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McNamara Bombing Case (1911)

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Introduction

At 1:07 a.m. on October 1, 1910, a huge explosion rocked the building of the *Los Angeles Times* newspaper. The explosion caused a fire that destroyed the building and killed twenty people.[1] The nation was stunned by the crime which would be called the "Crime of the Century."

Suspicion quickly fell on organized labor. Los Angeles was the scene of a bitter struggle between labor and capital, and the *Los Angeles Times* was the most vocal critic of the unions. Soon several labor union members were arrested for the crime. Labor rank and file believed the union members accused of the crime were innocent, had been unjustly targeted, arrested and kidnapped when they were taken to Los Angeles to stand trial. Because of the similarities, labor viewed the *Los Angeles Times* bombing case as a repeat of the Haywood trial in 1907. The government's 1906 arrest and extradition across state lines of Big Bill Haywood and the other defendant's to stand trial for the assassination of Frank Steunenberg in Idaho was universally viewed by labor as a frame-up complete with illegal arrests and kidnapping. Labor also saw the same forces at work—ruthless and greedy capitalists using their wealth and colluding with the government prosecution to crush labor.

Just as it had in the Haywood trial, labor turned to Clarence Darrow to defend the accused men. Darrow's stunning defense of Haywood in which he and his co-counsel saved Haywood from the gallows made Darrow a legend to labor leaders and rank and file union members. But Darrow refused to get involved in the *Los Angeles Times* bombing case. He knew it would be a long drawn out battle against the superior resources of big business aligned with the state and he wanted no part of it. But labor, largely through Samuel Gompers, the leader of the American Federation of Labor, pleaded, cajoled and threatened Darrow until he reluctantly accepted. When he took the train west to Los Angeles, Darrow could not have known that he would come very close to ending his legal career in a California state prison.

General Harrison Gray Otis and the *Los Angeles Times*

[1] Some accounts say twenty-one people died.

General Harrison Gray Otis was the owner and publisher of the Los Angeles Times. Otis, originally from Marietta, Ohio, came from a family that instilled strong loyalty to patriotic causes. His grandfather served in the Revolutionary War, and his father was an ardent abolitionist who housed runaway slaves for the Underground Railroad. Otis served valiantly in the Union Army's Twelfth Ohio Voluntary Infantry during most of the Civil War. He was called "General" because of his Civil War service and because he preferred fighting to discussion.

When he was younger, Otis was not anti-union and had even been a member of the International Typographical Union. But after Otis took over the *Los Angeles Times*, he went through a series of labor struggles with the International Typographical Union until the union finally went on strike. In response, Otis brought in strikebreakers from Kansas City to get the *Los Angeles Times* published. Over time, Otis had become a sworn enemy of labor and he relished the role. After the struggle with the union, Otis "vowed never again to hire a union member" and the *Los Angeles Times* used colorful language in paper to describe union and union members—"rowdies," "bullies," "gas-pipe ruffians," "brutes," "roughnecks," "anarchists," "pinheads," "blatherskites," and "skunks."[2] Over time, Otis and the *Los Angeles Times* became increasingly well-known as tough opponents of organized labor.

Merchants and Manufactures Association (MMA)

Otis was a key player in forming the Merchants and Manufactures Association (MMA), a powerful organization whose members represented 85 percent of the businesses in Los Angeles.[3] They were staunchly anti-union and they had the power to dictate that businesses in Los Angeles not employ union workers. Businesses that defied this edict would be put out of business by boycott or "financial coercion" such as having their bank credit cut-off.[4] This capital versus labor battle would grow until "*Los Angeles Times* had been picked for destruction . . . because Harrison Gray Otis, its publisher, was, in the minds of the McNamara brothers and their associates, the arch-villain in the battle against labor unionism in Los Angeles and California."[5]

