was true of every one of those 800,000 people in the United States as long as they stayed in good standing?

A. Yes, sir.

Q. It is so provided in this per capita you could not be a member of the local union, could you, unless you paid your per capital tax to the International, you could not be a member of the local, could you?

A. Be a member of the local but you couldn't be a member of the International.

Q. The International Constitution requires that every member of a local pay that per capita tax?

A. It pays to the local and the local pays the per capita.

Q. I say, every member pays a per capita tax?

A. Under the by-laws.

Q. You say that Mr. McKinney was just a guest at the meeting?

A. That is what I understood. He wasn't assigned—

Q. Mr. Bouton, how long were you in that union?

A. I was in it from 1946 until it busted up.

Q. Now isn't it a fact and don't you know had Mr. McKinney come there and wanted to come to that meeting there wouldn't have been anything on earth to keep him on the outside?

A. If there was any reason for him he should
page 182 } have been.

Q. You mean the local union office could have excluded him from that meeting?

A. Yes, sir.

Hubert Bouton.

Q. And at a meeting would that union have considered any orders that were given by McKinney?

A. If he was assigned. We had a representative assigned.

Q. He was assigned during the strike?

A. No.

Q. Who was assigned?

A. A man by the name of Dishner.

Q. He was your assigned representative?

A. Yes, sir.

Q. Whatever he said you did?

A. We voted it.

Q. I thought you said a minute ago that you did it?

A. No, you asked if Mr. McKinney was assigned there.

Q. I understood you said that you didn't have to obey Mr. McKinney unless he was assigned; didn't you say that awhile ago?

Mr. Stallard: I don't think the witness said that.

The Court: The record will show.

Mr. Warren: I won't pursue that particular part of it.

By Mr. Warren:

Q. Mr. Bouton, these International representatives, their function is to bring orders and instructions from the International headquarters?

A. They are assigned to help. They are not assigned to bother anything or advise us. The membership votes on whether we do it or not.

Q. The membership absolutely acts on its own?

A. Take a vote just like any other corporation or anything.

Q. As a matter of fact, I think the membership did listen to everything that McKinney and Dishner told them in regard to the conduct of this strike?

A. I couldn't say they listened to everything.

Q. McKinney or one of them directed you how to put the pickets out in what groups and so forth?

A. We were told by the President of the Union.

Q. Sir?

A. By the President of the union.

Q. You say that neither McKinney nor Dishner instructed you in meetings, in your own union meetings how to put your pickets out and instructed you in the arrangement of your pickets and so on and so forth?

Hubert Bouton.

A. They could advise us but they couldn't give us orders.

Q. I am not asking you what they could do. I'm asking you what they did. Isn't it a fact they did instruct you and those instructions were part of the meetings?

page 184 } A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Do you deny that McKinney and Dishner exercised the paramount authority in that strike?

A. No, sir.

Q. Do you deny that they exercised the paramount authority in the conduct of the negotiations of the company?

A. Can I have that again?

Q. In negotiating with the company they were the ones who exercised the authority as to determine on what basis the strike might be settled and so on?

A. No, we had the committee.

Q. You had the committee?

A. Yes, sir.

Q. That committee was nothing in the world but a figure-head, was it, Mr. Bouton?

A. I couldn't say.

Q. You weren't on it, were you?

A. No.

Q. Where do you work now, Mr. Bouton?

A. New Lloyd Products.

Q. Are you a union member there?

A. No, no, there's no union there.

Q. Did you lose your job at Bristol Door on
page 185 } account of this strike?

A. Yes.

Q. Do you know how the union happened to fold up?

A. I don't know a thing about it. I don't know what happened.

Q. Well, weren't you an officer at the time?

A. I was an officer of the local, but I wasn't on the strike committee or nothing like that.

Q. The strike committee wasn't the union described here, the union folded that had to do with the strike?

A. They brought it before the membership and had a vote on it and the membership voted to call the strike off.

Q. And when that happened, the International boys came in and took the Charter. isn't that what happened?

A. No, they didn't pick it up.

Q. When did they pick it up?

Hubert Bouton.

A. Whenever the Union posted notice and everybody quit paying dues.

Q. Did you get any refund of any kind out of what you had paid into the Union over the years?

A. No, but what I paid entitled me to insurance and a chance to go to the Veterans' Home in Florida.

Q. You lost all that, didn't you?

A. When I lost my membership in the union, yes.

Q. I say you didn't get any refund, no return
page 186 } premium so-called on this so-called insurance?

A. No.

RE-DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Bouton, as an individual member, could you pay your dues to the International?

A. No, I had to pay it through the local union.

Q. Did you get a receipt from the local union?

A. Yes, sir.

Mr. Stallard: That is all.

RE-CROSS EXAMINATION.

By Mr. Warren:

Q. There are other local unions here in town, Mr. Bouton?

A. I don't know any of sawmill workers like we was.

Q. That does not make any difference. There are other local unions in the United Brotherhood?

A. Yes, there is other local unions in the United Brotherhood.

Q. And as far as provisions go you knew *not* you could get from one to the other if one folded?

A. That is right.

Q. Nothing had kept you from paying dues if you wanted to?

A. I didn't have no job. Couldn't pay no dues without money.

page 187 } Mr. Warren: That is all.

The Court: Mr. Edmondson?

Mr. Edmondson: No questions.

Mr. Stallard: If Mr. McKinney were a member of some

Roy K. Elkins.

other sister local would he have a right to come to your meetings just as a friend?

Mr. Warren: I object to that as irrelevant. That is not proper.

The Court: I overrule the objection. It doesn't fit the evidence so far.

Mr. Warren: Exception.

Mr. Stallard: Could Mr. McKinney, if he were a member of some other local, come in your local as a member?

The Witness: You mean to the Brotherhood Local?

Mr. Stallard: Yes.

The Witness: Yes, if in good standing, I see no reason to keep him out.

Mr. Stallard: Did you examine each one's card to see if he is paid up in dues?

The Witness: We had a door-keeper.

Mr. Stallard: Did you have your own ritual, a secret ritual?

The Witness: No, we only had—

Mr. Stallard: Did you have a pass word?

page 188 } The Witness: We had a pass word.

Mr. Stallard: That is all.

Mr. Warren: In other words, a member of the United Brotherhood in the United States in good standing could go to some other local meeting?

The Witness: Yes, if they are a member of the local in good standing.

Mr. Warren: Because they are all members of the United Brotherhood of Carpenters and Joiners, is that right?

The Witness: Affiliated with them, members of the carpenters.

Mr. Warren: That is all.

(Witness excused.)

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ROY K. ELKINS,

the witness, being recalled, was further examined and testified as follows:

Roy K. Elkins.

DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Elkins, you were asked yesterday by me if you could find a receipt from your local union or any card?

A. No, sir, they got misplaced and I couldn't find them anywhere.

Mr. Stallard: That is all I wanted to ask him. So far as I am concerned, the witness can go to work.

CROSS EXAMINATION.

By Mr. Warren:

page 192 } Q. Mr. Elkins, I omitted asking you something yesterday. Were you any sort of official in the local union at the time of this strike?

A. Yes, sir, I admitted that I was Treasurer.

Q. That is right, you certainly did.

A. Yes, sir.

Q. And were you also a committeeman of any type?

A. No, sir, I wasn't a committeeman. I wasn't on the negotiating committee, with exception I was Treasurer.

Q. You didn't take part in any contract negotiations between the company and the union?

A. No, sir, I did not.

Q. You don't know what went on?

A. Except what I was told and I was on no other committees except I was Treasurer.

Q. You did, I take it, attend the meetings of the union during that period of time?

A. Yes, sir, I attended as a member.

Q. And I believe you were on the bonding committee, were you not?

A. Now I don't know whether I understand that question.

Q. Well, let me explain my question.

A. All right, sir.

Q. It is a fact that the union had during the strike had made provision for going on the bond of any of its members who got in trouble with reference to the strike?

page 193 }

A. No, sir, I wasn't on the committee.

Q. You weren't the chairman of that committee?

A. No, sir, I wasn't. I said I was only the Treasurer and I wrote the checks and that was all.

Roy K. Elkins.

Q. Who was on that committee, do you remember?

A. So far as I know, I don't remember of any committee. There was what we called the finance committee.

Q I'm talking about the committee to go on the bonds of any member who got in trouble in the strike?

A. I couldn't tell you that.

Q. Do you know who was on that committee?

A. I know who was on the finance committee. So far as that other committee, I don't know.

Q. Regardless of what they called it did they have a committee down there to go on the bonds of the men that might get in any difficulty?

A. I couldn't answer that question just exactly. I can tell you who was on the finance committee. So far as the other committee, I couldn't.

Q. Was that the one who did that?

A. They was the ones okayed bills, any bills that came in there into the union that was supposed to have been paid, they okayed and then I wrote the checks. In other words, I didn't have anything else to do with it.

page 194 } Q. Didn't you stay there every night until 11 o'clock even though you were working on the picket day shift, or whatever you were doing, you were working during the day?

A. Working?

Q. Yes, your duties with the union either as a picket during the strike—

A. With the strike I was captain of the first shift in the afternoon 3 to 11. He taken me off. I wasn't on the picket line the last of the strike. In other words, I stayed—after we got money from the International, I stayed in the office.

Q. You stayed in the office?

A. Yes, sir.

Q. And you stayed there until 11 o'clock?

A. No, the office didn't stay open.

Q. I am talking about you stayed there?

A. Not every night I didn't stay.

Q. You deny you had anything to do with making arrangements for bonding men who got in trouble?

A. If there was a bond, any money, I was supposed to sign checks but so far as being on a committee—

Q. You say you could not find your union card?

A. No, sir, I couldn't. Been over two years; it's been misplaced and I don't know where it's at.

Joe Malone.

Mr. Warren: That is all. May he go back to work?

page 195 { Mr. Stallard: Do you wish to go back to work?
The Witness: I would like to, if permissible.
The Court: He may be excused.

(Witness excused.)

Mr. Stallard: Mr. Joe Malone.

JOE MALONE,

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Malone, will you state your full name and what you do?

A. Joe Malone; work for Miller and Bradley, cutting timber.

Q. Were you ever a member of the union named Local 3092, the Sawmill Local here in Bristol?

A. Yes, sir.

Q. Do you remember the strike that occurred approximately two years ago?

A. Yes, sir.

Q. Were you a captain on the picket line?

A. Yes, sir.

Q. Who were your pickets, if you can recall the names?

A. I couldn't call all the names. Roscoe Humphreys was one.

Q. Was the plaintiff, Roscoe Humphreys one of your pickets?

A. Yes, sir.

Q. What were the hours they were supposed to picket?

A. From 11 to 7.

page 196 { Q. From 11 to 7?

A. Yes, sir.

Q. Did you have any difficulty on the picket line during the time?

A. Well, the only thing I have, Roscoe Humphreys come in three times a-drinking and I sent him home.

Q. Now did you ever attend any of the meetings at the hall of the union?

Joe Malone.

A. Yes, sir.

Q. Was that a meeting trying to settle the strike?

A. Yes, sir.

Q. Did you see a Mr. A. O. McKinney there?

A. Yes, sir.

Q. Did you have any difficulty with McKinney?

A. Yes, sir, men and him had a word or two.

Q. What was the nature of it?

A. Well, I wanted to come on on the strike and get the strike started and over with and Mr. McKinney, he didn't.

Q. You wanted to come out on strike?

A. I wanted to and Mr. McKinney was trying to settle the strike. He didn't want to strike.

Q. He didn't want to strike?

A. No, sir.

Q. What did you say?

page 197 } A. Well, I told him get it over, come on strike
and get it over, had about enough trouble.

Q. You attended how many of those meetings, if you recall?

A. I wouldn't say how many; attended first, about every one.

Q. Did you ever hear Mr. McKinney or any other person in the hall state, "I understand some of the men are talking about going back to work; if anybody does, don't do anything on the picket line; catch them down town or on the way home and entertain them?"

