

History on Trial
Episode 6
New York v. Max Blanck and Isaac Harris
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PROLOGUE

Lena Yaller was getting ready to leave work when she heard a girl yell “fire!” Frightened, Lena whipped around – and rolled her eyes. The girl who had shouted was the factory’s prankster – she was always telling her fellow sewing machine operators that the boss was coming, making them jump in their seats...only for no boss to appear. Lena paid the girl no attention - it was a strange joke, perhaps, but nineteen-year-old Lena just wanted to get home. It was Saturday, the end of her work week. A whole day of freedom awaited her, a day away from the clamor of the sewing machines, a day to rest her aching fingers and back.¹

So she stayed in the dressing room, putting on her coat and picking up her pocketbook. It was only when she emerged that she saw the smoke. The prankster had not been joking this time.

Lena was terrified. The smoke was already filling the factory floor, making it difficult to see - but she could make out flames shooting up outside the windows across the room. Her coworkers were clustered by the nearest exit, a door that led to the stairs down to Washington Place, trying to get it open. Some were screaming, crying out for their children. When Lena tried to make her way to the door, the crowd forced her back towards the dressing rooms. She was trapped.

Then she felt a breeze – a door was open somewhere, she thought. The breeze seemed to be coming from across the factory floor, on the Greene Street side. This was where Lena had seen the flames. But what choice did she have? She knew she couldn’t stay where she was. So she set out, groping her way through the smoke, tripping over fallen chairs, passing the burning tables where she had been working only minutes before.

She opened the first window she reached, thinking maybe she could jump out – but fell back in shock. The air outside was so hot that it had burned her knee. From the street below, she could hear people calling for her to jump, but she was afraid – it was too high, a drop of nine stories, and the air itself had burned her. She needed a new plan.

¹ Testimony of Lena Yaller, from *The People of the State of New York, Before: Hon. Thomas C. T. Crain, against Isaac Harris and Max Blanck*, via Kheel Center, Cornell University (hereafter “Trial Transcript”), 686-693. <https://ecommons.cornell.edu/collections/8136d906-eb78-4ec3-a806-fb745b453f26>

Nearby were the freight elevators. Lena stumbled to them and knocked, praying that an operator would bring the elevator up. She waited for two minutes, maybe three, but it felt more like hours. No one came.

There was only one more way out now: the door to the Greene Street stairs. But when she opened the door, the stairs were filled with flame. She could not go down. It was hopeless.

But then, an idea: what if she went up to the roof? It was risky, but so was staying put. She pushed forward. In the stairs the air was punishingly hot. The flames licked at her heels. She ran.

By the time she made it to the roof, two stories up, Lena's hair was smoldering. She had burns on her arm, her neck, and her face. But she was alive. On the roof, she found men holding ladders that led to the roof of an adjacent building, and so she climbed off the roof, and away from the burning remains of the factory she worked at, the Triangle Waist Company.

Lena did not know it then, but she had gotten extraordinarily lucky. She had just survived one of the worst workplace disasters in United States history. After the smoke cleared, and the bodies were tallied, the horrified public would learn that 146 people had died in the fire, in a space of barely fifteen minutes.

They had died on the fire escape, when the rickety structure, burdened with too many bodies, had sheared off the side of the building and sent workers plunging to their deaths. They had died on the factory floor, smothered by smoke, their bodies burned beyond recognition. They had died jumping on top of the elevator cars, desperate to make it out. And most horrifyingly, they had died by leaping from the building, making the jump Lena had fortunately been too frightened to make. Dozens of men and women on the ninth floor had been hemmed in on all sides by the fire, pushed closer and closer towards the windows until their only choice had been to burn or to jump.

On the street, in the midst of a beautiful, sunny spring day, just as Lena reached the roof, the bodies began to hit the sidewalk. Onlookers would never forget the sight, or the sound.

Fires had happened before. People had died in workplace accidents before. In fact, it happened all the time. But this fire, which came to be known as the Triangle Shirtwaist Factory fire, was different, and these deaths were different too. They were very, very public. Hundreds of New Yorkers had seen these people, mostly poor young women from Eastern Europe and Italy, die. They had seen the firemen uselessly try to extend

their too-short ladders to the people huddled on the ninth floor window sills. They had seen how the fire escape, even before it had broken, had been deficient: the way its bottom rung hung above a basement skylight, making reaching the ground difficult, if not impossible. And they had heard the rumors, which began to spread in the days after the fire, that some factory doors had been locked from the outside. That the workers had died piled up by the Washington Place door, unable to escape.

One of the people who witnessed the immediate aftermath of the fire was New York District Attorney Charles Whitman. An ambitious reformer, Whitman had long wanted a high-profile case to make his name on. As he stood in front of the still-smoldering building, he thought he might have found it. With this case, he could both raise his own profile and also get justice for the victims. He could prove his progressive bona fides, stand up for the working class, and punish greedy businessmen. He could use the system, so often rigged against the powerless, to make the powerful pay.

But the system is not so easily changed, as Whitman would discover when he charged the Triangle's owners, Max Blanck and Isaac Harris, with manslaughter. At their trial, a shrewd defense attorney and legal norms skewed towards business interests would guarantee that the prosecution was in for the fight of its life.

Welcome to History on Trial. I'm your host, Mira Hayward. This week, New York v. Isaac Harris and Max Blanck.

ACT I

Max Blanck and Isaac Harris had both arrived in America in the 1880s. Like hundreds of thousands of other Eastern European Jews in the last decades of the 19th century, Blanck and Harris fled the anti-semitic persecution of the Old World for a chance at something new and exciting.

Nearly half of all Jewish immigrants during this period entered the garment business, and Blanck and Harris followed the crowd. In the 1880s, when Blanck and Harris got their start, the business was a dismal one. Most people worked out of tenement sweatshops: tiny, dank rooms packed with employees all struggling to stitch or iron or cut in the poor light. The average workweek was eighty-four hours and pay was nearly nonexistent. Disease spread rapidly through the crowded spaces.²

These conditions killed many people. They also made a few people very rich, including Max Blanck and Isaac Harris.