Labor in San Francisco

To understand how the labor troubles in Los Angeles led to the *Los Angeles Times* bombing, it is necessary to understand the labor situation in San Francisco. During this time period, Los Angeles and San Francisco could not be more different in terms of union and business relations. Although in 1901, San Francisco was the scene of a struggle in which the San Francisco Employers Association was close to crushing organized labor, labor overcame this threat and so effectively captured the political system that their party

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[2] W.W. ROBINSON, BOMBS AND BRIBERY: THE STORY OF THE MCNAMARA AND DARROW TRIALS FOLLOWING THE DYNAMITING IN 1910 OF THE LOS ANGELES TIMES BUILDING 5 (1969) [hereinafter BOMBS AND BRIBERY].
[3] GEOFFREY COWAN, THE PEOPLE V. CLARENCE DARROW: THE BRIBERY TRIAL OF AMERICA'S GREATEST LAWYER 75 (1993) [hereinafter PEOPLE V. CLARENCE DARROW].
[4] *Id.* at 75.
[5] BOMBS AND BRIBERY, *supra* note 2, at 3.

won the mayoral election, gained control of the city purse strings and the police department.[6] Upon gaining the upper hand, the unions won important concessions and the Employers Association was disbanded. So thoroughly had labor triumphed that it could be said:

> Unquestionably, San Francisco workers established the strongest labor movement in any American city during the early twentieth century. Teamsters, carpenters, iron molders, waitresses, seamen, and longshoremen, among others, benefited from the high wages and fixed hours that a virtual closed shop in their trades made possible. Moreover, economic power at the workplace translated into considerable political power. The Union Labor candidate for mayor was elected in 1901, 1903, and 1905. In the 1905 election, all eighteen members elected to the board of supervisors were Union Labor party nominees. In 1909, despite the exposure of corrupt practices on the part of two of its leaders, the Union Labor party elected its candidate mayor and obtained a majority on the board of supervisors.[7]

In sharp contrast, Los Angeles was predisposed to be pro-business and anti-union. In addition to the powerful influence of Otis and the MMA, Los Angeles had a different political base than San Francisco. Los Angeles had a large number of Midwest transplants—retirees with conservative political views—which prevented labor unions from taking control of the city government as they were able to do in San Francisco.[8] The sharp contrast between these two major California cities is demonstrated by the fact that after 1901, San Francisco became "the first and only closed shop-city in America, where only union members were allowed to work."[9] While to the south, Otis and the MMA were so powerful and successful in their anti-union efforts that Los Angeles became known as "Otistown of the Open Shop."[10] An open shop is a place of employment that does not require employees to join or financially support a labor union as a condition of being hired or to continue being employed. In a closed shop the employer agrees to only hire union members, and employees have to stay in the union to remain employed.

But labor's success in San Francisco, which resulted in higher wages and shorter work days, was economically unsustainable for northern employers whose cost of doing business was now so much higher than employers in Los Angeles and other non-union areas. This economic fact was especially acute in the metal trades. San Francisco employers demanded that one of two things had to change: either workers' wages must go down and their work hours increased or they would have to turn Los Angeles into a pro-union town.[11] This was not an idle threat because the contracts of the San Francisco

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[6] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 75–76.
[7] Michael Kazin, Reform, Utopia, and Racism: The Politics of California Craftsmen, in WORKING PEOPLE OF CALIFORNIA 311–12 (DANIEL CORNFORD ED., 1995).
[8] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 75.
[9] *Id*. at 76.
[10] *Id.*
[11] *Id.*

Metal Trades Council and the California Metal Trades Association, which limited the work day to eight hours, were set to expire and would not be renewed unless things changed.[12]

Forewarned, San Francisco labor unions mobilized to help organize their brothers in Los Angeles. San Francisco labor backed a letter sent by the Los Angeles Metal Trades Council to Los Angeles employers that demanded a minimum wage of four dollars a day and an eight hour work day. The demand was backed up with the threat of strike. A week later, the *Los Angeles Times* responded that the employers had tossed the demand letter in the trash. This prompted the Los Angeles metal trade union workers to go on strike on June 1, 1910 as promised. Interestingly, this is similar to the Oshkosh Woodworker's strike in 1898 where Darrow defended a union leader accused of conspiracy following a strike. In that case, a labor union had sent a demand letter to the main business antagonist who had responded by throwing the letter in the trash, thus helping to set a strike into motion.

