

## AMERICA'S MOST FAMOUS LAWYER BUSTED IN LOS ANGELES

By John S. Caragozian

In 1910, Clarence Darrow was America's most famous lawyer, having represented clients from socialist presidential candidate Eugene Debs to newspaper mogul William Randolph Hearst. Darrow was a particular hero to labor. In 1907, for example, he had successfully defended militant unionist William Haywood after the bombing death of Idaho's former governor. Darrow also won better wages and conditions for unionized workers.

During the same time, Los Angeles was notoriously anti-labor. L.A.'s dominant Merchants and Manufacturers required its members to boycott businesses that recognized unions and strong-armed banks into denying credit to such businesses. The *Los Angeles Times*, under publisher Harrison Gray Otis, was capital's principal mouthpiece.

Los Angeles capital and labor—especially the International Association of Bridge and Structural Iron Workers—were at war with one another, with violence among their repertoires. See, e.g., John Farrell, "Clarence Darrow: Attorney for the Damned," 208 (2011).

At 1:00 a.m. on October 1, 1910, an explosion inside the *L.A. Times* building killed 20 employees and caused enormous property damage. The same night, bombs were planted at the homes of Otis and M&M's secretary, but neither bomb exploded.

The *L.A. Times* immediately blamed "unionist bombs," but unions denied any involvement, asserting that improperly stored flammable ink caused the explosion. The District Attorney's investigators included leading Los Angeles lawyer Earl Rogers and the nation's most famous private detective William Burns.

Both Rogers and Burns contributed to identifying two IABSIW operatives, James McNamara and Ortie McManigal. Largely disregarding legal formalities, Burns was able to arrest McNamara and McManigal. McManigal confessed and implicated McNamara's brother and IABSIW official J.J. McNamara as the bombing's mastermind. See, e.g., Michael Hannon, "Bribery Trials of Clarence Darrow (1912 and 1913)," 1, [https://librarycollections.law.umn.edu/documents/darrow/trialpdfs/Darrow\\_Bribery\\_trials.pdf](https://librarycollections.law.umn.edu/documents/darrow/trialpdfs/Darrow_Bribery_trials.pdf). J.J. was arrested in Indianapolis and—again, under questionable legalities—brought to L.A. By May 1911, both brothers were jailed in L.A. on first-degree murder charges.

Organized labor immediately proclaimed the McNamaras' innocence. American Federation of Labor founder and president Samuel Gompers raised a \$200,000 defense fund and engaged Darrow to defend the brothers for \$50,000. (Today, \$6.7 million and almost \$1.7 million, respectively.)

The local defense team included co-counsel Job Harriman (who was running for L.A. mayor on the Socialist ticket) and investigator Bert Franklin (who had been a detective for the Los Angeles County sheriff and the U.S. marshal). Darrow tried to recruit Rogers as another defense co-

counsel, but he (Rogers) declined due to the conflict of having previously investigated the bombing.

Despite the McNamaras' public and private declarations of innocence, Darrow concluded by mid-summer 1911 that they were guilty. The evidence against them was strong. A dilemma was that organized labor was paying for the defense, and Gompers and IABSIW leaders had staked their reputations on the McNamaras' innocence.

Another difficulty was the prosecution's and defense's no-holds-barred tactics. Each side, for example, had spies in the other's offices, so confidentiality was problematic. *E.g.*, Geoffrey Cowan, "The People v. Clarence Darrow," 150 (1993).

In the end, Darrow was left with two—or possibly three—options. The first was to build public support, such that a jury might acquit or, at least, hang, regardless of the evidence. The second was a plea that would spare James McNamara the death penalty and perhaps dismiss charges against J.J.

The possible third option, which is debated to this day, involved bribing jurors. What is undisputed is that, during the two months of jury selection, defense investigator Franklin attempted to bribe two jurors, Robert Bain and George Lockwood. On Oct. 6, 1911, Franklin paid seated juror Bain \$500 and promised an additional \$3,500 upon Bain's acquittal vote. (The \$4,000 total would be over \$130,000 today.)