² David Von Drehle, *Triangle: The Fire That Changed America* (New York: Atlantic Monthly Press, 2003), Triangle, 41-42. <https://archive.org/details/trianglefirethat00vond/page/n1/mode/2up>

Harris had gotten his start in a sweatshop. His needle skills and eye for design allowed him to rise through the ranks. Blanck came to the business through the contracting side, buying and selling cloth. The two men's paths crossed in the late 1890s, likely through a family connection – their wives were cousins – and decided to team up. In 1900, they founded the Triangle Waist Company. Their backgrounds were complementary, and their business steadily grew.

By 1911, the two men owned multiple factories, all employed in making blouses, or, as they were known then, shirtwaists or waists. Blanck and Harris were the shirtwaist kings. The Triangle factory alone shipped two thousand blouses a day. The profits funded a lavish lifestyle, a far cry from the men's early days in New York. They lived with their families in neighboring town houses on the Upper West Side and went to work in chauffeured cars. Max Blanck had five live-in servants; Isaac Harris only had four, the peasant.³

As their wallets expanded, so too did their flagship factory's footprint. In 1902, the Triangle Waist Company had moved into the Asch Building, on the corner of Washington Place and Greene Street in Lower Manhattan. The company had initially leased the nine-thousand square foot ninth floor. By 1909, they had taken over the 8th and 10th floors too.⁴

At first glance, the factory facilities at the Asch Building seemed a far cry from the horrifying sweatshop conditions of earlier decades. The ceilings were 12 feet high. The sewing machines were powered by a centralized electric motor, not by foot pedals. There were windows!

In many ways, it was true: these new loft factories *were* much better than the sweatshops. But they were still extremely difficult places to work. They were crowded and hot and noisy. The hours were very long. Workers had few rights, and owners regularly exploited their employees, denying them breaks and shortchanging them in their pay.

By the end of the first decade of the 1900s, garment workers had become fed up with their working conditions. An organized labor movement began to take shape. Blanck and Harris did their best to shut down unionization efforts in their factories. They made an in-house union, staffed with their own relatives, and tried to convince workers to join it instead of an outside union. They fired anyone said to be associated with the labor

³ Von Drehle, *Triangle*, 37, 88.

⁴ Von Drehle, *Triangle*, 46-47.

movement.⁵ But Blanck and Harris could not reverse the growing tide of discontent. In early October 1909, Triangle workers decided to strike.

Blanck and Harris fought back, calling in favors with the police department, who promptly arrived and began beating up and arresting strikers. The two owners hired strikebreakers, too, men who were willing to violently attack the striking women.⁶ Strike leaders began to mysteriously get beaten up while walking home at night. But the violence did not scare the strikers off. If anything, it only attracted more workers to their cause. Over the next two months, the call for a general strike of shirtwaist makers grew stronger and stronger.

On November 22nd, 1909, thousands of workers attended a meeting of the Local 25 chapter of the International Ladies' Garment Workers' Union and enthusiastically agreed to a general strike. Picketing began on November 24th; by the next day, more than twenty thousand workers filled the streets of the Lower East Side, marching and chanting for change.⁷ It was a strike of nearly unbelievable size.

Around 500 garment producers were affected by the strike. Roughly one out of every seven of these shops surrendered in the first forty-eight hours, agreeing to the strikers' conditions of a pay raise, a fifty-two hour work week, and union-only shops.⁸

But these early surrenders were mainly the smaller factories, the ones who could not afford to stop business for long, or pay for new workers willing to cross picket lines. The largest factories refused to give in. No one dug their heels in more than Isaac Harris and Max Blanck. The two men proposed to their fellow factory owners that they form a manufacturer's association to help one another out during the strike. Nearly one hundred factories signed up for the association, and signed a "no surrender" declaration.⁹ With the battle lines drawn, both sides settled in for a long, hard fight.

For months, neither side budged. But by February 1910, things were reaching a breaking point for union leaders and owners alike. On February 8th, the Triangle Waist Company, one of the last holdouts, agreed to settle with the union. Blanck and Harris agreed to higher wages and shorter hours for their returning workers. But they did not agree to the strikers' demand for a closed shop, a union-only factory.¹⁰

⁵ Von Drehle, *Triangle*, 49.

⁶ Von Drehle, *Triangle*, 86

⁷ Von Drehle, *Triangle*, 61

⁸ Von Drehle, *Triangle*, 58

⁹ Von Drehle, *Triangle*, 63.

¹⁰ Von Drehle, *Triangle*, 86.

Though the workers had not gotten everything they wanted, the strike was a milestone for the growing American labor movement. Twenty thousand young people had taken on their wealthy, powerful employers, and won better conditions for themselves. Their actions would inspire workers all across the country to fight for their rights.

The strike had another legacy: it forever tainted the Triangle Waist Company and its owners. Nobody had fought harder or more violently against the strike than Max Blanck and Isaac Harris. One labor newspaper, writing after the strike, had only contempt for the men and their company: ‘The Triangle Company,’ wrote the *Forward*: “with blood this name will be written in the history of the American workers’ movement.”¹¹

But it would not be in blood that the Triangle’s name would enter history. The Triangle’s name would enter history in fire.

ACT II

On March 25th, 1911, thirteen months after the garment workers’ strike ended, someone dropped a match or a cigarette butt into a scrap bin at the Triangle Waist Company. Isidore Abramowitz noticed the fire first.¹² Abramowitz was a cutter. Cutters trimmed fabric into the shape of the garment patterns. A good cutter organized the tissue paper pattern pieces carefully across the yards of fabric stretched across their table, minimizing waste. But even the most efficient cutter created scraps. These scraps were swept into bins under the tables, and periodically emptied by rag traders. The Triangle’s bins had last been emptied in January. By late March, there were hundreds of pounds of scrap piled under Isidore Abramowitz’s cutting table.