International Association of Bridge and Structural Iron Workers

Another important factor leading to the *Los Angeles Times* bombing was the activities of the International Association of Bridge and Structural Iron Workers (IABSIW). The IABSIW was created at a convention in Pittsburgh on February 4, 1896.[13] Five union locals from New York, Buffalo, Boston, Pittsburg and Chicago participated in the convention. The IABSIW came into being at the beginning of the industrial use of structural steel for buildings. While a few buildings were made with steel in the late 1880s and early 1900s, it was an industry still in its infancy and the "erection of structural steel was at that time just forming the position of a distinct trade."[14] Steel made skyscrapers possible and, at this time, before the widespread use of reinforced concrete, steel was required if a building was going to be more than four stories high.[15] This was due to the fact that masonry was simply too heavy to be used for taller buildings. This is demonstrated by the seventeen-story Monadnock Building in Chicago's downtown Loop district, which was so heavy that it sank into the ground after it was built in 1891, requiring steps to be installed at the entrances. The ten-story Home Insurance Building in Chicago built in 1895 was the first tall building to be supported by a metal infrastructure of vertical columns and horizontal beams.

The early workers in this industry were actually "bridge carpenters" who were skilled at using wood to make buildings but who adapted to the use of steel when it began to replace wood for erecting buildings and thus became "bridgemen."[16]

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[12] *Id.*
[13] LUKE GRANT, NATIONAL ERECTORS' ASSOCIATION AND THE INTERNATIONAL ASSOCIATION OF BRIDGE AND STRUCTURAL IRON WORKERS 5 (1971) [hereinafter NATIONAL ERECTORS AND IRON WORKERS].
[14] *Id.*
[15] SIDNEY FINE, "WITHOUT BLARE OF TRUMPETS": WALTER DREW, THE NATIONAL ERECTORS' ASSOCIATION, AND THE OPEN SHOP MOVEMENT, 1903-57, 12 (1995) [hereinafter WITHOUT BLARE OF TRUMPETS].
[16] *Id.*

Ironworkers in the early unions received much lower wages than other skilled workmen in the building trades and this was likely because their work required less skill than these other trades.[17] Early structural ironworkers were also not recognized as skilled workers by other building trades and it took years before they gained respect as skilled tradesmen. It also took years of struggle before they received pay commensurate with the dangers they faced on the job.[18] The difference in skill required is demonstrated by the length of the apprenticeships found in agreements and contracts of this time, with the period of time ranging from six months to a maximum of eighteen months for ironworkers. In contrast, most of the other skilled building trades required three to five years of apprenticeship.[19] As a union trade organizer put it in 1914, the trade takes "probably three to four months to learn how to heat and drive rivets" and after that the main learning goal was "'to become accustomed to going up high and not falling off.'"[20]

That the IABSIW became very militant may be partially explained by the makeup of its union workforce. The work was so dangerous that "only men endowed with physical strength and daring take up the work. Facing danger daily develops in the ironworker a sort of desperate recklessness, that the workman in a less hazardous occupation does not understand."[21] Besides the dangers, the work was also not conducive to a tranquil home life. A large part of the work consisted of bridge building, which required a considerable amount of travel because railroad bridges often had to be built far away from towns and cities. Because of these factors, "[t]he calling is one that hardly attracts the home-loving married man. As a result, the trade develops a class of roving and irresponsible workmen, more noted for strength and physical courage than for trained skill and intelligence."[22]