A. No, sir, I never heard nobody say anything about that.

Q. I believe you were summoned here yesterday by the plaintiff?

A. Yes, sir.

Q. And I summoned you here this morning?

A. (no response.)

Mr. Stallard: That is all.

CROSS EXAMINATION.

By Mr. Warren:

Q. By the way you said you sent Roscoe home?

A. Yes, sir, I sent him home.

Q. Now isn't it a fact you had a little shack across the street where the pickets gathered?

A. That's right.

Joe Malone.

Q. And you sent some of the others home who
page 198 { were doing so much drinking that Dishner and
McKinney got after you?

A. No, sir.

Q. That is the truth, isn't it?

A. No, it ain't the truth. I don't fool around with that kind
of stuff. It has been 16 years since I took a drink of alcohol
and I can prove it, too.

Q. And you wanted to come on out on strike?

A. That is right.

Q. But you didn't hear Mr. McKinney saying a word about
bothering anybody?

A. He didn't say a word.

Q. You didn't go to the home of Burt Smith?

A. No.

Q. George Rogers?

A. No, sir, I didn't go to his home.

Q. You went to Carl Wilson's home, too?

A. No, I didn't go to anybody's home.

Q. You know Burt Smith?

A. I know Burt Smith.

Q. You deny you went to his home?

A. I didn't go.

Q. Who did?

A. Nobody I don't reckon. If anybody did go I didn't know
anything about it.

Q. Barney Hinkle told you to do your jumping
page 199 { over all over in Tennessee, because he had things
fixed up over there, he used to be a Deputy
Sheriff?

A. No, sir.

Q. What did he tell you?

A. He didn't tell me anything about Tennessee.

Q. Nobody ever did tell you anything?

A. No, sir, not a think in the world.

The Court: Wait a minute. I want to ask him a question.
After Mr. Elkins ceased to be captain of the 3 to 11 shift of
pickets who was the captain of the 3 to 11 shift?

The Witness: I couldn't answer that question. I don't
know, sir.

The Court: That is all I want to ask him.

(Witness excused.)

Mr. Stallard: I want to call Mr. A. O. McKinney.

ADRIAN O. McKINNEY,
the next witness, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. McKinney, will you state your full name and occupation?

A. Adrian O. McKinney. I am a representative for the General President of the United Brotherhood of Carpenters and Joiners of America.

Q. Have you any credentials that may show evidence of that representative capacity?

A. Yes, sir.

Q. May I see them?

A. (Witness hands credentials to counsel.)

Q. Would you read this to the jury and tell who it is signed by, the whole thing?

Mr. Warren: May I see it first, please?

Mr. Stallard: Certainly.

(Credentials handed to counsel.)

Q. Will you read that to the jury?

A. "Credentials 47 issued to Adrain O. McKinney, Representative for the General President of the United Brotherhood of Carpenters and Joiners, AFL-CIO, Indianapolis, Indiana for the year 1961, or until revoked." Signed by M. A. Hutchinson, General President and the signature A. O. McKinney.

Q. Mr McKinney, what is your duty as representative for the President?

A. Organizing new members, negotiating contracts, servicing those contracts such as settling grievances and any other grievances that occur within the contract period for the local unions.

Q. Do you remember coming here to Bristol or if you were here you might state just why you did come into the strike here at the Bristol Door. Will you tell the jury in your own words just what took place?

A. Well, I was assigned to another campaign here when the strike occurred at Bristol Door. I was not assigned to Bristol Door. It was another company and prior to the strike I had been doing business with the attorney for the Bristol Door. I have been knowing Mr. Miles for several years and he and I had been negotiating a contract with another company and we got into a discussion on the situation that they had at Bristol

Adrian O. McKinney.

Door and I told him if I could be any assistance I would be glad to try to help him and told him if he would call me at any time that I would come over. I wasn't supposed to unless I had an assignment from the General President.

So a few days later Mr. Miles called me and he had talked to Mr. Hutchins with the Federal Mediation Conciliation Service and Mr. Hutchins thought maybe if he and I got together we may be able to work out something.

Q. Did you participate in various negotiations with the members of the union and the attorney for the company?

A. I believe there was only one or two meetings that I was in with the members of the committee.

Q. Did you have several other meetings directly with Mr. Waldo Miles?

A. Yes, sir.

Q. What was your position in the strike as far page 202 { as being called? Were you in on it before it was called?

A. Yes, I was in on it or before they came out on strike, yes, sir.

Q. Were you present when they voted to strike?

A. No, sir.

Q. Did you express any opinion on whether they should strike or not?

A. Yes, sir. Before the strike I did meet with the membership and tried to explain to them. I had met with Mr. Miles and we thought we had a workable agreement worked out, and I went to the membership and presented it to them. That is when I met with them the first time.

Q. What did the membership do?

A. They liked to throw me out of the building.

Q. Now it has been testified to here by the plaintiff that you were at one of the meetings and you stated the following: "I understand some of the men are talking about going back to work; if anybody does, don't do anything on the picket line; catch them down town or on the way home and entertain them."

Did you ever make any statement of that kind?

A. Not to my knowledge, no sir.

Q. Did you ever make any statement to have a fight or do anything to these people?

A. No, sir, that has always been strict instructions, that there will be no violence.

page 203 { Q. You said you had been appointed as an organizer, negotiations of new contracts and settlement of grievances. Is that the extent of your authority?

Adrian O. McKinney.

A. Yes, sir.

Mr. Stallard: That is all.

CROSS EXAMINATION.

By Mr. Warren:

Q. Mr. McKinney, you say you are a representative of the General President, is that his title?

A. Yes, sir.

Q. And the General President is the President as the name implies of the International Brotherhood?

A. Yes, sir.

Q. And you act under orders from him?

A. Yes, sir, either directly or indirectly.

Q. Either directly or indirectly?

A. Yes, sir.

Q. And you report to him?

A. Yes, sir.

Q. And you had been sent to Bristol, in your words, assigned to another campaign at another company?

A. Yes, sir.

Q. You were not assigned originally to this campaign at this company?

A. No, sir.

page 204 } Q. But it was a campaign, wasn't it, Mr. McKinney, and you were subsequently assigned to it?

A. No, sir.

Q. You were not?

A. No, sir.

Q. Well, I thought you said that there was nothing you could have to do with it unless you were?

A. I say I wasn't supposed to but if I could help them I would. I didn't make any report to the General President that I was on that assignment.

Q. You don't have to report everything you do to the General President?

A. You try to get in all you can, if you can possibly get it on your report.

Q. In any event you deny that you actually took part in official negotiations before the strike ever occurred?

A. No, sir, it was not official negotiations.

Q. You were there in your capacity as representative of the General President?

A. I was representing the local union.

Adrian O. McKinney.

Q. You said you were here as a representative of the General President and yet you said you were representing the local union; which did you represent?

A. I was representing the local union.

Q. You weren't a member of the local union, were you?

A. No, sir.

page 205 { Q. You were here as representative of the General President and paid by the national organization, right?

A. Right, sir.

Q. And Mr. D. Arcil Dishner, or is it C. Arcil Dishner?

A. D.

Q. What was his capacity?

A. Representative.

Q. The same as you?

A. Yes, sir.

Q. He was also here?

A. Yes, sir.

Q. Was he assigned to this or to another campaign?

A. He was assigned to this.

Q. Was he assigned to this campaign before you had your initial involuntary conversation with Mr. Miles that you have testified about?

A. Yes, sir.

Q. And together with permission from him to go ahead in all the negotiations with him?

A. Yes, sir, I was with him.

Q. He was not your superior, was he?

A. No, sir.

Q. And didn't you as a matter of fact, Mr. McKinney, take charge of the negotiations?

page 206 { A. No, sir.

Q. Did I detect some hesitancy in that answer?

A. I have no authority to take charge of negotiations it was his assignment.

Q. I'm asking you if you did not in fact take charge?

A. No, sir.

Q. You filed unfair labor practice charges, didn't you?

A. Yes, sir.

Q. Wasn't that taking charge? You filed them in the name of the union?

A. No, sir, it's not taking charge. We have two men in the southern staff that are qualified to handle NLRB procedure.

Q. And you are one?

A. Yes, sir.

Q. Who is the other?

Adrian O. McKinney.

A. J. A. Barker.

Q. And you were the only one qualified in Bristol to handle NLRB procedure?

A. That is right.

Q. And those procedures are naturally incident to a strike and both sides can file unfair labor practice charges?

A. Yes, sir.

Q. And Mr. McKinney, do you deny that on at least four occasions and I will give you dates, July 3, 1958, July 15, 1958, September 18, 1958 and September 22, 1958 you page 207 } met with Mr. Waldo Miles representing the company and with other representatives of the company and with the union negotiating committee on all of those occasions having to do with negotiations concerning this strike? Do you deny meeting with all of those people on those four occasions?

A. Well, you say all those people—

Q. Well, sir, I understood you to say a moment ago that only on two occasions did you meet where the committee was present?

A. A full committee, yes, sir.

Q. I'm asking about on the four occasions, regardless of the full committee, but where members of the union were there. That is right?

A. I probably did, yes, sir.

Q. In other words, they were official negotiations?

A. Yes, sir.

Q. Well, when were the two meetings that you were talking about?

A. Well, sir, that is something I couldn't tell you the date.

Q. You have no record?

A. No, sir.

Q. Mr. McKinney, regardless of the merits or what was involved, you appeared in this Court in regard to an injunction?

A. Yes, sir.

Mr. Stallard: Your Honor, I object to that. I page 208 } don't think the record shows that.

Mr. Warren: I am asking if he didn't physically appear.

Mr. Stallard: The document, the Sergeant's return will show.

Mr. Warren: Regardless of that, he can say if he appeared.

Adrian O. McKinney.

The Court: Overrule the objection.

Mr. Stallard: Exception.

The Witness: I would like to say, sir, that it was not in this room.

By Mr. Warren:

Q. What room was it?

A. Down stairs.

Q. In this building?

A. Yes, sir.

Q. And you employed an attorney to represent the local union and the International, didn't you?

A. No, sir.

Q. You didn't employ Mr. Ralph H. Brumet?

A. No, sir.

Q. You did not go to his office and engage his services?

A. No, sir.

Q. Didn't go there with anyone else to do it?

A. No, sir.

Q. Do you know who did employ him?

page 209 } A. Our General Counsel.

Q. Who was that?

A. Bill McGowan.

Q. Where is his office?

A. Indianapolis.

Q. Did he employ him on your advice?

A. He employed him after I talked with him.

Q. And I take it the International paid Mr. Brumet for it?

A. I wouldn't know.

Q. They thereby made themselves responsible to pay him if they employed him?

A. Probably did. I don't know.

Q. Sir?

A. They probably did. I don't know.

Q. Now we've had some dispute between the witnesses or conflict by the testimony of the witnesses concerning the status of a person who belongs to a local union such as these men who belonged to this Bristol Door local. How long have you been a member of the United Brotherhood of Carpenters and Joiners?

A. Five years.

Q. And what union were you a member of prior to that?

A. I was a member of the International Woodworkers of America.

Q. And how long were you with them?

Adrian O. McKinney.

A. Five years.
 page 210 } Q. And without going into details, you were in union work prior to that, weren't you?

A. Yes, sir.

Q. I take it you are familiar with the laws and the government of the United Brotherhood of Carpenters and Joiners in general?