Scrap fires weren’t unknown – there were “no smoking” signs on every floor of the factory, but everyone ignored them, and all it took was a single spark to light up the highly flammable fabric and tissue paper waste.¹³ The factory kept fire pails on ledges around the cutting floor for just such incidents. Now, Abramowitz grabbed a pail and splashed it on the flames, to no avail. Other cutters saw him and joined in the effort, but the fire wasn’t slowing. A gust of wind blew into the room from the elevator shaft and the workers saw the flames jump. Someone tried the firehose, which was connected to a water tank on the roof, but no water came out.¹⁴ People began to panic.

What happened next happened fast. The factory was a tinderbox, filled with flammable fabric and pattern paper, and an air shaft in the back corner of the building made the

¹¹ Von Drehle, *Triangle*, 86.

¹² Von Drehle, *Triangle*, 119

¹³ Von Drehle, *Triangle*, 107.

¹⁴ This account of the start and spread of fire, including the timeline, comes from Von Drehle, *Triangle*, chapters “The Golden Land,” “Inferno,” and “Three Minutes.”

perfect vehicle for the fire to travel to higher floors. The speed of the fire is a crucial part of the story: as David Von Drehle says in his book *Triangle: The Fire That Changed America*, “All the crucial things that happened inside the factory that awful afternoon—the heroics, the terror, the tragedy, the strokes of fortune both saving and deadly—transpired in a handful of minutes and in the presence of a hideously voracious fire.”¹⁵ Isidore Abramowitz first spotted the fire around 4:40PM. By 4:45, the fire had nearly consumed the 8th floor, and had traveled to the 9th.

There was no good way for workers on the different floors to communicate with each other. A telephone connected the 8th and 9th floors to the 10th floor, but the two lower floors could not communicate directly with each other. A bookkeeper on the 8th floor called up to the 10th floor shortly after the fire began to spread. The phone operator on the 10th floor alerted the workers there, giving them a few crucial extra minutes to escape. But she panicked and did not call down to the 9th floor. It was only at 4:46 PM, just as the fire was already reaching the 9th floor, that someone on the 8th floor pulled the internal fire alarm, setting bells ringing on all three floors. Outside, a passerby saw the flames and ran for the nearest public fire alarm.

Each factory floor had four exits. There was a door leading to the stairs on the Washington Place side. There was a fire escape in the air shaft in the rear corner. On the Greene Street side, there was a bank of elevators, and next to these elevators, another door leading to stairs.

Many of those who survived the fire survived because of the heroic actions of two elevator operators, Joseph Zito and Gaspar Mortillalo. Despite the overwhelming heat, and the flames licking at the elevator doors, Zito and Mortillalo kept making return trips, rescuing close to 150 people between them, nearly half of all the survivors. Some of those survivors had only made it onto the elevator cars by flinging themselves into the shaft and landing on top of the cars as they traveled down.¹⁶

Many of those who died died because they took the fire escape. It is a cruel, terrible irony. The fire escape on the Asch Building was a death trap. City inspectors had allowed the developer to substitute a fire escape for the normally required third staircase. When the architect submitted the building’s plans to the city, an inspector noticed that the fire escape ended over a skylight in the basement – there was no way for those evacuating to safely reach the ground. The architect promised to change the plans. He didn’t. On top of that, the fire escape was rickety and extremely narrow. As more and more people

¹⁵ Von Drehle, *Triangle*, 126.

¹⁶ Von Drehle, *Triangle*, 150.

crowded onto the escape, the iron frame began to groan, and suddenly it collapsed, sending terrified people plummeting to their deaths.¹⁷

On the 8th and 10th floors, employees escaped via both sets of stairs. The Greene Street doors were open – employees were required to exit via these doors, so that a security guard posted there could inspect their bags for stolen items. The Washington Place doors were locked at closing time, to keep workers from leaving that way. On the 8th floor, a man named Louis Brown unlocked the Washington Place doors, allowing the workers to escape. By 4:47, the 8th floor had completely evacuated.

Workers on the 10th floor were also able to take both sets of stairs. By the time they evacuated, the fire blocked their escape downwards, so they headed for the roof, where people in the adjoining buildings held ladders out for them to climb to safety.

Things were different on the 9th floor. This is the floor where Lena Yaller, the young woman whose story we followed in the prologue, worked. The 9th floor was the last to hear about the fire, only learning of it nearly 6 minutes after the blaze started. By this time, the fire had already reached them, traveling via the airshaft. The floor quickly filled with smoke and flame. The four exit options dwindled: by 4:51, the fire escape had collapsed, and by 4:53, the elevators could no longer travel through the superheated shaft.

Some people were lucky enough and fast enough to reach the Greene Street door, as Lena had, and make their way up to the roof.

The remaining eighty or ninety workers were trapped on the edges of the room. They could not get the locked Washington Place door open. And they could not travel through the growing flames to reach the Greene Street door. The fire pushed them away until they were standing on the window sills, praying for a way out.

Outside, the fire department had arrived. They began to raise ladders, but their ladders only reached the sixth story, some thirty feet too short. Instead, the fire fighters began to spread out nets, because they had realized what many of the workers huddled above had: the only way out was down.

As David Von Drehle points out, many of the people working at the factory that day had survived pogroms in Russia, organized massacres of Jews where fire was often used as a weapon. They knew what fire could do. They wanted their relatives to be able to recognize their bodies.¹⁸

¹⁷ Von Drehle, *Triangle*, 118, 127, 147.

¹⁸ Von Drehle, *Triangle*, 155, 95.

At 4:50, the first person jumped.¹⁹

The nets were futile. A body falling nine stories is moving so fast that a net can barely slow it down. And so many people began to jump so quickly that there was no chance of catching them all, even if catching would help. There was nothing anyone on the street could do but watch, horrified, as people began to fall. Those who went first jumped; those who came later did not have the luxury of choice, as the window sills burned out from beneath them and sent them tumbling to their deaths.