When large companies entered into the new business of erecting buildings, the ironworkers also traveled to various cities to work. They lived a nomadic and dangerous life without the stability that other tradesmen had. As building erection became more common, more ironworkers could remain in the same city but bridge builders continued to travel. In general, the structural ironworker trade was characterized by "the comparatively small degree of skill required, the extremely hazardous nature of the employment, and the shifting character of the work, which necessitates being 'on the road' much of the time."[23]

National Erectors' Association (NEA)

The major firms in the steel erection industry formed an association known as the National Association of Manufactures and Erectors of Structural Steel and Iron Work (NAM) in March 1903 in New York City. The association was formed mainly to deal with the IABSIW about wages and hours of the ironworkers.[24]

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[17] *Id.*
[18] *Id.* at 6.
[19] *Id.* at 6–7.
[20] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 12.
[21] *Id.* at 8.
[22] NATIONAL ERECTORS AND IRON WORKERS, *supra* note 13, at 8.
[23] *Id.* at 6.
[24] *Id.* at 11.

Soon after the NAM was formed, it entered into a national agreement with the IABSIW that established uniform hours of work and working conditions, but leaving the wage scale up to each locality since local conditions would differ. This national agreement was not renewed after it expired on January 1, 1905 and future agreements were worked out locally. The NAM initially had "amicable relations" with the IABSIW until August 1905, when the union went on strike against the largest firm in the industry, the American Bridge Company, a subsidiary of United States Steel Corporation.[25] At the time, American Bridge was "by far the largest and most influential member of the Erectors' Association."[26]

The strike was called because American Bridge sublet a steel erection contract to Boston Bridge Works that employed nonunion labor.[27] Soon after the strike began, American Bridge made an offer that substantially met the union's demands—it agreed to employ union workers for all steel erection work even if by sub-contract and to pay the agreed upon wage rate.[28] But the union at its Philadelphia convention added the new demand that American Bridge force the National Tube Company to employ union iron workers in erecting a tube mill at McKeesport, Pennsylvania.[29] But American Bridge had no control over National Tube Company and the union leaders were told they would have to discuss that issue with U.S. Steel. At the convention, the union delegates were inflexible in their demands and directed the union's officers not to settle unless all their demands were met.[30] The union later realized this was a mistake, but by then, American Bridge refused to compromise anymore:

> The union had erred and there was no pardon for it. The company had opened its doors once and invited the union to step in, provided it did not go too far. When it refused the doors were forever barred. It was then that the union, to use a metaphor, tried to blow the doors open with dynamite. They are still closed and barred.[31]

The iron workers' main trade was the erection of steel buildings and bridges, but steel erection was not the NAM's primary reason for resisting the union. The NAM was actually much more protective of steel production in their fabricating operations than they were concerned about steel erection.[32] The union made numerous attempts to establish jurisdiction over the steel fabrication work and unionize that workforce. These efforts pushed the NAM to vigorously resist expansion of the IABSIW. This fear of union expansion into steel production explains the stalemate over the construction of the tube mill at McKeesport.

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[25] Sidney Fine, The National Erectors' Association and the Dynamiters, 32 Labor History 6 (1991) [hereinafter *National Erectors' and Dynamiters*].
[26] NATIONAL ERECTORS AND IRON WORKERS, *supra* note 13, at 13.
[27] *National Erectors' and Dynamiters*, *supra* note 25, at 6.
[28] NATIONAL ERECTORS AND IRON WORKERS, *supra* note 13, at 140.
[29] *Id.* at 140–41.
[30] *Id.* at 141.
[31] *Id.*
[32] *Id.* at 144.