A. In general, yes, sir.

Q. Sir?

A. In general, yes, sir.

Q. Well, just how does one become a member of the United Brotherhood of Carpenters and Joiners?

A. You cannot become a member of the United Brotherhood of Carpenters and Joiners, not the International.

Q. You cannot?

A. Anyone.

Q. Well, are you a member of it?

A. No, sir.

Q. It has no members?

A. Not directly, no, sir.

Q. Well, what is it composed of?

A. It is composed of local unions

Q. Is it local unions or of the members of the local unions?

A. The locals are composed of members.

Q. The members are members of the International, aren't they?
 page 211 }

A. No, sir, not directly.

Q. Let me call your attention to some provisions of the Constitution and Laws of the United Brotherhood of Carpenters and Joiners of America admitted in evidence in this case and identified as Plaintiff's Exhibit No. 2, and on page 2, the very first section, Section 1, this is said:

"This organization shall be known as the United Brotherhood of Carpenters and Joiners of America, and shall consist of an unlimited number of Local Unions and members subject to its laws;" do you know who is referred to there as members subject to its laws?

A. Members of the local unions, I imagine.

Q. They are members of the United Brotherhood?

A. Not directly, no, sir. They don't pay dues to the Brotherhood.

Q. They don't pay dues?

A. No, sir.

Adrian O. McKinney.

Q. Let me call your attention to page 6, Section F, and this is still under the section of this thing having to do with the International. We haven't gotten to the local yet. That begins over on about page 30. This is page 6 having to do with general officers and elections. Section E, first of all, says:

“Any member, Local Union, District Council, Provincial Council or State Council which sends out any page 212 } letter, or letters or circulars of a scurrilous or defamatory nature against any candidate for office in the United Brotherhood, unless such candidate has been charged, tried and found guilty of a violation of some provision or provisions of the laws of the United Brotherhood, shall be expelled.”

Do you know that is referring to when it says “any member”?

A. Member of a local union.

Q. In the next section, “No member shall be elected or appointed to any Local or General Office, representative or deputy or, a delegate to any Central Body or to a Convention unless such member is a citizen of the United States,” and so forth. Is that referring to a member of the local or what?

A. Yes, sir.

Q. Well, a member of a local can't be elected to a general office, can he, Mr. McKinney?

A. He most certainly can, if he's got enough votes.

Q. If he's got enough votes of who?

A. Of the delegates of the Convention.

Q. And the delegates are chosen by whom?

A. By the local union.

Q. Now let me ask you this. Over on page 7 under the duties of the General President and authorities it says this:

“The General President may appoint any member of the United Brotherhood in good standing as a representative”—

Who is it talking about, any member in good page 213 } standing of the United Brotherhood?

A. Any member of the local union.

Q. Any member of the local union. Without going into all of them—

The Court: What was that last reference?

Mr. Warren: On page 7, your Honor.

Adrian O. McKinney.

By Mr. Warren:

Q. And over on pages 8 and 9 it says, this beginning on page 8 of Section J, and this is also under General President:

“In case of charges against any General Officer, the General President shall have power to suspend said officer pending an investigation by the other members of the General Executive Board, such investigation to take place, and the findings of the General Executive Board, with a copy of all evidence, submitted to a general vote of the Local Unions within thirty days. The result of said vote to be returned to the General President within thirty days thereafter, and should the accused be found guilty as charged by a majority vote of the members of the United Brotherhood voting, the General President shall make the suspension permanent.”

Isn't it talking about that being submitted to a vote of the local union, and then it says, “Be found guilty as charged by a majority vote of the members of the United Brotherhood voting,” aren't they talking about members of the page 214 } local union and United Brotherhood?

A. Yes, sir, they are talking about the members of the local union.

Q. And designating United Brotherhood?

A. Indirectly they are maybe but they—

Q. How is the United Brotherhood supported?

A. Supported by membership of the local union.

Q. In other words, it is a rose by some other name. They pay dues but it is not called that?

A. No, sir, it is just like another person taxes a certain percentage of the dues sent you.

Q. And the general office determines what that per capita shall be?

A. No, sir.

Q. It does not?

A. The Government determines.

Q. Talking about the General Vice President, and in 1959 he received \$675 a week which goes to the General Vice President, “In cases of charges against the General President, the First General Vice President, in conjunction with the other members”—this is page 10—“of the General Executive Board, shall have power to suspend said officer pending an investigation by the General Executive Board. Their findings shall be submitted, with a copy of all evidence, by the General Secretary to a vote of all the member of the United Brother-

Adrian O. McKinney.

hood"—Who would you refer that to if you
page 215 } wanted to get a vote of members of the United
Brotherhood?

A. All local unions. Sir, I would like to make provision that no one but the General President shall interpret the Constitution, so I don't want you to take it that I'm trying to interpret the Constitution.

Q. But he's the head man, isn't he?

A. Yes, sir.

Q. Over here on page 33 finally and there are any number of other places but I won't go beyond that, there are three subparagraphs designated T, U and V. T reads as follows:

"No member of the United Brotherhood shall lump, subcontract or work at piece work for any owner, builder, contractor, manufacturer or employer. For a violation of this Paragraph or any part of it, the member shall be fined" so and so.

"U. Members who contract work or become foremen, must comply with Union rules and hire none but members of the United Brotherhood."

Those are members of the local union referred to here as members of the United Brotherhood?

A. Yes, sir.

Q. Section V. "No member of the United Brotherhood can remain in or become a member of more than one Local Union, or any other organization of carpenters and joiners, or any mixed union of building tradesmen, under penalty of expulsion."

page 216 } They are talking there about members of local
unions when talking about members of the United
Brotherhood, aren't they?

A. Yes, sir.

Q. But you still say that there is no such thing as a direct membership in the United Brotherhood?

A. Yes, sir.

Q. Or direct members?

A. If it was we would be allowed to join the United Brotherhood and pay our dues one place, but we travel and we have to belong to a local union.

Q. Now, Mr. McKinney, can the President, International President, the General President call a strike?

A. No, sir.

Q. Can he stop a strike?

Adrian O. McKinney.

A. That would all depend. I don't know whether he could stop a strike. That depends on the people. He could tell them to go back to work; whether they would abide, I don't know.

Q. If they didn't could he expell them?

A. By filing charges.

Q. Can an Executive Board of the union call a strike of a local?

A. No, sir.

Q. Cannot?

A. No, sir.

Q. Let me read you Section E on page 14 of this page 217 } Constitution. This is the whole governing laws of the union.

A. Is that the new one, sir?

The Court: That is the one which has been admitted in evidence by stipulation.

By Mr. Warren:

Q. It has been agreed here this is the official one as of the date it bears of the time we are concerned with.

(Witness examines booklet.)

A. I believe that is the latest one.

Q. Section E on page 14, "The General Executive Board shall have power to authorize strikes in conformity with the Constitution and Laws of the United Brotherhood, and when necessary to defend the organization in any locality against the attacks of employers, combinations or lockouts, or any attempt to disrupt or destroy the organization, to support such locality by levying a per capita assessment and by ordering a cessation of work for any employer involved, irrespective of where such work is located; enter into agreement with other organizations with reference to jurisdiction over work; or a general offensive or defensive alliance."

Were you aware of that provision?

A. Yes, sir.

Q. Does it mean what it says?

A. I couldn't tell you whether it means what it says, but there is another provision that says before a local
 ✓ page 218 } union can strike you have to file a schedule what the demands are, what the progress is and so forth before the General Executive Board will even approve calling a strike.

Q. Even before calling a strike?

Adrian O. McKinney.

A. If they expect financial aid.

Q. And if the General Executive Board approves the strike they get financial aid?

A. Yes, sir.

Q. And that was all done in this case?

A. ~~Yes, sir.~~

Q. So the Board and the International knew all about the strike? That is my question.

A. I would assume so, yes, sir.

Q. You were in Bristol at the time this Roscoe Humphreys incident occurred in September, were you not?

A. I couldn't tell you, sir. I travel in and out.

Q. You were aware of this happening, weren't you?

A. I heard about it, yes, sir.

Q. The hearing at which you appeared in this Court that you admitted awhile ago happened two days thereafter, didn't it?

A. I couldn't tell you.

Q. You don't remember?

A. No, sir.

Q. Do you deny that it is true?

A. No, sir, I don't deny it is true.

page 219 } Q. In your best recollection, how many days thereafter was it?

A. I couldn't tell you, sir, because it wasn't my job to keep up with it.

Q. Very short time?

A. I couldn't say.

Q. You weren't even concerned?

A. Not directly.

Q. Why did you appear here in this then?

A. I came over with Mr. Brumet.

Q. Well, Mr. Brumet, did I understand he represented the local union?

A. Yes, sir.

Q. What did you come for?

A. Sir, I go in court rooms all the time.

Q. You came over as a disinterested witness?

A. I don't reckon a witness.

Q. Observer I should say?

A. Observer?

Q. You were named as one of the parties?

A. I couldn't tell you, sir. It never was served on me.

Q. You do admit that you heard about the Humphreys thing but don't know when?

A. That is right.

Adrian O. McKinney.

Q. Did you do anything about it?
page 220 } A. No, sir.

Q. Now Mr. McKinney, how many meetings of the local union did you attend during the time that you were here in Bristol and when this labor difficulty first came up and then the strike?

A. You mean prior to the strike?

Q. Both prior to and afterward?

A. I would say three or four.

Q. Is that all?

A. I do not remember offhand.

Q. Well, it has been said in evidence that there were one or two meetings a week of that union. Didn't you attend practically every one of these meetings?

A. No, sir.

Q. Didn't you attend the first meetings that they had immediately after the strike was called and instruct the members on how to set up their pickets?

A. No, sir, they set up a committee to do that.

Q. How do you know?

A. Because I told them what to do.

Q. You told them what to do?

A. Yes, sir.

Q. What did you tell them?

A. I told them they had to set up a committee to line up the pickets and what they could do and couldn't do.

Q. You told them they also had better set up a
page 221 } committee to bond out boys who got in trouble?

A. No, sir.

Q. A bonding committee?

A. No, sir.

Q. There was one, wasn't there?

A. No, sir, not to my knowledge.

Q. Mr. Dishner was at all the meetings you were at, wasn't he?

A. I believe so, yes, sir.

Q. He had the same authority you had?

A. He had the authority. I didn't have.

Q. But you were exercising it?

A. Yes, sir.

Q. And you represented yourself to be, as Mr. Miles said as they all know you, a representative of the General President, didn't you?

A. Yes, sir.

Q. But you deny that you ever suggested such a thing as

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entertaining, or whatever you want to call it, the non-strikers between their jobs and homes?

A. Between their jobs and homes?

Q. Between their jobs and homes, that is right.

A. I don't understand.

Q. Between their homes and their place of work, you deny that you suggested, told the meeting or the membership of this *of this* local to entertain those men between the plant and their home back and forth?

A. I definitely deny it.

Q. You deny that you had anything to do with suggesting or advising or instructing as to any violence whatever?

A. Yes, sir. In fact, I went so far as to type a set of rules that they were supposed to go by.

Q. Where are they?

A. I don't know, sir. They posted them on the picket line.

Q. You didn't keep a copy?

A. No, sir.

Q. You type things and yet you don't keep a copy, things that you were responsible to the General President for?

A. Yes, sir, I am responsible to the General President. I did that for the local union. I'm responsible to the General President, but I was doing the local union a favor.

Q. Whatever you do you are still responsible to the General President and if it didn't meet with his approval he could fire you?

A. Yes, sir.

Q. You didn't keep a copy in the office?

A. Probably a copy there.

Q. You don't have it?

A. Night before last I got in and took a search.

Q. How long have you known about this suit?

page 223 } A. I found out Tuesday.

Q. Never had known it before?

A. No, sir.

Q. Mr. McKinney, what happened to this local union?

A. I couldn't tell you.

Q. You don't know?

A. No, sir.

Q. You weren't here at its demise?

A. No, sir.

Q. You didn't take its Charter physically?

A. No, sir.

Q. And carry it away?

A. No, sir.

Adrian O. McKinney.