Inside the Asch Building stairwells, fire crews were battling the inferno. By 5:15PM, only thirty-five minutes after Isidore Abramowitz had first noticed a fire in his scrap bin, they had the fire under control. But by then, nearly 150 people, more than 20% of the people in the Triangle factory that day, were dead.²⁰

Most of those who died in the Triangle fire were young women, immigrants from either Eastern Europe or Italy. Many of them had worked alongside their sisters or mothers, and many families lost more than one person that day. The Saracinos lost Tessie and Serafina, the Goldsteins lost Mary and Lena, the Brenmans lost Rosie and Surka, while their brother Joseph survived. One family, the Malteses, lost two girls: Lucy, aged 20, and Sara, the youngest victim of the fire, only fourteen years old, and they lost Lucy and Sara's mother, Catherine, too. Three family members gone in the blink of an eye.²¹

The unidentified bodies were laid out in a large building on a pier in the East River, and friends and family members lined up to try to find their missing loved ones. The task was heart-wrenching and gruesome. Many of the bodies were so badly damaged by the fall or by the fire that they had to be identified by jewelry, or hairstyles, or even the darns in their stockings. By the end of the week, all but seven corpses were identified.

On April 5th, a funeral procession for the Triangle victims traveled through lower Manhattan. Some 120,000 people marched, and another 300,000 lined the streets.²² It was a clear sign of the fire's impact on New York. The city was reeling. Writing about the procession for the Women's Trade Union League, Martha Bensley Bruere asked the question on the lips of many New Yorkers: "The fire is over, the girls are dead," she wrote, "Now what is going to be done about it?"²³

¹⁹ Von Drehle, *Triangle*, 149

²⁰ Von Drehle, *Triangle*, 166

²¹ Von Drehle, *Triangle*, 167

²² "300,000 in Fire Parade," *New York Times*, April 4, 1911.

²³ Martha Bensley Bruere, "What is to be Done?" *Life and Labor*, May 1911.

https://trianglefire.ilr.cornell.edu/primary/testimonials/ootss_MarthaBensleyBruere.html

Political leaders shied away from answering the question. New York Mayor William Gaynor directed reporters to the fire chief. The state labor commissioner directed reporters to the city building department. The building department head was on vacation and refused to return. But he did direct reporters to the fire department.²⁴

Conflicting information about the fire and the cause of the deaths filled newspapers and official statements. No one knew quite what to believe, or quite who to blame. But everyone wanted to blame someone.

New York District Attorney Charles Whitman was also struggling with the question of what to do. Whitman had arrived at the scene of the fire shortly after 5pm on the 25th, after the last person had jumped, but before the bodies had been taken away or the fire had been extinguished. The images of that terrible day stuck with him.

As Whitman considered how to get justice for the fire victims, he faced a choice. Would his office pursue the city's building department, and accuse them of lax oversight? Or would he go after the factory's owners, Isaac Harris and Max Blanck? He felt could not pursue a case against one without weakening his case against the other. For almost a week after the fire, he equivocated, encouraging his office to investigate both lines of inquiry. But on March 31st, after William Randolph Hearst's newspaper ran an editorial accusing Whitman of moving too slowly, the DA made a decision: he would pursue the factory owners. We can only speculate as to why he chose this path, but if I had to guess, Whitman may have felt that this was the more straightforward case. Instead of tackling the systemic issues of worker protections and factory safety laws, Whitman could focus on proving the individual responsibility of Harris and Blanck.²⁵

The District Attorney's office organized a grand jury to look into the fire. The testimony Whitman heard at the grand jury convinced him that the Washington Place door on the 9th floor had been locked. Under New York law, quote "all doors leading in or to any[...]factory[...] shall not be locked, bolted, or fastened during working hours."²⁶ Violating this law against locked doors was a misdemeanor. Whitman, and the two assistant district attorneys he had assigned to the case, Charles Bostwick and J. Robert Rubin, wanted a stronger charge, something that carried a larger penalty than just a fine. They wanted jail time for Harris and Blanck. The locked door was the prosecution's way in: although locking the doors was simply a misdemeanor, a misdemeanor that resulted in death was manslaughter.

²⁴ Von Drehle, *Triangle*, 184.

²⁵ Von Drehle, *Triangle*, 186-188.

²⁶ New York State Labor Laws (Article 6, Section 80).

On April 12th, the grand jury indicted Isaac Harris and Max Blanck on charges of manslaughter.²⁷ The two men were arrested that same afternoon. Many felt that this was a good first step towards getting justice – but no one could predict what would happen in the courtroom.

ACT 3 - The Trial

On December 5th, 1911, a crowd gathered outside Judge Thomas Crain's courtroom. It was the second day of jury selection in the Triangle Fire trial. When the defendants, Isaac Harris and Max Blanck, arrived, someone in the crowd shouted, "Oh mama, look! Here they come! Here are the murderers!"²⁸

The crowd began to yell and wail. People held up photographs of their deceased relatives. Women tore out their hair. Max Steuer, Harris and Blanck's attorney, was unphased. An immigrant, Steuer had himself worked in sweatshops as a child, before fighting his way to the top of New York's legal ladder.²⁹ Not much could trouble him. Steuer pushed his way through the crowd, leading his clients into the courtroom.

Nearly nine months after the Triangle fire, many people were still horrified and outraged. On the next day of the trial, when Harris and Blanck went to lunch, relatives of the victims followed them and yelled at them from the sidewalk while they ate. Judge Crain ordered police protection for the defendants.³⁰

That afternoon, Charles Bostwick delivered the prosecution's opening statement. In his forties, Bostwick was a veteran lawyer with a brushy mustache and a dignified manner. His co-counsel was J. Robert Rubin, a young attorney who had been on the scene of the Triangle fire. The horrible things Rubin had seen that day had motivated him as he prepared for the trial. Now he hoped that his and Bostwick's hard work would see justice done for the victims.