Open Shops Versus Closed Shops

By the end of 1906, the strike had spread until it affected other firms in the steel erector association. This prompted steel erector firms to reorganize into the National Erectors' Association (NEA) and they adopted as part of their constitution support for "the institution and maintenance of the Open Shop principle in the employment of labor," a position supported by other employer associations during this time.[33] The Open Shop versus the Closed Shop was a very contentious labor issue. Basically, the open shop principle meant that companies could employ workers regardless of their union status, which of course meant they could employee non-union workers. Labor fought for closed shops under which employers could only hire union workers and workers had to remain in the union while employed. Open shop proponents argued that companies have the right to hire who they wanted and employees had the right to join or not join a union. Labor argued that the closed shop was the only way labor could have influence over employers who violated worker rights in regard to pay, the length of the workday, working conditions and safety. Starting in 1906, NEA membership was open only to firms that pledged fidelity to the open shop principle.

The NEA's stance against unionization left the IABSIW as the only union with any power in the steel industry. Never a large union, it had a membership of 10,000 during 1905-06 and 12,222 during 1912–13.[34] The face of the NEA was Walter Drew, its commissioner from 1906 to 1957, and an ardent supporter of the open shop:

> What has been insufficiently understood is that Drew was not just a defender of the open shop in the structural steel erection industry but that he also played a major role in seeking to spread the open shop in various communities to the building trades as a whole and, beyond that, to other unionized sectors of the economy as well. Until the New Deal changed the rules of the game in labor-management relations, there was no more influential protagonist of the open shop in the nation than Walter Drew.[35]

To fight against the open shop, the union sometimes resorted to violence such as paying members to assault foremen and iron workers of firms that did not support union shops. In New York for example, an "Entertainment Committee" whose members earned $5 per day had a "standing price" of $150 for assaulting a foreman and putting him in the hospital.[36] In the beginning of the open shop battle, the assaults on non-union workers were "numerous and vicious. About one hundred such assaults were recorded and three deaths of watchmen are traced to those attacks."[37]

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[33] *National Erectors' and Dynamiters*, *supra* note 25, at 6.
[34] *Id.*
[35] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at vii–viii.
[36] *National Erectors' and Dynamiters*, *supra* note 25.
[37] NATIONAL ERECTORS AND IRON WORKERS, *supra* note 13, at 130–31.

The NEA's actions in subcontracting work out to non-union companies and undercutting the IABSIW workers were especially egregious to the bridge and structural iron workers because their work was so dangerous—requiring them to work on scaffolds and building roofs without safety nets or other safety measures that are now required. The work was so dangerous that each year at least one hundred iron workers were killed—an attrition rate of one in every hundred workers.[38] Despite these dangers they only earned about $2.50 per day.

Dynamite

The IABSIW tried negotiations but when this failed, they "found an effective alternative: dynamite."[39] The union escalated to the dynamiting of non-union steel erection work sites in the summer of 1905. Between 1908 and 1911, a few men from the union planted dynamite at seventy work sites of companies that refused to allow the iron workers to organize the work force. Importantly, despite the sabotage, no one was killed in any of the explosions and the average property damage was about $1,000 per incident.[40] The lack of any fatalities was intentional. The union's goal was to force companies to only do business with companies that employed union labor or in the alternative, raise their cost of doing business by making them implement costly security on job sites.[41] The sabotage worked against small firms but large firms such as American Bridge were not intimidated enough to give in because they had the resources to resist the threat. To help protect their members' work sites, the NEA took action including creating a "Committee on Dynamiting."[42]

Even though the NEA and some of its members had the resources to mitigate some of the effects of the sabotage, the IABSIW's desperate and violent tactics worked so well that the iron workers rapidly changed from one of the lowest paid building trades to one of the highest.[43] These gains were made despite the destruction of most other unions by the United States Steel Corporation.