Q. Who did?

A. I couldn't tell you that, sir.

Q. Do you know what happened to its minutes?

A. No, sir.

Q. Do you know what happened to the minutes of the supposed meeting where you got up and said, "Don't strike"?

A. No, sir.

Q. You don't know what happened to those minutes?

A. No, sir.

Q. Do you know what happened to the other minutes of the meetings?

A. No, sir.

page 224 } Q. Well, they would reflect what was said there, wouldn't they?

A. They should if he had a good recording secretary.

Q. This paper requires that it be done?

A. Yes, sir.

Q. It sets forth the order of the minutes and that they shall be kept and preserved?

A. Right, sir.

Q. And doesn't it also require that all minutes pertaining to the International be reported by the recording secretary to the General Secretary?

A. Yes, sir.

Q. Do you know whether that was done?

A. No, sir.

Q. Whether those records are now in the General Secretary's office?

A. No, sir.

Q. Did you try to find out?

A. No, sir.

Q. One other question. I may have covered this. If so, I'm sorry to renew it. Mr. Dishner was here all during this campaign, the Bristol Door matter?

A. Yes, sir, as far as I know. I couldn't tell you when I was out of town.

Q. Well, he lived at Bluff City?

page 225 } A. Yes, sir.

Q. Local boy?

A. Yes, sir.

Q. Do you know where he is now?

A. No, sir.

Q. Does he still live at Bluff City?

A. I couldn't tell you.

Q. Have you made any attempt to locate him?

Adrian O. McKinney.

A. No, sir.

Q He was at every union meeting during this time, the meetings of this local union with which we are concerned and at which you were present?

A. All the meetings that I was present.

Q. He was there?

A. Yes, sir.

Mr. Warren: I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. McKinney, do you agree you were a resident here at Bristol or was at the time this strike took place?

A. More or less temporary resident in this area.

Q. How long did you live here?

A. I had an apartment in Johnson City; stayed in this area for about six years.

Q. During that time you were negotiating with page 226 } the attorney for the employer here on other contracts?

A. Yes, sir.

Q. Did you and the attorney for the employer prepare a contract for the employees of the local union?

A. We agreed and I prepared it.

Q. What happened to that as far as the local union was concerned?

A. It was a stipulation to extend the contract for a period of six months and I took it to the committee. I got the negotiating committee to agree to it and Mr. Miles agreed to get permission from the company to allow the negotiating committee to go through the plant and poll the employees as to whether they would accept it or not.

They took it through the plant and it was turned down. And that was the night I asked the committee at a special meeting, I made the statement and they liked to throw me out.

Q. Mr. Miles thought a strike was perilous and you also thought it was perilous. Is that a true statement?

A. Definitely so.

Q. If you had stated before this body what the plaintiff stated you allegedly did, what would have happened to you as far as being representative of the United Brotherhood of Carpenters and Joiners—

Adrian O. McKinney.

Mr. Warren: I am objecting to the question.

The Court: Sustain the objection. That is a page 227 } hypothetical question which calls for a hypothetical situation.

By Mr. Stallard:

Q. You definitely deny making it?

A. Yes, sir.

Q. You attended some meetings. Did you hear anybody else make such a statement?

A. No.

Q. To your knowledge was the statement made?

A. No, sir.

Q. Do you know approximately what this strike cost the International Union through strike payments?

A. Benefits, services and so forth, they estimated it \$80,000.

Q. Does the United Brotherhood International want strikes?

A. No, sir, definitely not.

Mr. Warren: I don't believe he can speak for them, your Honor. I'll have to object to that.

The Court: Overruled.

Mr. Warren: I'll withdraw the objection.

By Mr. Stallard:

Q. Why do you know that?

A. That is our instructions. That is the reason we go in to assist local unions in negotiations to prevent strikes.

Q. What do you find in a locality like that where a strike takes place?

A. You find bitterness, brothers start fighting each other, friends and so forth, and just continuous bitterness; takes years to overcome.

Q. You say you wrote out some instructions for these people. What were the instructions?

Mr. Warren: Object to that unless he produces the instructions here. He says he wrote them out and he should have kept them if he wanted them here. I would like to see them, but we object to his testimony to it. It is self-serving in the first place.

The Court: I don't think any of the proof shows that except the fact that the gentleman testified he wrote instructions.

I will not permit the introduction of secondary evidence.

Adrian O. McKinney.

By Mr. Stallard:

Q. Do you belong to a local union. Mr. McKinney?

A. Yes, sir.

Q. Where is that?

A. Bristol, Tennessee.

Q. Now you stated you were not a member of the International here. Do I understand that this union has about the same system as the International Lions and International Kiwanis?

Mr. Warren: I'm going to have to object to leading, leading and relevance. We don't know what the Lions or Kiwanis system may be.

page 229 } The Court: I believe that's getting pretty far afield. You go as much as you like into the organization and nature, that is the nature of the International and local organizations, go into that as fully as you like, anything that you care to. We do not want to compare it with something that would take a whole lot of time proving what it is.

By Mr. Stallard:

Q. Well, I'll ask you as a representative of the International, can the local union do things contrary to the International Constitution?

A. They are not supposed to, no sir.

Q. Do local unions have their own Constitution and By-Laws?

A. Yes, sir.

Q. So long as these are not unconstitutional can any local union write their own by-laws?

A. Yes, sir, after they are approved by the First General President.

Q. Actually the law requires you to have a Constitution and By-Laws?

A. Not only the law, but the Constitution of the United Brotherhood requires it.

Mr. Warren: I am going to object to what the law requires unless the gentlemen present the law.

The Court: Overruled.

Mr. Warren: Save exceptions.

page 230 } By Mr. Stallard:

Q. You say your Brotherhood Constitution and By-Laws?

Adrian O. McKinney.

A. Yes, sir.

Mr. Stallard: That is all.

CROSS EXAMINATION.

By Mr. Warren:

Q. But actually what you said, I believe, did you say that any local by-laws had to be first approved by the General Vice President?

A. First General President to show that they are not in conflict with the General Constitution.

Q. Mr. McKinney, you say this strike cost the Union \$80,000?

A. No, sir, I did not. I said they estimated it \$80,000.

Q. Who estimated it at \$80,000?

A. Director of Organization.

Q. Well, the Union has 800,000 members, doesn't it?

A. I couldn't tell you.

Q. You don't know?

A. No, sir.

Q. Do you know approximately how many?

A. Between eight and nine hundred thousand.

Q. Between eight and nine hundred thousand members and per capita tax is \$1.25 a head a month?

A. It was at that time.

page 231 { Q. Well, if that time if they had 800,000 members they were getting a million dollars a month from their members?

A. I couldn't tell you.

Q. So the cost of maintaining unions and organizing is small compared to the yield that it produces, isn't it?

A. I don't understand that, sir.

Q. Well, I said an \$80,000 investment for expanding the union or keeping it alive on behalf of the International is a small investment as compared to the yield it produces over the years?

A. Yes, sir, but you can't take just one local union. There are 3,000 local unions.

Q. I understand you do with between eight and nine hundred thousand members. Isn't it a fact that you told me you didn't want this union to strike and thought it detrimental to the union movement and the International tried to avoid strikes, strife and so on that caused strife and you thought the union was making a bad mistake, in other words, the local?

Adrian O. McKinney.

A. Yes, sir.

Q. And you thought in doing so, I take it, that they were hurting the interest of the International?

A. Not necessarily so, no, sir.

Q. You didn't think so?

A. I thought they were hurting themselves.

Q. But didn't hurt the International?

page 232 } A. Not directly, no.

Q. Losing that local union which you might readily have contemplated and \$80,000, wasn't that detrimental to the International?

A. Sure it is detrimental to the International but I didn't think we would lose it.

Q. You didn't think you would lose it?

A. No, sir

Q. And you so told the members, didn't you?

A. No, sir.

Q. You didn't think it would do the local any good but you told them that it would?

A. I figured a couple or three times from other experiences they would get tired and be all ready to go back in two or three days.

Q. You were here two or three months after it started?

A. Yes, sir, in and out ever since.

Q. Did you continue to think that you wouldn't lose it during that period of time?

A. Well, I don't understand what you are talking about losing.

Q. By losing the strike?

A. There is a lot of ways of losing a strike. People come out and go back with exactly the same thing they had.

The Court: Mr. Warren, aren't you getting too
page 233 } far afield from the issue?

Mr. Warren: Exactly. It is nothing but irrelevant. No more questions.

The Court: Mr. Edmondson?

Mr. Edmondson: No, sir.

(Witness excused.)

The Court: Who is next?

CLAYTON PRICE,

the next witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Edmondson:

Q. What is your name?

A. Clayton Price.

Q. Where do you live, Mr. Price?

A. Alvarado, Virginia.

Q. Where is Alvarado?

A. It's about six miles east of Abingdon.

Q. Southeast?

A. Yes, sir.

Q. What do you do for a living?

A. Farm for Dr. Harry Hayter.

Q. Dr. Harry Hayter, surgeon at Abingdon?

A. Yes, sir.

Q. Mr. Price, were you a member of the union
page 234 } that went on strike at the Bristol Door?

A. Yes, sir.

Q. You were an employee of Bristol Door & Lumber Company?

A. I were employed by Bristol Door.

Q. How long had you been working there?

A. Around five or six years. I'm not quite sure of the date.

Q. Were you out on strike?

A. Yes, sir, when the majority came out, why, I was with the majority at the time.

Q. Was Roscoe Humphreys out on strike?

A. Yes, sir.

Q. Was Mr. Parks out on strike?

A. Yes, sir.

Q. Now, in your own words, tell exactly what happened in reference to this suit?

A. Well, we were on Goodson Street at the time on picket line and Mr. Strouth, Halvie Strouth came up and we were talking about some tires. I needed some tires for my car and Halvie—

Mr. Warren: I'm going to object to what the conversation was.

The Court: Sustain the objection to the conversation.

Clayton Price.

By Mr. Edmondson:

Q. Just tell what you did. Don't tell what somebody else said.

A. We were looking for some tires, so we were
page 235 } going out towards Earl Webb's Service Station.

I don't remember which direction we were going and we stopped at Earl Webb's Service Station to get some gas for the car and I went in to get some cigarettes.

As I were going in Roscoe Humphreys was sitting in a chair along about the entrance of the service station and he reached his foot over to trip me and I fell over on Roscoe and the chair turned over and Roscoe fell out on the concrete, and Mr. Webb was standing there at the pumps talking to somebody as well as I remember and looked around and said, "Boys get up. We don't allow this here." So me and Mr. Parks walked off, and Humphreys, Webb had put Humphreys in the car that we came in, and we walked on back down to the plant.

Q. Mr. Price, did you trail Mr. Humphreys out to Webb's Service Station? Did you get in your car and promptly follow him out there?

A. Absolutely not. No, sir.

Q. Was Mr. Humphreys back to work the next day?

A. Yes, he came out of the plant the following day. I remember him coming out of the plant.

Q. Could you tell anything was wrong with him?

A. No, sir, I didn't notice a thing in the world that could be matter with him.

Q. Did you just walk up and hit him?

A. No, sir, I didn't hit him. If he was hit it
page 236 } was when I fell over on him, I possibly could. I don't know what his idea was for tripping me at
at that point.

Q. Were there other people at the service station?

A. Yes, there were other people but I didn't know the people.

Q. You are definitely sure that there was several other people?

A. Yes, sir.

Q. Were there other people in lawn chairs?

A. Yes, sir, they were sitting along in the lawn chairs talking as you might do at a public place like that.

Mr. Edmondson: I believe that is all.

Clayton Price.

FURTHER DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Price, have you ever been on a negotiating or any other committee of your Local Union 3092?

