



## In a mostly forgotten

piece of Americana, 95 years ago in Los Angeles, arguably one of this country's greatest lawyers was tried on a charge of bribery—bribery of jurors in a murder case. If his defense and history are any indicators, it was that lawyer's controversial legal career—as much as jury tampering—that were being judged in that California courtroom in 1912.<sup>1</sup>

By the time Clarence Darrow headed west to represent defendants in a notorious murder case, he was already famous for representing those whom others would not represent.

History would remember Darrow as the man who defended the right of John Thomas Scopes to teach Darwin's theory of evolution—dramatized in the play and eventual movie *Inherit the Wind*; for his plea for clemency for Richard Loeb, who, with Nathan Leopold, tried to commit the perfect crime by murdering a classmate—made into the novel and film *Compulsion*; and as the “greatest champion of labor and the poor, the ‘attorney for the damned.’”<sup>2</sup>

It is no hyperbole to say that Darrow was the most famous lawyer of his time. Most lawyers in the early 1900s were not courtroom artists, but he was. Starting as a railroad lawyer, he later went on to defend unpopular people and causes. Darrow represented the coal miners during their 1902

# The People v. Clarence Darrow

BY HON. ROBERT L. GOTTSFIELD

**Hon. Robert L. Gottsfield** is a retired but called-back full-time judge of the Superior Court, Maricopa County.

strike. He was against the death penalty, organized religion and social discrimination (*Id.* at 443).

In fact, he switched sides to defend his first great client, Eugene Debs. Debs was a union organizer who had established the railroad worker's union and the Socialist Party, becoming its presidential candidate in five elections beginning in 1900. And it was Debs who generated intense public pressure to free John and James McNamara, two brothers



accused of blowing up a newspaper plant, an action that led to the death of 20 men.

It was his representation of the brothers McNamara that would lead to charges against Darrow himself. How he reached that pass says much about the times in which Darrow lived and the commitment he felt to the plight of working people.



Early-1900s America was an age of industrial violence. As the means and methods of production changed and consolidated, workers confronted sometimes shocking working conditions and a declining standard of living. For many, a solution lay in the unity of organized labor.

In that tempest of labor strife, an auxiliary plant of the *Los Angeles Times* was blown up by dynamite, killing 20. This would be a tragedy and high-profile case in any age; in that tinderbox, the ensuing trial was called the greatest labor case, murder case and political trial in the country's history (*Id.* at 3). Accused of the deed were James Barnabas McNamara and his brother John Joseph McNamara, treasurer of the Bridge and Structural Iron Worker's Union. John Joseph was a lawyer, a respected labor leader and a devout Catholic. He was a hero to the working man.

Darrow traveled west from Chicago to Los Angeles to represent the brothers. He was the acknowledged leader of a "band of radicals, intellectuals, workers and reporters, who were prepared to follow him anywhere" (*Id.* at 22).

At Darrow's urging and just before trial, the brothers pleaded guilty. John Joseph was sentenced to life and James, the least culpable and under the control of his brother, to 15 years. Fifteen-thousand men and women lined the streets outside the courthouse, "many whose hopes and ideals had been so deeply invested in the brothers' innocence" (*Id.* at 268). Eventually, the brothers were released from San Quentin within 10 years.



Out of this scenario came the 1912 trial of the bribery charge against Darrow. Specifically, Darrow, lead defense counsel,

was charged with using his chief jury investigator, Burt Franklin, to bribe two jurors in the trial.

Darrow was alleged to have arranged, through Franklin, the bribery of two McNamara jurors. The first was George Lockwood, a Civil War veteran and retired county employee whom, it was alleged, was to be paid \$4,000 for his acquittal vote. The second juror was Robert Bain, another Civil War veteran, down on his luck and employed as a carpenter, though already in his seventies; much was made of his need to make payments on a new house (*Id.* at 25).

The police arrested Burt Franklin at the scene of the alleged payoff. It appears that Lockwood had been outraged by the offer, and he had notified the police in advance (*Id.* at 231-233, 236-237). Spotted near the payoff scene—but not arrested—was Clarence Darrow.

Franklin's arrest was made prior to the McNamara guilty pleas. Therefore, Darrow's motives in having them plead guilty thereafter have always been challenged, by both allies and enemies. He always maintained he did it to save their lives and not to save his own skin from a possible bribery indictment. Nonetheless, that indictment eventually was handed down.

The Lockwood bribery trial was tried first, in Los Angeles. Darrow's defense team consisted of four lawyers including Darrow. His chief counsel was Earl Rogers, allegedly the most brilliant criminal lawyer in Los Angeles. Rogers gave the first closing argument at the conclusion of the trial, but Darrow also was permitted to speak in his own defense following Rogers' summation. And Darrow's closing was a dramatic one, transforming the trial for the Lockwood jurors into far more than a case about jury tampering.



Joseph Ford, a prosecutor, had opened the trial with a stunning and venomous personal attack on Darrow. His words were punctuated by his vociferous use of a handy spittoon (*Id.* at 410-412). Ford compared Darrow to Judas Iscariot and Benedict Arnold—with the only qualification being that Darrow's crime was even more despicable.