The following month, Franklin also approached potential juror George Lockwood and told Lockwood that, if he were seated and voted to acquit, he would be paid \$4,000. The approach, however, angered Lockwood. He reported it to the District Attorney, who arranged surveillance. On Nov. 28, 1911, Franklin met Lockwood—who, by then, had been seated as a juror—on a downtown Los Angeles street corner and handed over \$500 in cash with a promise of an additional \$3,500. At the hand-over, police officers swooped in and arrested Franklin. At the same time, Darrow himself was rushing to the scene and waving, but Darrow, despite his immediate presence, was not arrested.

What was Darrow's role in Franklin's undisputed actions? That question was tried in 1912, but the immediate issue was McNamaras' plea negotiations. Those negotiations were already complex. Darrow was torn between saving the brothers from the death penalty and being loyal to union leaders who had paid to prove the McNamaras' innocence. Even the McNamaras themselves were divided: J.J. would plead to save his brother from death, but James would plead only if charges were dropped against J.J.

The District Attorney was willing to forego the death penalty, but insisted on a guilty plea and imprisonment of J.J. The M&M and its allies wanted to protect their long-term business interests by defeating socialist Harriman (who had placed first in the primary) at the Dec. 5, 1911 runoff, and a timely guilty plea would discredit Harriman. *See, e.g., id.* 223-25.

Finally, at around the time of Franklin's arrest—the exact date was disputed—Darrow agreed to James McNamara pleading guilty to the *Times* bombing and being sentenced to life imprisonment, J.J. pleading guilty to another bombing and being sentenced to ten years (later changed to fifteen years). On Nov. 30, the brothers discussed the deal, including with the jail chaplain, and assented. *See id.*, 246-50.

The McNamaras pled on Dec. 1. A firestorm followed. No one in organized labor, including AFL president Gompers, received any advance notice. Even defense co-counsel Harriman had no warning, and he lost the mayoral election in a landslide. Darrow was savaged for selling out the McNamaras and discrediting labor. Darrow responded that he had to save his clients from the death penalty.

Franklin's bribery arrest and Darrow's purported involvement in the bribery had weakened the defense. Darrow admitted it to his clients, and the trial judge was explicit: "[T]he bribery and attempted bribery of jurors were the efficient causes of the change of pleas ..." *Id.*, 246; W.W. Robinson, "Lawyers of Los Angeles," 137 (1959).

Franklin then pled guilty to attempted bribery and was fined, but was not imprisoned in exchange for testifying against Darrow.

In 1912, Darrow was tried for attempting to bribe juror Lockwood. Darrow was represented by Rogers. Darrow denied authorizing any bribery and further testified that (1) bribing Lockwood would have been futile, as Darrow had already agreed to the McNamaras' pleas, and (2) he went to the street corner only after receiving an anonymous telephone call to meet Franklin there.

The jury deliberated for 34 minutes before announcing a not guilty verdict. However, Darrow's victory was tempered by the District Attorney's same-day announcement that Darrow would be tried for bribing juror Bain.

At the second bribery trial, Darrow was unable to avail himself of the futility defense, because Bain had been bribed seven weeks before any plea agreement. Also, Rogers—who suffered from poor health and alcoholism—was largely absent from the second trial. Without Rogers, Darrow chose to justify the McNamaras' crimes as a centerpiece of his (Darrow's) bribery defense.

This jury hung, the final vote being 8-4 to convict. The District Attorney elected against a re-trial, and Darrow left California.

Gompers never forgave Darrow for the McNamaras' pleas. Still, Darrow's national fame only grew after 1912. Moreover, Darrow broadened his advocacy, opposing racial discrimination and capital punishment.

Did Clarence Darrow – "perhaps the greatest lawyer in American history" – attempt to bribe Los Angeles jurors? The foremost authority, Professor Geoffrey Cowan, answered yes, and Darrow

may have so confessed. *See id.*, xix, 434-35; Adela Rogers St. Johns, “Final Verdict,” 448 (1962). If so, did the era’s labor-capital war justify Darrow’s actions?

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