A. No, sir, absolutely not.

Q. Have you ever been designated as an agent to act for them in any way?

A. Absolutely not.

Q. Have you ever been designated a representative of the United Brotherhood of Carpenters and Joiners of America?

A. Never.

Q. Do you know where the International office is?

A. I don't know to be sure but the only way I
page 237 } heard it said from other people.

Q. Do you know any of the officers of the International Union?

A. No, sir.

Q. Do you know the representative, Mr. A. O. McKinney who just testified?

A. I know him when I see him, not personally acquainted.

Q. Did you ever see him at meetings of your local?

A. It so happened that I just attended two of those meetings that I recall.

Q. Did you ever hear him or any other representative of the International Union say, "I understand some of the men are talking about wanting to go back to work"—

A. Not to my knowledge.

Q. Let me finish. "If anybody does, don't do anything on the picket line but catch them down town or on the way home to entertain them"?

A. No, sir.

Q. Have you ever heard anybody say that?

A. No person I know of ever to my knowledge.

Mr. Stallard: That is all I want to ask.

Mr. Edmondson: May I ask another question?

FURTHER DIRECT EXAMINATION.

By Mr. Edmondson:

Q. Mr. Price, did you see Mr. Parks strike or
page 238 } kick Rocoe Humphreys in any manner?

A. No, sir. To my recollection he never laid a

Clayton Price.

hand on him. He was offering to help him up the way I gathered it there, and I think he picked the chair up and set it back where it was setting.

Q. Did he hit him with a chair or attempt to hit him with a chair or any such thing as that?

A. No, sir. No, sir. Absolutely not.

Q. Have you seen Mr. Humphreys since this time?

A. Have I saw who?

Q. Other than the next day?

A. I don't quite get the question.

Q. Have you seen Mr. Humphreys since this alleged assault?

A. You mean between that time and this time?

Q. Yes.

A. I saw him over here in Tennessee when they had the hearing over here.

Mr. Edmondson: That is all.

CROSS EXAMINATION.

By Mr. Warren:

Q. You say you do admit that Parks picked up the chair?

A. He might have picked the chair up and set it up on the concrete. I wouldn't say.

Q. He might have picked up a tire tool?

A. Wasn't no tire tool around.

page 239 } Q. Did or didn't he pick up the chair?

A. I can't say to be exact.

Q. Why are you saying that at all? What is the basis of your information?

A. I say he could have picked it up. I don't know whether he did or not.

Q. You don't know whether he did or not. Don't you know he did and you know Earl Webb made him put it down?

A. No, sir, I don't know no such stuff.

Q. And Earl Webb told you to get away, he didn't allow that around there?

A. He didn't say get away he didn't allow that around there. He said, "Boys, you'll have to get away from here."

Q. And you and Bud Parks walked all the way to Bristol Door?

A. We walked back, yes, sir.

Q. You and Bud Parks and Halvie Strouth were on picket duty, weren't you, that day?

Clayton Price.

A. We were on picket duty. I don't remember the exact hours.

Q. You were on picket duty when you left and went out to Earl Webb's?

A. No, sir, couldn't been.

Q. You know that is why you went back to the plant, to go back to picket duty?
page 240 } A. No, sir, not necessarily. I don't remember if we were on any particular time, what hour or nothing about it.

Q. Tell me why it is you rode out to that filling station with Halvie Strouth and then walked all the way back to Bristol Door and left Halvie Strouth?

A. Simply because Halvie Strouth had Roscoe Humphreys in his car and we did not want to go with Roscoe Humphreys. It wouldn't do us any good in with somebody that always caused trouble.

Q. You mean he drove off with Roscoe in his car?

A. Yes, sir, absolutely did.

Q. Halvie did. You saw that as plain as you saw everything?

A. They left the service station.

Q. They left the service station?

A. They left and we left at the same time.

Q. You didn't say anything to Halvie about what he was taking him for or why he wasn't going to take you back to town?

A. No, sir.

Q. What did you go out there for in the first place?

A. We were going out to hunt some tires for my car.

Q. You weren't going to Earl Webb's service station for gas?

A. There was a service station on out South Holston, his brother said he might have tires and we was going out to look.

Q. But you turned there and walked all the way back to Bristol Door & Lumber Company?
page 241 }

A. I got some the next day, some tires.

Q. And when Earl Webb told you to move off, you didn't say a word to him about tires; you turned around and moved right on?

A. That is right.

Q. You did not say, "Mr. Webb, we are sorry. This man tried to trip us"?

A. I suppose Webb saw it at the particular time.

Clayton Price.

Q. He saw it when he said what he said?

A. "Boys you'll have to break this off; can't have this going on."

Q. And it was Earl Webb and not Bub Parks who was helping Roscoe up?

A. Earl Webb helped him up?

Q. Didn't you say a minute ago that Bud helped Roscoe up?

A. I said he might have picked the chair up.

Q. Did Parks help Roscoe into Strouth's car?

A. No, sir, absolutely not.

Q. Tell me something, if you were going out there just to stop to get gas and cigarettes, how come Strouth stopped his car across the street and you and Bud Parks got out there?

A. Halvie Strouth did not park his car across the street. He pulled in by the pumps to get gas.

Q. He stopped the car across the street and you
page 242 } walked over?

A. He pulled in between the pumps. He was getting gas and went in the service station. I were going in the service station.

Q. All you did was trip and fall on Roscoe?

A. Yes, sir.

Q. You didn't mean to hit or hurt him?

A. Yes, sir.

Q. And if you could have caught yourself, you wouldn't have fallen on him?

A. I caught myself on him.

Mr. Warren: All right, sir.

RE-DIRECT EXAMINATION.

By Mr. Stallard:

Q. Mr. Price, were there several people around and saw this?

A. Yes, there were quite a few people. There were two or three summoned over here in Tennessee on the particular thing when it was tried before Mr. Sams.

Q. Do you mean to tell the jury that the plaintiff, Mr. Humphreys and Mr. Strouth rode away together?

A. That is right.

Q. You didn't see them any more that day?

A. I saw Halvie that day, yes, sir.

Q. You did see him after that?
page 243 } A. Yes, sir.

Clayton Price.

RE-CROSS EXAMINATION.

By Mr. Warren:

Q. You say you saw Halvie later that day?

A. Yes, sir.

Q. When? How much later?

A. I don't know. It was sometime up in the evening right late.

Q. It was right late in the evening when this happened, wasn't it?

A. No.

Q. You say there were a number of people around out there?

A. Yes, sir.

Q. And in addition to Mr. Webb, is that right?

A. That is right.

Q. You knew Mr. Webb?

A. I didn't know him personally.

Q. You knew he was the man who ran the service station?

A. Yes, sir.

Q. And if you ever wanted to go back you knew how to get back?

A. Yes, sir.

Q. And you say you saw these other people over in Tennessee?

A. What other people?

Q. Some of the other people who were in the page 244 } station there that day. You saw them over in Judge Sams' court?

A. There were a couple of witnesses or more that he had summoned.

Q. Have you made any effort to find out who they were?

A. No, sir, I haven't made any effort to find out who they were.

Q. Have you ever been back to ask Mr. Webb or take down their names at those hearings either one?

A. I didn't take none.

Q. Where is Halvie Strouth now?

A. I don't know.

Q. You know him right well?

A. I know of him.

Q. You didn't really know Halvie Strouth at that time did you?

A. I know him just about like I know of him now.

Delmer Ray Parks.

Q. Just knew him very slightly?

A. Yes.

Mr. Warren: That is all.

(Witness excused.)

The Court: Gentlemen of the Jury, observe the same precautions which the Court has given you throughout the case. Take a short recess and come back in about five minutes.

(Short recess.)

page 245 } The Court: Let Court come to order, please.
All right, Mr. Edmondson.

DELMER RAY PARKS,
the next witness, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION.

By Mr. Edmondson:

Q. What is your name?

A. Delmer Ray Parks.

Q. Where do you live, Mr. Parks?

A. I live at Alvarado, Virginia.

Q. What do you do for a living, Mr. Parks?

A. Farm.

Q. Were you working at Bristol Door & Lumber Company
at the time of the strike?

A. Yes, sir.

Q. Were you all out on strike at the time of this alleged
occurrence?

A. Yes, sir.

Q. What is your age, Mr. Parks?

A. 27.

Q. Will you explain exactly as far as you know what hap-
pened out at Webb's Service Station?

A. We just was going to see about some tires and we was
just pulling in to get some gas and go in and pick
page 246 } up some cigarettes and we got out of the car and
as we walked by Humphreys tripped Clayton.

Q. Did you in any manner touch Mr. Humphreys, kick him
or attempt to hit him with a chair or anything?

Delmer Ray Parks.

A. No, sir.

Q. Were you trailing him out there?

A. No, sir.

Q. Did you know where he was?

A. No, sir.

Q. When did you first notice that he was sitting there?

A. After we got out of the car.

Q. Have you seen Mr. Humphreys since this time?

A. Yes, sir.

Q. Did you see him the next day?

A. Next evening.

Q. Next evening?

A. Yes, sir.

Q. What time was that?

A. Oh, four or five o'clock.

Q. Did you and Mr. Price usually ride to work together?

A. Yes, sir.

Q. You live fairly close together?

A. Yes, sir.

Q. How far do you and Mr. Price live from each other?

A. Oh, couple of blocks.

page 247 } Q. You say you saw Mr. Humphreys about what time the next afternoon?

A. It was at quitting time. It was at four or five o'clock, I don't know which.

Q. Did he seem to be bruised up or anything that you could tell?

A. Not that I could tell. I wasn't too close to him.

Q. You and Mr. Price had nothing to do with this alleged occurrence with the Strouth boys the next day?

A. No.

Q. Do you know anything about that?

A. No, sir.

Q. You were not along?

A. No, sir.

Mr. Edmondson: I believe that is all.

FURTHER DIRECT EXAMINATION.

By Mr. Stallard:

Q. You say you were a member of 3092?

A. Yes, sir.

Delmer Ray Parks.

Q. Did you attend any of the meetings?

A. A few.

Q. You say a few. How many?

A. Oh, two or three.

Q. During your attendance did you ever see a Mr. A. O. McKinney?

page 248 } A. Yes, sir.

Q. Do you know who he is?

A. When I see him.

Q. Did you see him at any of those meetings?

A. Yes, sir.

Q. Did you hear him say anything?

A. I maybe did.

Q. Did you ever hear him tell the meeting, "I understand some of the men are talking about going back to work; if anybody does, don't do anything on the picket line but catch them down town or on the way home and entertain them"?

A. No, sir.

Q. Did you ever hear anybody make that statement?

A. No, sir.

Q. Now, have you ever been on any committees of your local union?

A. No, sir.

Q. Ever been elected officer in the local union?

A. No, sir.

Q. Have you ever been designated by the International Union to represent them in any capacity?

A. No, sir.

Q. Did you see Mr. Webb put the plaintiff, Mr. Humphreys in Mr. Halvie Strouth's car?

A. Yes, sir.

page 249 } Q. Did they drive away?

A. I don't know.

Q. You don't know. Do you know what happened to them?

A. No, sir.

Q. You were there, weren't you?

A. I left.

Q. You left?

A. Yes, sir.

Q. Did you walk back with Price?

A. Yes, sir.

Q. Well now, you don't know what happened at all?

A. No. We left.

Delmer Ray Parks.

Q. Well, did you leave before the plaintiff and Mr. Strouth left?

A. Why, I seen him put him in the car, and the man told us to leave and we left. They could have pulled off or they could have sat there; I don't know.

Mr. Stallard: That is all.

CROSS EXAMINATION.

By Mr. Warren:

Q. Were you trying to get away before the police got there, Mr. Parks?

A. Not exactly.

Q. Not exactly, but you had a good idea they might be there shortly?

page 250 } A. I hadn't done nothing.

Q. I say you had a good idea they might be there shortly?

A. Generally they are.

Q. Generally they are when a fight takes place?

A. Generally.

Q. Well, in other words from what you saw of your friend Price you thought they might be there. Is that what you thought?