The prosecution carried out this personal attack throughout the trial. But it aided in Darrow's strategy at trial as well as his closing argument. Darrow's aim was to show his damnation by the prosecution was "not so much because he was a 'jury briber,' but because he had been for years the champion of labor" (*Id.* at 412).

As Darrow began his closing argument, all conversation ended among the huge crowd of spectators. The 12 jurors, all men, eyed him intently. Present were his trademark unkempt hair and unruly lock falling over his forehead. His voice was low, his hands in his pockets. He looked from juror to juror as he spoke<sup>3</sup>:

Gentlemen of the jury, it is not easy to argue a case of importance, even when you are talking about someone else. An experience like this never came to me before. Of course, I cannot say how I will get along with it. But I have felt, gentlemen, by the patience you have given this case for all these weeks, that you would be willing to listen to me. I might now argue it as well as I would some other case, but I felt that I ought to say something to you twelve men besides what I said on the witness stand.

In the first place, I am a defendant, charged with a serious crime. I have been looking into the penitentiary for six or seven months, waiting for you twelve men to say whether I shall go or not. In the next place, I am a stranger in a strange land, two thousand miles away from home and friends, although I am proud to say here, so far away, there have gathered around me as good and loyal and faithful friends as any man could ever have upon the face of the earth. Still I am unknown to you.

I think I can say that no one in my native town would have made to any jury any such statement as was made of me by the assistant district attorney in opening his summation. I will venture to say he could not afterward have found a companion except among detectives and crooks and sneaks in a city where I live if he had dared to open his mouth in the infamous way that he did in this case. But I am in his hands. Think of it! In a position where he can call me a coward.



## *The People v. Clarence Darrow*

### CELEBRITY TRIAL, Circa 1912

Clarence Darrow, defendant, was far from the only remarkable figure to distinguish his bribery trial. A fascinating cast of characters populated the stage of the legal drama, many of whom are still recognizable almost 100 years later<sup>1</sup>:

<i>Eugene Debs</i>	<i>Edgar Lee Masters</i>	<i>William J. Burns</i>	<i>Samuel Gompers</i>	<i>Lincoln Steffans</i>	<i>Jerry Gelster</i>	<i>E.W. Scripps</i>
As noted, <b>Eugene Debs</b> created great public interest in the murder trial of the two brothers that led to the charges of bribery.	<b>Edgar Lee Masters</b> , a lawyer and poet, best known later for <i>Spoon River Anthology</i> , was Darrow's law partner at the time of both prosecutions. He spent countless hours helping Darrow in the bribery trials.	<b>William J. Burns</b> , of Burns Detective Agency fame, was at the time "the most celebrated (and self-promoting) detective in American history," calling himself a second Sherlock Holmes. The City of Los Angeles hired him to discover who had blown up the <i>Los Angeles Times</i> plant.	<b>Samuel Gompers</b> , who built the American Federation of Labor into a nationally credible union, was the prime reason Darrow took the case. Gompers' reputation and career were threatened by the charges against the McNamaras.	<b>Lincoln Steffans</b> was the "muckraking" journalist who uncovered stories of bribery and corruption and tried to settle the McNamara case.	<b>Jerry Geisler</b> was a young lawyer—researcher for Darrow and one of Darrow's criminal lawyers in the Lockwood bribery trial. He later became famous as an attorney for movie stars in divorce and criminal matters.	And finally, <b>E. W. Scripps</b> , newspaper publisher and owner of United Press, was an outspoken friend of the worker and an adviser to Clarence Darrow.

1. See GEOFFREY COWAN, *THE PEOPLE V. CLARENCE DARROW: THE BRIBERY TRIALS OF AMERICA'S GREATEST LAWYER* XXI-XXIX (1993).

In all my life, I never saw or heard so cowardly, sneaky, and brutal an attack as this thing here perpetrated on me.

Was any courage displayed by him? It was only brutal and low, and every man knows it. This attack of Ford's was cowardly and malicious in the extreme. It was not worthy of a man and it did not come from a man.

What am I on trial for, gentlemen of the jury? You have been listening here for three months. If you don't know, then you are not as intelligent as I believe. I am not on trial for having sought to bribe a man named Lockwood. There may be and doubtless are many people who think I did seek to bribe him, but I am not on trial for that. I am on trial because I have been a lover of the poor, a friend of the oppressed, because I have stood by labor for all these years, and have brought down upon my head the wrath of the criminal interests in this county. Whether guilty or innocent of the crime charged in this indictment, that is the reason I am here, and that is the reason I have been pursued by as cruel a gang as ever followed a man.

Will you tell me, gentlemen of the jury, why the Erector's Association of Indianapolis (a manufacturers' association) should have put up as vicious and

cruel a plot to catch me as was ever used on any American citizen? Are these people interested in bribery? Why almost every dollar of their ill-gotten gains has come from bribery.

It is not that any of these men care about bribery, but there never was a chance before, since the world began, to claim that bribery had been committed for the poor.

Suppose I am guilty of bribery. Is that why I am prosecuted in this court? Is that why, by the most infamous methods known to the law, these men, the real enemies of society, are trying to get me inside the penitentiary?