Bostwick's opening was straightforward. He talked jurors through the layout of the 9th floor of the Triangle factory, pointing out the various exits as he spoke. He mentioned the elevators and the fire escape and the Greene Street door. Then he began to speak about the Washington Place door. One of the employees that ran to the Washington

²⁷ For a full account of the indictments, see Arthur F. McEvoy, "The Triangle Shirtwaist Factory Fire of 1911: Social Change, Industrial Accidents, and the Evolution of Common-Sense Causality," *Law & Social Inquiry* Vol. 20, No. 2 (Spring, 1995), 632.

²⁸ Von Drehle, *Triangle*, 229

²⁹ Von Drehle, *Triangle*, 222

³⁰ Von Drehle, *Triangle*, 232

Place door, Bostwick said, was named Margaret Schwartz. And Margaret Schwartz was now dead.

The district attorney's office had filed manslaughter charges against Harris and Blanck for the deaths of seven different people.³¹ In this trial, they were only focusing on the death of one of those people, Margaret Schwartz. The DA's strategy was to hold onto the other manslaughter charges in case something went wrong in this trial.³²

Margaret Schwartz, Bostwick said, had tried to escape via the 9th floor Washington Place door. But like everyone else who tried to do so, she failed, because, Bostwick argued, the door had illegally been kept locked. The factory owners had kept this door locked so that employees would have to exit through the other door, where a security guard sat to inspect their bags for stolen goods. The illegal act of keeping the door locked had caused Margaret Schwartz's death, Bostwick said, making Harris and Blanck guilty of manslaughter.

Bostwick's first witnesses helped establish both the layout of the factory as well as Margaret Schwartz's cause of death, asphyxiation. Several witnesses also testified about the conditions at the factory, including a rag trader named Louis Levy who testified that he had last cleared out the scrap bins on January 15th, more than two months before the fire.³³

On Monday, December 11th, the Triangle Fire victims began to testify. Bostwick led them through their recollections of the fire. Each witness described their actions that day, including their desperate attempts to escape. One after another, witnesses testified to their fear and anger at finding the Washington Place door impassable. As they spoke, Bostwick asked the witnesses to rise from the witness stand and go to the courtroom door, to demonstrate how they had tried to get the Washington Place door open.

"I took hold of the handle and I turned and pulled it," Mary Bucelli said, as she yanked on the courtroom door. Sam Bernstein recalled: "I tried with both hands to open it...There where the lock was—I wanted to tear it open!" Lillian Weiner said: "I tried to turn the handle and it would not bend. It was locked."³⁴

Over and over, jurors watched the young men and women reenact some of the worst moments of their lives. Over and over, the jury heard that the Washington Place door had been locked.

³¹ One of these charges was dismissed, see McEvoy, "The Triangle Shirtwaist Fire," 632.

³² McEvoy, "The Triangle Shirtwaist Fire," 637, *fn* 71.

³³ Von Drehle, *Triangle*, 236

³⁴ Von Drehle, *Triangle*, 237.

It was powerful, compelling testimony. But even as it occurred, defense lawyer Max Steuer was doing everything he could to reduce the impact of the witness's words. One of Steuer's main arguments was that the Triangle Fire victims had been doomed not by any action of Harris and Blanck, but by their own panicked, irrational choices during the fire.

Whenever he could, Steuer worked to undermine the credibility and intelligence of the survivors who were testifying. He picked up small inconsistencies in their stories and used these inconsistencies to imply that the witness was either lying on the prosecution's behalf, or did not speak English well enough to understand what they were saying, or was not clear-headed enough during the fire to properly remember what happened. During worker Yetta Lubitz's cross-examination, for example, Steuer implied that Lubitz did not know what a square was, that she thought that doors could stop fires, that she had answered the prosecution's questions without understanding them, and that she was lying about her testimony.³⁵ Rubbing salt in the wound, in the midst of making these accusations, Steuer chided Lubitz, "don't get upset".³⁶

Steuer had two other approaches for tripping up the prosecution's witnesses. The first was questioning their motives. On cross examination, he questioned witnesses about lawsuits they had filed against Harris and Blanck. Many of the survivors, as well as the relatives of victims, were pursuing claims against the Triangle's owners. Steuer framed these lawsuits as conflicts of interest.

Steuer's second plan to damage the prosecution witnesses was raising the theory that their stories were coached. He planted the idea that many of the witnesses had attended union meetings where, he implied, they had learned what to say on the stand. He devised a cunning way of supporting this theory. On several cross examinations, instead of trying to poke holes in the stories of witnesses, he simply asked them to repeat their stories again, over and over. As they repeated their stories, the witnesses inevitably repeated certain phrases, making their stories sound rehearsed.

This tactic was particularly damaging to one of the star prosecution witnesses, Kate Alterman. Alterman had been a friend of Margaret Schwartz, the woman whose death Harris and Blanck were accused of causing. On the stand, Alterman broke down crying as she told the story of her last moments with Schwartz: the two friends had tried to open the Washington Place door, Alterman recounted, but could not. As they frantically tried to force the door, Schwartz suddenly collapsed. Alterman tried to rouse her but Schwartz would not wake up. Alterman had no option but to leave her friend behind to

³⁵ Cross Examination of Yetta Lubitz, Trial Transcript, p. 431-466.

³⁶ Cross Examination of Yetta Lubitz, 456.

save her own life. As she ran across the room, she looked back, and saw Schwartz on the floor, the hem of her dress and the ends of her hair beginning to burn.³⁷

The jury was stunned. More so than any other witness, Alterman had transported them into that burning building and confronted them with the horror of being trapped by a locked door.