A. Generally if somebody calls they come is what I am trying to say.

Q. And you expected them to call, did you?

A. Yes, sir.

Q. Were you arrested on *account* of that?

A. No, sir.

Q. Was Price arrested?

A. No, sir.

Q. You say you and Price turned and walked back to Bristol Door & Lumber Company?

A. Yes, sir.

Q. How far is it from where you were to Bristol Door & Lumber Company?

A. Oh, mile and a half or two miles.

Q. Between a mile and a half and two miles?

A. Probably.

Q. And you and he were on picket duty. That is why you went back, wasn't it?

page 251 } A. Yes, sir.

Roscoe Humphreys.

Mr. Warren: That is all.

(Witness excused.)

Mr. Stallard: Your Honor, I rest my client's case, United Brotherhood of Carpenters and Joiners.

Mr. Edmondson: We rest, your Honor.

* * * * *

ROSCOE HUMPHREYS,
the plaintiff being recall in rebuttal, was further examined and testified as follows:

DIRECT EXAMINATION.

Mr. Warren: This may have been covered in answers to cross examination, your Honor, but I want to ask for the purpose of the record.

Q. Mr. Humphreys, when Parks and Price got out of the car and came toward you at Earl Webb's filling station, did you trip either accidentally or on purpose Clayton Price?

A. No, sir.

Q. Or either of them?

A. No, sir.

page 252 } Q. Did either of them fall on you, so to speak, supposedly accidental?

A. The only one fell was me.

Q. It was testified to by one man here, Joe Malone, that you were drinking on picket duty three times and he had to send you home. Is that true?

A. That is not. I got sick on the picket line one night at two o'clock in the morning and a guy took me home.

Q. Was there drinking there on the picket line?

A. There was, sure. These guys that lived up around Abingdon would bring down whiskey; lots of things went on the job; had women down there in the cars—

Mr. Stallard: Your Honor, I don't know what this is rebutting?

Mr. Warren: I agree. I think you are right.

The Court: It should be limited.

Roscoe Humphreys.

By Mr. Warren:

Q. Limit your answer to what I ask.

The gentleman who testified here, Mr. Roy Elkins, did he have anything to do in the union with reference to a bonding committee?

A. When the strike first started he was there for about two weeks on day shift and he would stay until 9:30, 10:30 or 11 o'clock to see if there was going to be trouble during changing shifts and after there wasn't no trouble he would leave.

Q. I asked you if he had anything to do with
page 253 } the bonding committee?

A. I understood that he was the man.

Mr. Stallard: I object to he understood he was the man.

The Court: Sustained unless he shows when.

By Mr. Warren:

Q. Where did you get that information?

A. We was told that in the hall.

Q. In the union hall?

A. In the union hall.

Q. Just exactly what were you told?

A. During the meetings and stuff like captains and co-captains and all kinds of captains that I knowed nothing about, it was said; I think that was said by Barney Hinkle, that he was appointed as their bondsmen committee.

Q. Who was?

A. Mr. Roy Elkins.

Mr. Warren: I believe that is all.

Mr. Stallard: That is all.

CROSS EXAMINATION.

By Mr. Edmondson:

Q. Mr. Humphreys, I believe you testified that there were several people around the filling station, is that correct?

A. I'd say four or five.

Q. Besides Mr. Webb?

A. I'd suppose so. I never counted. I don't
page 254 } know.

Q. How far did you live from Webb's Service Station?

Roscoe Humphreys.

A. About six miles.

Q. Did you know any of these people that were at Webb's Service Station?

A. Nobody but Mr. Webb.

Mr. Edmondson: I believe that is all.

(Witness excused.)

• • • • •

Mr. Stallard: Your Honor please, I want to renew my motion made on yesterday to strike the plaintiff's evidence as far as the defendant, United Brotherhood of Carpenters and Joiners of America is concerned on the ground that the plaintiff has not shown that Parks, Price, H. E. Strouth and H. C. Strouth were acting as agents of the defendant, nor have they shown if they were agents they were acting with authority vested in them by employer, United Brotherhood.

I respectfully submit on the authority which I page 255 } gave yesterday that the evidence should be stricken as to this defendant, and assign all those authorities that I assigned on the motion and made yesterday.

The Court: Do you have a motion?

Mr. Edmondson: Yes, sir.

May it please the Court, I move to strike the evidence as to the two individual defendants, Price and Parks on the ground that the only testimony that has been evidenced here in this trial that the defendants assaulted the plaintiff has been the testimony of the plaintiff himself. He has brought in no corroborating evidence whatsoever, and for that ground, I move to strike.

The Court: Let both motions, the motion by the United Brotherhood and motion of the defendants, Parks and Price be overruled. The evidence presents a jury question.

Mr. Edmondson: Exception.

Mr. Stallard: Counsel for the defendant, United Brotherhood excepts for the reasons stated yesterday in the record.

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page 257 } INSTRUCTION NO. 1.

(Refused).

The Court instructs the jury that if you believe from a preponderance of the evidence that the International Union, defendant, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, through its agents and employees, authorized or directed Union members to commit acts of violence upon persons returning to work at Bristol Door and Lumber Company during the strike, and that as a result of the same the Plaintiff was unlawfully assaulted by union members on either or both occasions in question, then said International Union is bound by the acts of its said union members and is liable to the plaintiff for any injury sustained by him.

The Court: Any objection to No. 1? State your objection first, Mr. Stallard, and then Mr. Edmondson.

I see one objection before any are lodged that would keep the Court from giving the instruction because down somewhere about the fourth line from the bottom it isn't qualified sufficiently to require that the union members
page 258 } in making any assault would be acting in the scope of their authority, if actual or apparent, as members of the union.

Mr. Stallard: I would object to it on two grounds: First, that they have not put in any evidence that the agent was acting within the scope of his authority, and the second ground that there is no clear proof as required by Section 106, U. S. Code Annotated, Title 29 known as the Norris-LaGuardia Act which says:

"That the union can be held only upon clear proof of acts of participation in or actual authorization of such act or of ratification of such act after actual knowledge thereof."

Here you have a vague statement made in a union hall allegedly by a representative of the United Brotherhood of Carpenters and Joiners, who himself testifies he is an agent for three purposes, namely, to organize, negotiate and conciliate.

It is respectfully submitted that he doesn't have the authority, if he had acted as agent, he wasn't acting with authority and he could not delegate his authority to some third person to act for and in behalf of the International Union.

Mr. Warren: In regard to that last objection, I would say that the Norris-LaGuardia Act has no connection insofar as this case is concerned insofar as the Act is page 259 } still effective in any event.

The Court: As the Court previously stated, this Instruction 1 is refused because it does not sufficiently qualify it to require that an unlawful assault by a union member, on either or both occasions, but while acting within the scope of his membership, his authority as a member of the union.

Mr. Warren: I would like to re-offer No. 1-A while we are on that, your Honor, inserting in the fourth line from the bottom after the term "members" these words: "Acting within the scope of their authority, real or apparent, as union members" and going on, "On either or both of the occasions" in question.

Thereupon, Instruction No. 1-A was offered by counsel on behalf of the Plaintiff.

page 260 } INSTRUCTION NO. 1-A.

(Given).

The Court instructs the jury that if you believe from a preponderance of the evidence that the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, through its agents and employees, authorized or directed union members to commit acts of violence upon persons returning to work at Bristol Door & Lumber Corporation during the strike, and that as a result of the same the plaintiff was unlawfully assaulted on either or both of the occasions in question by union members who were acting within the scope of their authority, actual or apparent, as union members, then said United Brotherhood is bound by the acts of its said union members and is liable to the plaintiff for any injury sustained by him.

The Court: Any objection to 1-A? That is 1-A?

Mr. Warren: Yes, as amended.

Mr. Stallard: Your Honor, I object to that instruction for the two reasons already stated, and the further reason that I do not know what he means by real or apparent, the authority real or apparent. I know of no principle of law to substantiate you can have real authority or apparent authority. I think

you would have to have real authority, acting
 page 261 } within the scope of your real authority, not appa-
 rent authority.

Mr. Warren: I have got an instruction defining that,
 your Honor.

The Court: Mr. Edmondson, do you have any objection
 to 1-A?

Mr. Edmondson: No, sir, I have none to 1-A.

The Court: Instruction 1-A will be given.

Mr. Stallard: Counsel for the defendant, United Brother-
 hood of Carpenters and Joiners of America objects for the
 same reasons stated originally when objections to Instruction
 1 were given, and for the further reasons stated just now in
 reference to the real or apparent authority.

* * * * *

INSTRUCTION NO. 2.

(Given).

The Court instructs the jury that if you believe from a
 preponderance of the evidence that the plaintiff was unlaw-
 fully assaulted on either or both of the alleged occasions, and
 that the acts of the persons who assaulted the plaintiff were
 authorized, directed or ratified by the International Union
 acting through its duly authorized agents or em-
 page 262 } ployees, then your verdict should be in favor of
 the plaintiff against said United Brotherhood.

The Court: Any objection to No. 2 by either of you gentle-
 men?

Mr. Stallard: Your Honor, I object to the Plaintiff's In-
 struction No. 2 on the ground there is no evidence that the
 defendant, United Brotherhood of Carpenters and Joiners of
 America authorized or directed the alleged assault, nor was
 there any evidence offered that United Brotherhood of Car-
 penters and Joiners of America ratified the acts of the de-
 fendants Parks, Price, H. E. Strouth and H. C. Strouth.

The Court: Shouldn't you use instead of International the
 word "United Brotherhood"?

Mr. Edmondson, any objection?

Mr. Edmondson: No, sir.

The Court: Instruction No. 2 is given.

Mr. Stallard: Exception for the reasons stated.

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page 263 } INSTRUCTION NO. 3.

(Given).

The Court instructs the jury that if you believe from a preponderance of the evidence that at the times in question herein A. O. McKinney and D. Arcil Dishner, or either of them, were the agents or employees of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, then said United Brotherhood would be bound by the acts of either or both of said agents or employees committed within the scope of their employment.

And you are further instructed that, in general terms, it may be said that an act is within the scope of the employment if (1) it be something fairly and naturally incident to the business, and if (2) it be done while the employee was engaged upon the employers business and be done, although mistakenly or ill-advisedly, with a view to furthering the employer's interest or from some impulse or emotion which naturally grew out of or was incident to the attempt to perform the employer's business, and did not arise wholly from some external, independent, and personal motive on the part of the employee to do the act upon his own account.

The Court: Any objection to No. 3?

Mr. Stallard: Yes, sir. There isn't any evidence here that C. Arcil Dishner told the membership of Local 3092 anything which could be construed unlawful or that he told them to take care of anybody, and I would object to his name being inserted because there is no allegation that he said that.

My second objection is if McKinney or Dishner said what the plaintiff said McKinney said this was without the United Brotherhood's authority or without their knowledge and without the scope of authority originally issued to McKinney and Dishner; they were employed for a different purpose.

Now coming to the second paragraph, McKinney testified that he was a business representative of the United Brotherhood for three purposes. The objects of the United Brotherhood of Carpenters and Joiners of America are set out in Plaintiff's Exhibit No. 2 marked the second paragraph on page 2 and it is not or cannot naturally be inferred as an incident of the business because the business is not the business of beating people up, but the object as stated in that paragraph is to raise and improve the conditions of employ-

ment and to furnish aid in case of death or permanent disability, by legal and proper means to elevate the moral, intellectual and social conditions, and to improve the trade.

So this is not fairly and naturally incident to page 265 } the business. It is foreign to the business. It would not be in the interest of the United Brotherhood to have a fight by anybody.

The Court: Mr. Warren, what have you to say about the objection that there is no evidence whatsoever there even from the plaintiff or anyone that C. Arcil Dishner ever made any statement encouraging or countenancing any form of violence?