No, that isn't it, and you twelve know it. These men are interested in getting me. They have concocted all sorts of schemes for the sake of getting me out of the way. Do you suppose they care about what laws I might have broken? I have committed one crime, one crime which is like that against the Holy Ghost, which cannot be forgiven. I have stood for the weak and the poor. I have stood for the men who toil. And therefore I have stood against them, and now this is their chance. All right, gentlemen, I am in your hands, not theirs, just yet.

I am tried here because I have given a large part of my life and my services to the cause of the poor and the weak, and

because I am in the way of the interests. These interests would stop my voice—and they have hired many vipers to help them do it. They would stop my voice—my voice, which from the time I was a prattling babe my father and mother taught me to raise for justice and freedom, and in the cause of the weak and the poor.

They would stop my voice with the penitentiary. ... You know not what you do. Let me say to you, that if you send me to prison within the gray, dim walls of San Quentin there will brood a silence more ominous and eloquent than any words my poor lips could ever frame. And do you think that you would destroy the hopes of the poor and the oppressed if you did silence me now? Don't you know that upon my persecution and destruction would arise ten thousand men, abler than I have been, more devoted than I have been, and ready to give more than I have given in a righteous cause.

I have been, perhaps, interested in more cases for the weak and poor than any other lawyer in America, but I am pretty nearly done, anyhow. If they had taken me twenty years ago, it might have been worth their while. But there are younger men than I, and there are men who will not be awed by prison

bars, by district attorneys, by detectives, who will do this work when I am done.

I am about as fitted for jury bribing as a Methodist preacher! If you 12 men think that I would pick out a place a block from my office—and send a man with money in his hand in broad daylight to go down on the street corner to pass four thousand dollars—why, find me guilty. I certainly belong in some state institution.

Gentlemen, I have been human. I have done both good and evil. But I hope that when the last reckoning is made the good will overbalance the evil, and if it does, then I have done well. I hope it will so overbalance it that you jurors will believe it is not to the interest of the state to have me spend the rest of my life in prison.

Darrow's closing began on a Wednesday a little after 2:00 p.m. and ended on Thursday at noon, with an evening break in between. During his oration, he had gotten the jurors to focus on the good he had done against the forces of "evil" in society—manufacturer's associations, prosecutors and detectives. But he also stressed the uphill battle he had fought in the McNamara case and the brothers' good though misguided intentions. He pleaded for compassion for his former clients and compassion for himself.

Darrow also made a plea for jury nullification, that "as a matter of collective conscience—and in the interest of a higher sense of justice"—allowed jurors to free William Penn and John Peter Zenger. At the end of his summation, reporters wrote that Darrow was crying, the jurors were weeping—as was the crowded courtroom (*Id.* at 426).


The prosecution's final argument ended Friday afternoon. By Saturday morning, the jury began deliberations about 9:20 a.m. Less than 40 minutes later, they returned a not-guilty verdict. The courtroom exploded with excitement.

In its short tenure, the jurors had held three ballots for acquittal: 8–4, 10–5 and finally 12–0.

The second trial, regarding the juror Robert Bain, was tougher going for Darrow, but the result was the same. That 1913 trial ended with a hung jury.

Deliberations had extended to 40 hours, and the panel had decided 8–4 for conviction. Darrow was never retried.

Clarence Darrow died at 80 years of age on March 13, 1938. One of Darrow's former law partners, Judge William Holly, delivered the eulogy; as Darrow put it, "He knows everything about me, and has the sense not to tell it." An elegant touch, the eulogy had been written and given before by Darrow at the funeral of a close associate and mentor; Judge Holly had merely changed the names (*Id.* at 444-45). As Holly recited:

Clarence Darrow was a soldier in the everlasting struggle of the human race for liberty and justice on the earth. ... We may not know what justice is. ... But mercy is a quality that we can all recognize, and in his heart was infinite pity and mercy for the poor, the oppressed, the weak and erring—all races, all colors, all creeds and all humankind. 

#### endnotes

1. This article is based on GEOFFREY COWAN, *THE PEOPLE V. CLARENCE DARROW: THE BRIBERY TRIALS OF AMERICA'S GREATEST LAWYER* (1993). *See also* IRVING STONE, *CLARENCE DARROW FOR THE DEFENSE* (1941); CLARENCE DARROW, *ATTORNEY FOR THE DAMNED* (1957, Arthur Weinberg, Ed.). Books exonerating Darrow of the bribery charges discussed herein are Stone's book and Darrow's own autobiography, *THE STORY OF MY LIFE* (1932). The book by Cowan, an attorney and Darrow scholar, takes the position that Darrow may well have committed bribery and that his friends at the time were overwhelmingly of the view that he did it (7-8).
2. COWAN, *supra* note 1, at 5. Many may also remember the one man play by David Rintek, *Clarence Darrow*, starring Henry Fonda, which toured in the 1970s. Moreover, *All Too Human*, a one-man show, is still playing around the country and refers to the bribery trials.
3. *Id.* What appears here is from the trial transcript reported by COWAN at 416-422 in pertinent part.