Steuer had to control the damage. He had noticed that Alterman's testimony contained a number of distinct, evocative phrases: she didn't call the fire simply fire, for example, but described it as a, quote, "red curtain of fire." Steuer thought these phrases sounded rehearsed. On cross examination, Steuer had Alterman go through her testimony four times, pausing to highlight the specifics she repeatedly mentioned. In between, he asked her if she had ever told this story before, or studied her words. Alterman denied it.³⁸

As David von Drehle points out, Alterman was probably lying about whether she had ever told her story before - her testimony was so well organized that it's hard to imagine she never practiced it aloud.³⁹ However, a rehearsed story does not imply an untruthful one. It is extremely common for attorneys to prepare witnesses for trial by having them practice their testimony. Kate Alterman's story was consistent, and its details aligned with both the physical evidence and the testimony of other witnesses. But Steuer had gotten her to repeat herself so frequently that her words began to seem artificial to the jury.

After raising questions about the prosecution witnesses' credibility, Steuer tried to bolster the reputations of the defendants by having Harris and Blanck testify. Both men had been at the factory on the day of the fire - Blanck had actually had two of his young daughters there with him - and both had had harrowing experiences. It was a risk to put the defendants on the stand, but Steuer hoped that their testimony would humanize them, and make them appear to be victims like all the other survivors. In some ways this strategy worked - Isaac Harris had behaved heroically during the fire, climbing from the rooftop of the Asch Building to an adjacent rooftop and badly injuring his hand by breaking a skylight to get help.⁴⁰ But in other ways, having the owners testify backfired. On cross examination, Bostwick pressed Harris on the issue of employee theft. Theft was the owners' justification for locking the Washington Place door. But Bostwick pushed Harris on the specifics - and got him to admit that the total value of employee theft in the year before the fire had only been twenty five dollars.⁴¹

³⁷ Testimony of Kate Alterman (n.b., typo in transcript makes her name "Alperman"), Trial Transcript, 1154-1157.

³⁸ Cross Examination of Kate Alterman, Trial Transcript, 1161-1170.

³⁹ Von Drehle, *Triangle*, 250.

⁴⁰ Testimony of Isaac Harris, Trial Transcript, 1857.

⁴¹ Cross Examination of Isaac Harris, Trial Transcript, 1865.

Steuer also found ways to question the narrative of the locked door. From the prosecution witnesses, the jury had heard over and over again that the Washington Place door was kept locked. But now Steuer produced defense witnesses who made the jury question if this central claim was true. These witnesses - mainly Triangle employees and contractors – described how they had regularly used the Washington Place stairs during the course of their business. The Triangle factory had been set up with different functions on different floors – cutting on the 8th, sewing on the 9th, packing and shipping on the 10th – and people needed a way to carry goods from floor to floor. It would seem to be inefficient, and therefore unlikely, that the Washington Place door was always locked.⁴²

That being said, a number of witnesses also testified that keys were kept attached to the Washington Place door. The keys were hung from thin strips of fabric that regularly broke, and were also very flammable, explaining why the workers may not have been able to find them during the fire. Why were keys needed if the door was kept unlocked?⁴³

The prosecution also had one more compelling piece of evidence to support their claim of a locked door: a smoking lock, so to speak. During the grand jury proceedings, the DA's office had sent an investigator to the Asch Building to search for the 9th floor Washington Place door lock. And the investigator had succeeded. Steuer had fought hard to keep the lock from being admitted into evidence, questioning its provenance and claiming that it was unbelievable that the lock had been found more than two weeks after the fire.

Bostwick was prepared for this argument. The district attorney's investigators had shored up the discovery by tracing the lock in every step of its journey from factory to installation. They knew where the lock had been made, what store had sold it, who had bought it, and finally, who had installed it on the Washington Place door. Judge Crain allowed the lock to be admitted.⁴⁴

The lock seemed damning. The heavy bolt was undamaged, while the visible part of the lock, which would have been exposed to the fire, was discolored. The prosecution suggested that this meant that the bolt had been protected by the door frame – something that only would have been possible if the door was locked.

⁴² Von Drehle, *Triangle*, 251, citing the testimony of Max Hirsch, Samuel Rubin, and Edwin Wolf.

⁴³ Von Drehle, *Triangle*, 252, and testimony of Nathan Salub (1709), testimony of May Levantini (1293), testimony of Reginald Williamson (1354, 1355, 1360).

⁴⁴ Von Drehle, *Triangle*, 239.

Of course, Steuer had an explanation for this too. He brought in a lock expert of his own, who testified that the lock should have entirely melted in the fire, if it had really been there. The expert also claimed that the lock was easy to tamper with.⁴⁵

For every point the prosecution had made, Steuer had had a quick rebuttal. But would his clever lawyering be enough to counteract the powerful testimony of the survivors? On December 27th, after nearly three weeks of testimony and more than 150 witnesses, the case was handed over to the jury.

In his instructions to the jurors, Judge Crain explained the charges in the same way that the prosecutors had: it was against New York law for a factory door to be locked during working hours, and if someone had died because a door had been locked, then that was manslaughter. But he added another point, one that was favorable to the defense: he told jurors that to find Harris and Blanck guilty, the jury must find that the men *knew* the door was locked at the time of the fire. “If these men were charged with a misdemeanor,” Crain explained, “I might charge that they need have no knowledge that the door was locked, but I think that in this case it is proper for me to charge that they must have had personal knowledge of the fact that it was locked.”⁴⁶

With that, the jury was sent out to deliberate. Two hours later, they returned with a verdict. On the charges of manslaughter in the death of Triangle employee Margaret Schwartz, Max Blanck and Isaac Harris were found NOT GUILTY.

ACT IV

Immediately after the not guilty verdict, reporters went looking for explanations. One juror explained that he believed that the victim’s panic, not the locked door, was to blame for her death: “I think the girls, who undoubtedly have not as much intelligence as others might have in other walks of life, were inclined to fly into a panic,” he said.⁴⁷ Steuer’s tactics had clearly worked.