Mr. Warren: Only this, your Honor, it has been testified that C. Arcil Dishner was present at the meeting where McKinney made this statement attributed to him; that C. Arcil Dishner was there as a designated representative in support of this campaign, as Mr. McKinney termed it; that Mr. Dishner sat there and even more by his silence countenanced and approved everything that Mr. McKinney had to say.

It is stated that Dishner usually had things to say at the meeting and there is no refuting statement by him. Furthermore, there is evidence that Dishner with McKinney was in charge of the strike and that Dishner was actually in open contact with the pickets on the picket line and continually riding around the plant supervising their conduct and the incidents which took place, at least with Clayton Price and D. R. Parks; while those men were actually on the picket duty, they left the plant and returned to the plant.

page 266 } The Court: Mr. Edmondson, do you want to object to No. 3?

Mr. Edmondson: Yes, sir, I object to No. 3 as offered in that so far as the defendants, Price and Parks are concerned that it is a finding instruction that they assaulted the plaintiff which we absolutely deny. It says, "If it be done,"—that's what they are talking about—"If it be done," they are talking about the assault.

The Court: As I see it, it is generally having reference to acts generally whether or not it is within the scope of the employment.

If you have completed your objections, the Court will rule. Anything further by way of objection?

Mr. Edmondson: I would state beyond in paragraph two, it says if it be done, if it be something fairly and naturally incident to the business, and if it be done while the employee was engaged upon the employer's business and be done, although mistakenly or ill-advisedly, with a view to furthering the employer's interest or from some impulse or emotion

which naturally grew out of or was incident to the attempt to perform the employer's business, it would seem definitely that this instruction as offered would be a finding page 267 } instruction that they assaulted the plaintiff, which we deny vehemently.

The Court: Well, Instruction No. 3 is given.

Mr. Edmondson: Exception.

Mr. Stallard: Counsel excepts for the reasons stated above.

* * * * *

INSTRUCTION NO. 4.

(Given).

The Court instructs the jury that a principal is bound by the acts of its agent committed within the actual or apparent scope of his authority.

The Court: Now, No. 4. Any objection to No. 4?

Mr. Stallard: That statement is a correct statement of the law, but it is not applicable to this case because the evidence does not show that Price, Parks, H. E. Strouth and H. C. Strouth were agents of the principal defendant, United Brotherhood of Carpenters and Joiners of America.

Mr. Edmondson: I have no objection.

The Court: Instruction No. 4 is given.

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INSTRUCTION NO. 5.

(Given).

The Court instructs the jury that apparent authority is that authority which the principal has held the agent out as possessing or that which he has permitted the agent to represent that he possesses.

The Court: Any objection to No. 5?

Mr. Stallard: Counsel objects to that on the ground that there hasn't been any evidence that Price, Parks and H. E. Strouth and H. C. Strouth were agents of the principal, mean-

ing defendant United Brotherhood of Carpenters and Joiners of America.

The Court: Any objection to the instruction?

Mr. Edmondson: No.

The Court: No. 5 is given.

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page 269 } INSTRUCTION NO. 6.

(Given).

The Court instructs the jury that you may draw reasonable inferences from facts proven in evidence.

The Court: Any objection to No. 6?

Mr. Stallard: That is a correct statement of the law but it is not applicable to this case unless you state upon what facts you can draw reasonable inferences from.

Mr. Warren: In answer to that, I would say that would be an improper comment by the Court on the evidence.

The Court: You have no objection?

Mr. Edmondson: No objection.

The Court: No. 6 is given.

Mr. Stallard: Exception.

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INSTRUCTION NO. 7-A.

(Given).

The Court instructs the jury that an agent is one who represents another, called the principal, in dealings with third persons. And if the facts establish the relation of principal and agent between two parties, the intention of the parties is immaterial and the character of the relation is not affected by the private intention of the parties that an agency does not exist between them, nor by their denial of such agency. Nor is it essential to agency that one party be in the paid employment of the other.

The Court: Any objection to 7-A as offered?

Mr. Stallard: This is an abstract statement of law which I think is correct, but it has no relationship to the case at bar. I believe there should be added, "If the jury find from the evidence the relationship of principal and agent, then the intention of the parties is immaterial and the characterization is not affected by private intention of the parties that an agency does not exist between them?"

Mr. Warren: I'll accept that amendment.
page 273 } The Court: Suppose you insert the line you accept in the proper language.

Mr. Warren: May I withdraw 7-A and leave 7 refused until after lunch and let me concentrate?

The Court: Frankly, I think you've pretty well covered what Mr. Stallard said and what you conceded would be proper in the words as written.

Mr. Warren: Well, I will offer this 7-A.

Mr. Stallard: Counsel for defendant, United Brotherhood of Carpenters and Joiners objects. It don't say what parties. You might find principal and agent existed between these members and their own local, but not the principal and agency existed between the individual members named as defendants and the United Brotherhood of Carpenters, so it is a blank statement of the law not in any way connected with the case. It should be explained.

The Court: I think you probably would be entitled to an instruction clarifying that before the jury that in order before any liability can be placed on the International two steps are necessary. The conduct must have been authorized or ratified by an agent of the International and then the individual union members in their conduct must also in that conduct have been acting within the scope of their authority, real or apparent, as members of the union.

page 274 } In other words, it takes one set of facts to authorize the authorization, and one set of facts to authorize the carrying out of an authorization.

Well, the Court will give Instruction 7-A.

Mr. Stallard: Except for the reasons stated.

The Court: Do you have something else there?

Mr. Warren: Yes, sir, I do have something else.

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INSTRUCTION NO. A.

(Refused).

The Court instructs the jury that before Price, Parks, Halvie E. Strouth, and H. C. Strouth could become agents of the Defendant, United Brotherhood of Carpenters, there must be a contract of employment, expressed or implied. Unless you believe Price, Parks, and H. E. and H. C. Strouth were employed either by an express or implied contract to represent the Defendant, United Brotherhood of Carpenters and were acting within their authority as agents *as agents* when they allegedly assaulted the Plaintiff, then you must find your verdict for the Defendant, United Brotherhood of Carpenters.

The Court: Is there an objection to A? I might say that I examined them all hurriedly. It appears to me that most of them are in order. If the idea of a paid employee is eliminated or hired employee for daily compensation, agency should not be restricted to that, but many of these instructions tend to do that.

Mr. Warren: Your Honor please, that was my principal objection to all of them when I read them over.

It would seem to create in the minds of the jury one had actually to be employed in the sense of the word before they could become an agent.

The Court: What is the objection to A?

Mr. Warren: This says there must be a contract of employment where the principals of this contract were employed, either by express or implied contract.

The Court: Do you want to be heard on A?

Mr. Edmondson: No, sir.

The Court: A is refused because it expressly limits contracts to "Contract of Employment," and further down says, "Were employed." Unless those expressions are changed to something meaning substantially were authorized or acting within the express or apparent scope of their authority as members, as union members.

Mr. Stallard: Counsel for the defendant, United Brotherhood of Carpenters and Joiners *expects* to the ruling of the Court for the reason that the relationship of principal and agent must be by a contract of employment, either express or implied, and usually the creation is by an express contract between the parties but the relationship may be implied from the conduct of the parties and the nature of the substance of the particular acts done.

What the parties call themselves, of course, is immaterial. Counsel cites the case of *Uniontown Grocery v. Dawson*, 68 W. Va. 332 and other cases cited under Section 12 on Agency in Michie's Jurisprudence, Vol. I, page 284, which cites a list of Virginia cases: *Neilson v. Bowman*, 29 Gratt (70 Va.) 732 and *Rowan v. Hull*, 55 W. Va. 335, and other cases.

The Court: The Court just can't accept that theory in this case. The language employed will have to be in the nature of holding out or authorizing to act rather than employing or hiring.

If you would like to have A in a modified form and that should, I suppose, should follow the words "Ex-
page 283 } press or implied" there and the sixth line changed
to read, "Were expressly or by implication from
the conduct of the United Brotherhood authorized or em-
powered to represent."

Do you want to offer anything in substitution?

Mr. Stallard: No, sir, not at this time. I may in a few minutes decide to correct it.

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page 290 } INSTRUCTION NO. E.

(Refused).

The Court instructs the jury that the law indulges no presumption that an agency exists, but instead presumes that a person is acting for himself and not as an agent for another. The burden is therefore upon the Plaintiff in this case, to prove by preponderance of the evidence that D. R. Parks, Halvie E. Strouth, H. C. Strouth, and Clayton Price were agents of Defendant United Brotherhood of Carpenters and Joiners of America, when they allegedly assaulted Plaintiff and further the jury must believe that they were acting in the scope of their authority at the time, and unless you believe Parks, Strouth and H. C. Strouth and Price were agents of the United Brotherhood of Carpenters, and at the time Plaintiff was assaulted were acting in the scope of their authority, then you must find for the Defendant, United Brotherhood of Carpenters.

The Court: Any objection to E?

Mr. Warren: Yes, sir. We think the first sentence of E is not a correct statement of the law, that it is argumentative certainly on the face of it, and it further goes on to say in the

next sentence substantially what has been said in
page 291 } the previous instruction, the previous two in-
structions, B & D. It is almost exactly the same
language.

The Court: Mr. Stallard, do you have any authority there for the second phrase of the first sentence?

Mr. Stallard: Yes, sir, I took that verbatim out of the case—

The Court: Is that given in the *Barnes v. Hampton* case?

Mr. Stallard: That is the footnote and I don't recall—I believe that was given in the footnote from the Virginia Agency and I'm trying to find it. There isn't any presumption that there is an agency.

The Court: I will agree with you.

Mr. Stallard: If you will give me a second, I think I can find that question of presumption.

The Court: I don't have any quarrel with the first part of that sentence. Indulge no presumption when the agency exists. That is true. But there is no other presumption to the contrary either, is there?

Mr. Stallard: Yes, they've got to prove that the presumption is he is acting for himself and not as an agent.

The Court: Those are the words that I am questioning. Do you have any objection to leaving that out?

Mr. Stallard: Yes, I would have because I
page 292 } think that is a true statement, and I believe if you
will get the Barnes case it will show that that is
right.

The Court: There is no presumption of agency and I don't think there is any presumption that he was acting for himself.

Mr. Stallard: Could I go and get that 149 Va.?

(Virginia Reports 149 handed to counsel.)

Mr. Stallard: That case, I don't find used the exact language but the law of agency, if you will just indulge me one minute, I think I can show you that law of agency. I do not put my hand on it but that was the exact language copied from the law of agency.

The Court: The Court will refuse it as offered. If you want to offer it without the second clause of the first sentence, the Court will give that.

Mr. Stallard: Counsel for the defendant, United Brotherhood excepts for the reasons that there is no presumption that an agency exists, and there is a further presumption that a person is acting for himself and not as agent when he commits a tort, and cites the case of *Barnes v. Hampton*, 149 Va. 740.

The Court: Have you found it in *Barnes v. Hampton*, though?

Mr. Stallard: I have not found that very principle laid down. I have found this which came from the page 293 } Law of Evidence, 111 Agency, Michie's Jurisprudence, Volume 1 on agency:

"The law indulges no presumption that an agency exists, but instead presumes that a person is acting for himself, and not as an agent for another." And they quote 13 which is *Montague Mfg. Co. v. Aycock-Holly Lumber Company*, 139 Va., and *Brumley v. Grimstead*, 170 Va., not 149. So I withdraw as to *Barnes v. Hampton*, but those are the cases and cite the *Montague Mfg. Co. v. Aycock-Holly Lumber Co.*, 139 Va., and *Brumley v. Grimstead*, 170 Va., and under notes of those *Barnes* is quoted in the next sentence. The burden is therefore upon the plaintiff under evidence.

The Court: I wanted to see if you had a case that approved your instruction.