Another juror stated that it was Crain’s instructions that had sealed the decision for him. “I believed that the door was locked at the time of the fire,” the juror said, “but we couldn’t find them guilty unless we believed they knew the door was locked.”⁴⁸

Crain’s instructions had raised concerns when they were issued. Lawyers speaking to the *New York Times* were surprised that Crain’s instructions had not mentioned the large

⁴⁵ Von Drehle, *Triangle*, 254.

⁴⁶ “Triangle Owners Acquitted by Jury,” *New York Times* (December 28, 1911).

⁴⁷ “Regrets Voting for Triangle Acquittal,” *New York Times* (December 29, 1911).

⁴⁸ Douglas O. Linder, “Triangle Fire Trial (1911),” *Famous Trials*, UMKC School of Law.

number of lives lost at the factory, or the fact that several of the defense witnesses had made sworn statements to the DA that the door *had* been locked, but then testified to the opposite on the stand. Some felt that Crain's conduct throughout the trial had favored the defense: he had been strict about what the prosecution was allowed to mention about the fire, excluding, for instance, any testimony about victims jumping from the building, on the basis that it was irrelevant.

Crain may very well have been biased. He had, it turns out, a shockingly relevant past experience. Six years earlier, in March 1905, a tenement building on the Lower East Side of Manhattan had gone up in flames, killing twenty people. Many of the deaths were due to the unsafe conditions of the building, which had a blocked fire escape. At the time, the tenement house commissioner was Thomas Crain. Crain claimed that his inspectors had done everything they could to keep the building safe and blamed the residents of the building for the fire. But the city government blamed Crain. He lost his job and was maligned in the press.⁴⁹

Crain, a man who felt he had been unfairly blamed for a fire-related tragedy, was the judge for a trial of two men who were being blamed for a fire-related tragedy. He should have recused himself.

But while Crain's bias did, no doubt, cause issues for the prosecution, the verdict was in many ways the District Attorney's own fault. An editorial in the *New York Times* on December 29th opined that Whitman's office had mischarged Blanck and Harris, saying: "The acquittal does not mean[...]that nobody was to blame for this hideous disaster[...]What the verdict really means [...]is that[...]Harris and Blanck were not guilty as charged. Between this and not guilty at all there is much more than a technical difference." The DA, the editorial continued, should have simply charged Harris and Blanck with violating the factory laws, something they unequivocally did. That way, quote "either they would have been sent to jail or heavily fined, or else the inadequacy of those laws to serve their intended purpose would have been so plainly demonstrated as to have brought about an immediate reform."⁵⁰

This last point is the key one: the law at the time was inadequate to address a tragedy like the Triangle Fire. There were very, very few worker protections in existence in 1911. There were very few ways for the legal system to hold employers liable for harm done in the workplace. After the Triangle fire and the acquittal of Blanck and Harris, many realized that in order for justice to be done the law would have to change. And it's here that we see the true legacy of the Triangle tragedy play out.

⁴⁹ Von Drehle, *Triangle*, 256-257.

⁵⁰ "Meaning of an Acquittal," *New York Times* (December 29, 1911).

For months after the Triangle fire, people were skeptical that workplace safety reform would happen. After all, industrial accidents were extremely common - thousands of workers died due to workplace accidents every year and thousands more were injured.⁵¹ Injured workers had little legal recourse. Judicial precedent stood firmly on the side of employers. In a key case called *Farwell v. Boston & Worcester Railroad*, the Massachusetts Supreme Court had ruled, in essence, that when employees took a job they assumed the risk for workplace injuries. Following this 1842 decision, it became very difficult for workers to prove that their employers were legally responsible for workplace injuries, or for workers to receive compensation for such injuries.⁵² This common law environment matched public opinion: many people believed that workplace injuries were mainly caused by the inattention or negligence of individual workers.⁵³

But in the early 20th century, labor reformers began conducting surveys about the actual causes of workplace accidents. One seminal study, run by Crystal Eastman for the New York State Employer's Liability Commission and published in 1910, revealed that many workplace injuries were caused not by worker negligence, but were instead attributable to systemic issues caused by employer mismanagement.⁵⁴ Eastman, who went on to co-found the American Civil Liberties Union, had collected heaps of data to support her conclusions.

But raw data alone was not enough to change public sentiment or the law. People needed something more visible, something more visceral, to convince them of the need for change. The Triangle Fire was just such an event. As the legal scholar Arthur F. McEvoy writes, quote, "so graphic were the Triangle deaths and so clear their systemic causes[...] that the law could no longer contain them within the category "accident." [...]the Triangle fire inscribed the law of turn-of-the-century labor relations on its victims' bodies so that its meaning at last became clear."⁵⁵

At the same time as the need for reform was becoming evident, politicians were taking note of the voting power of the people who most needed workplace protections. In New York, the powerful political machine known as Tammany Hall, which had usually sided with wealthy industrialists in opposing workplace reform, realized that their new path to electoral victory was courting the votes of the working class. The combination of popular

⁵¹ "Achievements in Public Health, 1900-1999: Improvements in Workplace Safety—United States, 1900-1999," *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention (Vol. 48(22), June 11, 1999), *fn.* 3.

⁵² McEvoy, "The Triangle Shirtwaist Fire," 639, and Jamie Bronstein, *Caught in the Machinery: Workplace Accidents and Injured Workers in Nineteenth-Century Britain* (Stanford University Press, 2007), 20-24.

⁵³ McEvoy, "The Triangle Shirtwaist Fire," 629.

⁵⁴ McEvoy, "The Triangle Shirtwaist Fire," 643.

⁵⁵ McEvoy, "The Triangle Shirtwaist Fire," 631.

pressure and political will finally combined in the months after the Triangle fire to create real change.

On June 30th, 1911, New York Governor John Dix signed a law creating the Factory Investigating Commission. The commission's members worked tirelessly, collecting data, touring factories, and holding frequent public hearings. Soon, the commission began proposing reforms, many of which the New York State Legislature enacted as law. Over the next four years, the commission's work inspired dozens of workplace safety and worker protection laws.