Mr. Stallard: The *Barnes* case approved the next sentence.

The Court: I don't disagree with you at all that the law indulges no presumption of the agency existing, nor is the statement upon the plaintiff to prove its existence by a preponderance of evidence.

You are entitled to both of those, beyond question, but the thing I'm thinking about is that statement instead of the law, whether a person is acting for himself and not as an agent. There is no presumption for or against page 294 } agency. It is an open question to be established or not by the proof.

The Court has ruled on that. The Court refused E as written.

Mr. Stallard: Defendant excepts for the reasons stated and the cases cited.

The Court: It also fails to take into account the question of ratification by a principal. But as I said if you want to scratch out the words, "But instead presumes that a person is acting for himself."

Mr. Stallard: All right, I will offer it revised, but I except to your Honor striking, "But instead presumes that a person is acting for himself and not as agent."

I will offer to strike through with a pencil, if your Honor will permit, "But instead presumes that a person is acting for himself."

The Court: Let's call it E-1.

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INSTRUCTION NO. F.

(Refused).

The Court instructs the jury that Defendant, United Brotherhood of Carpenters and Joiners of America, cannot be held liable in damages for the acts of Defendants Parks, Halvie E. Strouth, H. C. Strouth, and Clayton Price, unless you find, upon clear proof from the evidence, that United Brotherhood of Carpenters and Joiners of America, actually participated in or actually authorized such acts, if any, or ratified such acts, if any, after actual knowledge thereof.

The Court: Any object to F?

Mr. Warren: Yes, sir, we object to F on the basis that it is for the fourth time a re-hash of this business of authorization, and whether or not they acted under authorization or the acts were ratified, but it talks about clear proof which we think is argumentative and going too far. Full preponderance of evidence talks about actually participated or actually authorized. Both of those adverbs are improper. It
page 299 } furthermore ignores and confines it to authorization of the particular acts, that is the offense against the plaintiff. The evidence is and we think it is sufficient that he made a general authorization about people in plaintiff's class. It furthermore ignores the implied or apparent authority that they might have acted with.

The Court: Do you want to object to Instruction F?

M. Edmondson: No, sir.

The Court: Instruction F is refused.

Mr. Stallard: Counsel for the defendant, United Brotherhood of Carpenters excepts for the reason that this instruction is approved in the case of *United Brotherhood v. U. S.* 67 Supreme Court Reporters, sub-note 780, and on the further ground that is the language used in the Norris-LaGuardia Act which was specifically made to protect not Labor Unions but corporations when some agent had acted contrary to his authority.

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INSTRUCTION NO. G.

(Refused).

The Court instructs the jury that unless you believe the Defendant, United Brotherhood of Carpenters, first appointed as agents and then authorized the Defendants, Parks, Halvie E. Strouth, H. C. Strouth, and Price to assault the Plaintiff, then you must find for the Defendant, United Brotherhood of Carpenters.

The Court: Is there any objection to G?

Mr. Warren: Yes, sir. First of all the language there, "First appointed as agents," that we think is an improper statement of law and requires more than is necessary and states it in a confusing way. In any event, it ignores ratification entirely, and again it confines it to assaults upon the plaintiff himself rather than upon non-strikers.

The Court: Do you want to object?

Mr. Edmondson: No, sir.

The Court: G is refused for one reason because it limits the manner in which the members might be constituted as agents and implies that a specific appoint is necessary, and for the further reason, it ignores the *the* matter
page 301 } of ratification and is repetitious, I think, of several of the others.

Mr. Stallard: Counsel for the defendant, United Brotherhood of Carpenters and Joiners of America except to the ruling on the ground that the duty is on the plaintiff to prove that Parks, H. E. Strouth, H. C. Strouth and Price were agents and that the Brotherhood approved their acts when they assaulted plaintiff and cites as authority *Means v. Southeastern Gas Co.*, 113 W. Va., 864.

The Court: Now, going back to A, Mr. Stallard, do you want to offer any substitute there?

Mr. Stallard: I'll offer A-1 of the refused and use the words, "There must be some appointment" either expressed or implied. Instead of employment, say some appointment.

The Court: Then the same thing would have to be corrected in the next sentence in some manner.

Mr. Stallard: Yes, sir, were appointed, either by express or implied contract to represent the defendant.

The Court: We will call it A-1. Do you object?

Mr. Warren: Yes, sir, I think there again to restrict the manner in which a person may become an agent by appoint is confusing to the jury.

The Court: A-1 then is refused because all page 302 } there has to be is an express or implied holding out as agent or representative.

Mr. Warren: If he said designation or must be constituted, express or implied or designated, we wouldn't object to that.

Mr. Stallard: Then your Honor, I will offer A-2 and amend the instruction to say, "There must be some appointment or designation, express or implied, unless you believe Parks, Price, H. E. Strouth and H. C. Strouth were appointed, designated, and leave out the word "contract," appointed, designated or held out and so on.

The Court: Authorized or held out, either expressly or impliedly.

Mr. Stallard: To represent the defendant. Now if your Honor please, there must be some appointment or designation, expressly or impliedly, unless you believe Parks, H. E. Strouth, H. C. Strouth and Price were appointed, designated or held out, either expressly or impliedly, to represent the defendant, United Brotherhood and were acting in their authority as agents and then allegedly assaulted the plaintiff, then you must find a verdict for the defendant.

The Court: If you add, their acts were afterward ratified with full knowledge. We haven't used ratified with full knowledge before.

page 303 } Mr. Stallard: I think we have used ratified in another instruction.

The Court: But we didn't say with full knowledge. Now, is there any objection to A-2 as offered?

Mr. Warren: Where he has the appointment or designation at the first place he said, it looks to me like he ought to have *hold* out either expressly or impliedly.

The Court: I believe he is doing away with the idea of appointment.

Mr. Stallard: Your Honor, I would like to offer A-2 without the words, "Unless you believe, etc." If your Honor refuses that, I will offer A-2 with the provision, "Unless you further believe the defendant further ratified the act by all four, and call it A-3.

The Court: Well, we will let it be treated as though you

have offered A-2, without the appendage there dealing with ratification, and it is refused. The language of A-2 is shown by leaving off the appendage from A-3.

Mr. Stallard: I except for the reasons stated in the case of *Chandler v. Kelly*, 149 Va., 221.

The Court: Then I understand you are offering it with the appendage regarding ratification.

Thereupon, Instruction No. A-3 was offered by counsel on behalf of the defendant, United Brotherhood.

INSTRUCTION NO. A-3.

(Given).

The Court instructs the jury that before Price, Parks, Halvie E. Strouth, and H. C. Strouth could become agents of the Defendant, United Brotherhood of Carpenters, there must be some appointment, authorization or designation expressed or implied. Unless you believe Price, Parks, and H. E. and H. C. Strouth were appointed, designated or held out either expressly or impliedly to represent the Defendant, United Brotherhood of Carpenters and were acting within their authority as agents when they allegedly assaulted the Plaintiff, then you must find your verdict for the Defendant, United Brotherhood of Carpenters unless you further believe the Defendant ratified the acts by Price, Parks, H. E. and H. C. Strouth.

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(Thereupon, the jury was excused and the following proceedings were had in the absence of the jury.)

Mr. Stallard: If it please the Court, counsel for the defendant, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, moves the Court to set aside the verdict of the jury in this case against them and Price and Parks in the sum of \$4,000 as being contrary to the law and the evidence in the case, and on the further ground that the jury was improperly instructed, namely, the Court refused to give defendant's instructions marked A. E. F and G, F being an instruction incorporating the Norris-La-Guardia Act which

is Section 106, Title 29 of the U. S. Code Annotated and approved in principle by the Supreme Court of the United States, 67 Supreme Court Reporter, page 775, page 317 } which was specifically passed by Congress applying to all Courts in the United States and for the specific protection of labor unions and corporations.

Counsel also moves to set aside the verdict on the further ground that counsel for the plaintiff appealed to the passion and prejudice of the jury when he used language, "Black," "Cloak," and "Dagger," and also quoted the evidence to the effect that the United Brotherhood of Carpenters and Joiners approved the strike, whereas they approved strike benefits, but not the strike. He referred to the strike that the United Brotherhood would have you believe it was a wildcat strike. There is no evidence of that effect.

And counsel also referred to the Tennessee case most recently meaning, counsel for the defendant, United Brotherhood of Carpenters and Joiners, believe that he had reference to a case of United Mine Workers in which John L. Lewis testified in Knoxville recently when the jury gave a large verdict up in approximately \$300,000.

Counsel for the defendant, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, makes the same motion in reference to the verdict given in behalf of the plaintiff in the sum of \$7,000 against the defendant, page 318 } United Brotherhood of Carpenters and Joiners of America and the Local 3092, and assigns the reasons for the motion the same as those in the motion on the \$4,000 verdict.

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Mr. Stallard: I would like to add, your Honor, that the verdicts in both cases are excessive, and I would like to add that in when they appealed to the passion of the jury that the verdicts show they were excessive because the plaintiff's doctor bill was in the sum of \$15. The doctor never testified he had a broken finger. He himself testified to that.

Mr. Warren: May I say something before the Court rules?
The Court: Yes.

Mr. Warren: I want to say that counsel for the United Brotherhood of Carpenters and Joiners has apparently mis-

understood the statement that was made by plaintiff's counsel when he said I referred to a case in Tennessee. I didn't refer to a case in Tennessee at all. I had no knowledge of that.

The Court: Do you have in mind the remark you made from which counsel quoted?

Mr. Warren: Yes, sir, I have in mind exactly the remark I made. I looked at my notes. I had notes about the warrants they had taken. He had commented on the fact
page 320 } that the warrants in Tennessee were never pursued and the plaintiff did not appear as sworn before the Grand Jury. My remark was that sometimes some strange things happened, and as I submit there is not evidence, but the plaintiff testified he went to court on several occasions and couldn't get his case tried; his case was continued from time to time when he went over there

The Court: I believe apparently counsel for the United Brotherhood is drawing up his inference on information that he had that the Court didn't have and that Mr. Warren didn't have. I was drawing the same conclusions that Mr. Warren was drawing, that is with reference to rather loose practices at times in the Sessions Court in Sullivan County, Tennessee, which is a Court corresponding respectively to our former Trial Justice Court.

Mr. Warren: Which is now under investigation because of illegalities and people being able to get trials over there.

The Court: You needn't go into the details.

Now the Court will overrule the motion and enter judgment on the verdict. The verdict should be, of course, for a total of \$11,000 against the United Brotherhood and the
Local No. 3092 and against Mr. Parks and Mr.
page 321 } Price for the sum of \$4,000, a portion of the said \$11,000.

Mr. Stallard: Your Honor, I wish to move the Court to suspend execution of this judgment for a period of 60 days to have the transcript written up and within which time to prepare a petition for writ of error.

The Court: Yes, sir. Motion will be given for suitable suspending bond. Will 15 days give you sufficient time?

Mr. Stallard: I suppose I can get a suspending bond.

The Court: Due to the fact that you are in Richmond, is there any objection to allowing 20 days?

Mr. Warren: None whatsoever.

The Court: It will be suspended for a period of 60 days on giving a suspending bond within 20 days in the penalty of \$500.

(Discussion off the record.)

Mr. Edmondson: If your Honor please, we except to the ruling of the Court overruling our motions to set aside the verdict. I don't know whether that is in the record, but we except and ask the same thing that the execution be suspended for a period of 60 days under the same page 322 } conditions.

The Court: It will be allowed as to the individual defendants.

Mr. Stallard: Counsel for the defendant, United Brotherhood of Carpenters and Joiners also excepts to the ruling of the Court for the reasons stated, meaning the motion made by counsel to set the verdict aside as contrary to the law and the evidence.

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A Copy—Teste:

H. G. TURNER, Clerk.

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