These laws included crucial reforms such as the banning of child labor, and the requirement that employers provide workers with clean drinking water and bathrooms. Other laws focused on fire prevention and protection measures, such as mandatory fire drills, automatic sprinklers, fireproof stairways, and fire escapes.⁵⁶

Unfortunately, these laws came too late to protect the Triangle workers. In the years after the trial, the fire's survivors and its victims' relatives struggled to get justice, or even compensation, for what they'd endured. Max Steuer represented Blanck and Harris in the civil suits against them, all of which seemed to have failed or fizzled out. The only suits that succeeded were those filed against the Asch Building's owner. In early 1914, twenty-three relatives of victims received a measly \$75 each in a settlement of these suits.⁵⁷ Even more disturbing: that paltry sum paled in comparison to the amount that Blanck and Harris *earned* from the fire. The two men had received a \$200,000 payout from their insurance companies in the wake of the disaster. But a 1913 investigation by Arthur McFarlane for *Collier's Magazine* revealed that Blanck and Harris had only been able to document \$134,075 in losses, meaning that they were, for some reason, overpaid by more than \$60,000 dollars.⁵⁸

Despite this windfall, the Triangle Company did not survive much longer. The DA's office had tried to pursue additional manslaughter cases against Harris and Blanck, but a judge ruled that this would be unconstitutional double jeopardy. Harris and Blanck continued their partnership for nine years, operating shirtwaist manufacturers across New York City, before eventually going their separate ways in 1920. The men do not seem to have learned any lessons from the 1911 tragedy. In 1913, Max Blanck was arrested for locking doors at one of his factories. At his trial, he defended himself by

⁵⁶ Peter Dreier and Donald Cohen, "The Fire Last Time: Worker Safety Laws After the Triangle Shirtwaist Fire," *Race, Poverty, and the Environment*, Vol. 18, No. 1 (2011).

⁵⁷ Von Drehle, *Triangle*, 264.

⁵⁸ Arthur E. McFarlane, "The Triangle Fire – The Story of a "Rotten Risk," *Collier's National Weekly*, May 17, 1913, p. 29.

saying that his employees would rob him if he didn't lock the doors – the same argument he had used at the Triangle trial. He was found guilty and fined \$20.⁵⁹

The legacy of the Triangle Fire's victims would long outlive Blanck and Harris. The reform work that New York did in the wake of the fire would become a national model for workplace regulation. Worker protection reforms continued throughout the twentieth century. Nearly 60 years after the Triangle Fire, in 1970, Congress passed the Occupational Safety and Health Act, which, among other things, created the Occupational Safety and Health Administration, or OSHA, an agency that can set and enforce workplace safety standards. Though workplace safety standards and worker protections are not perfect, they are fathoms beyond what they were on March 25th, 1911, the day that a fire blazed through the Triangle factory, and changed our understanding of workplace safety forever.

That's the story of *New York v. Isaac Harris and Max Blanck*. Stay with me after the break to learn about how the Triangle fire led to the breaking of a political glass ceiling.

EPILOGUE

Today, the site of the Triangle Fire, the Asch Building, is known as the Brown Building, and houses New York University's Biology and Chemistry departments.⁶⁰ The building was designated as a National Historic Landmark in 1991, eighty years after the fire. Thirty years before this designation, on the fire's fiftieth anniversary, a plaque was placed on the building to memorialize the victims. A woman named Frances Perkins was invited to give the dedication.

On the day of the Triangle fire, Frances Perkins was having tea at a friend's home nearby. When they heard the sirens, Perkins and her friend followed the sound to the site of the fire. They arrived just as people began to jump.

Perkins, then thirty years-old, was horrified by what she saw, but not entirely surprised. She worked for the Consumers' League, a nonprofit focused on documenting and improving workplace conditions, and she was intimately familiar with the many ways that people could be harmed in the workplace. Still, what she saw on March 25th, 1911, haunted her.

After the fire, Perkins doubled down on her commitment to protecting workers. She became the primary investigator for the New York Factory Investigating Commission

⁵⁹ Von Drehle, *Triangle*, 265.

⁶⁰ Cara Cifferelli, "Better Know a Building: Brown Building," NYU Local, April 10, 2012. <https://nyulocal.com/better-know-a-building-brown-building-33e2ca17b940>

and was crucial in shaping the reform laws that the Commission proposed. Over the next two decades, Perkins served in increasingly prominent statewide organizations, including the Council on Immigrant Education and the New York State Industrial Board. Along the way, she became allies and good friends with a politician named Franklin Roosevelt. In 1933, now-President Roosevelt appointed Perkins to her biggest job yet: United States Secretary of Labor. She was the first woman to ever serve in a presidential cabinet.

Frances Perkins was the Secretary of Labor for twelve years. During that time, she helped the country recover from the Great Depression, and guided the passage of laws that still shape American life today, including the Social Security Act and the Fair Labor Standards Act - which established the rights to a minimum wage and overtime pay. Her impact is hard to overstate.

Perkins never forgot the Triangle fire. Speaking about the events of that day in 1964, fifty-three years after the fire and a year before her death, Perkins told the audience that her reform work could be seen as a type of atonement. The progress made, she said, “seems in some way to have paid the debt society owed to those children, those young people who lost their lives in the Triangle Fire.”⁶¹

Thank you for listening to History on Trial. My main sources for this episode were the trial transcript, David Von Drehle’s book *Triangle: The Fire That Changed America*, and Arthur F. McEvoy’s article “The Triangle Shirtwaist Factory Fire of 1911: Social Change, Industrial Accidents, and the Evolution of Common-Sense Causality.” For a full bibliography as well as a transcript of this episode with citations, please visit our website, historyontrialpodcast.com.

⁶¹Francis Perkins, Lecture at Cornell University, School of Industrial and Labor Relations, 30 September 1964, via Kheel Center at Cornell University.
<https://trianglefire.ilr.cornell.edu/primary/lectures/FrancesPerkinsLecture.html>