McNamara Brothers

The labor troubles in California were going on in the context of this "bitter conflict between the National Erectors' Association (NEA) and the International Association of Bridge and Structural Iron Workers (IABSIW) that began in 1905."[44] After the Los Angeles strike by the metal trade union workers began in June 1910, Eugene Clancy, the leader of the Structural Iron Workers' Union in San Francisco, sent news of the strike to John J. "J.J." McNamara, the union's secretary-treasure in Indianapolis, Indiana, and requested he send one of their top people to help the cause.[45]

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[38] *Id.* at 77.
[39] *Id.* at 78.
[40] *Id.*
[41] *National Erectors' and Dynamiters*, *supra* note 25, at 7.
[42] *Id.* at 7.
[43] *Id.*
[44] *Id.* at 5.
[45] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 77.

J.J. McNamara was the union's leader during this power struggle. But the actual work of sabotaging and blowing up work sites was done by his younger brother Jim "J.B." McNamara and an individual named Ortie McManigal at J.J.'s direction.[46] Of the two brothers, J.J. was by far the most accomplished and charismatic. He had risked his life as an iron worker and worked his way up the union hierarchy until he was elected secretary-treasurer when he was just twenty-eight years old. Thereafter, he pursued education through night school, taking classes and eventually earning a law degree from the Indiana School of Law.[47] J.J. McNamara was also devoutly Catholic. Jim McNamara was nearly everything his older brother was not: he smoked, drank, did not attend church and caroused with other men's' wives and prostitutes."[48] Jim's personality also resulted in his getting fired from most of his jobs.

J.J. McNamara eventually put Jim under the tutelage of Herbert Hockin, who would later succeed J.J. McNamara as secretary-treasurer of the union. Hockin taught the younger McNamara his knowledge about explosives and sabotage, such as how to transport and work with dynamite and nitroglycerine, knowledge of fuses and detonators, how to light a fuse with a cigar but leave enough time to establish an alibi before the explosion by ducking into a saloon or running into a railroad conductor.[49] After a year of such training, Jim was ready to use sabotage to further the union's goals. After learning of the Los Angeles strike, J.J. McNamara sent Jim to California to aid the strike efforts with his dynamiting skills.

Anti-picketing Ordinance

While they were on strike in Los Angeles, the iron workers were supported by a $7 per week stipend and low-cost groceries by the Building Trades Union. The strike aroused the anger of Otis and the MMA. The MMA instructed their general counsel, Earl Rogers, to draft a municipal ordinance that outlawed picketing to prevent violence. Wheaton Gray, another MMA attorney worked with Rogers on the anti-picketing ordinance. The Los Angeles City Council unanimously passed the ordinance on July 16, 1910.[50] The first section of the ordinance prohibited loud or unusual noises or outcries "for the purpose of" inducing or coercing anyone not to buy from or work for any place of business. The second section declared it illegal "to loiter in front of, or in the vicinity of, or to carry, show or display any banner, transparency or sign in front of, or in the vicinity of any works or factory, or any place of business or employment." Despite a citizens' petition against the ordinance, it was adopted unanimously by the Los Angeles city council.

Earl Rogers was one of the most famous criminal defense attorneys in the West and even the entire country. He was approaching legendary status in California because of his ability to save criminal defendants from seemingly open and shut prosecution cases.

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[46] *Id* at 78.
[47] *Id.*
[48] *Id.* at 79.
[49] *Id.*
[50] No. 20,586 N.s.

Rogers would play a crucial role during the upcoming events. Rogers would help lead the initial investigation of the *Los Angeles Times* building and gather the first important pieces of evidence. He would later defend Clarence Darrow against bribery charges in two trials that he would face in 1912 and 1913. Wheaton Gray would later serve as the special prosecutor in Clarence Darrow's second bribery trial.

The striking workers voted to defy the ordinance even if it meant jail time. When the police did arrest striking workers, the stakes were raised. The ordinance was challenged in November in the Supreme Court of California. Despite some misgivings, the court upheld the ordinance. In a short opinion concurring in the denial of a petition for a writ of habeas corpus the judge wrote:

> As to the provision concerning "picketing" for the purpose of intimidation, threatening, etc., I have no doubt that it is a valid exercise of the powers of the local legislature. As to the provisions relating to "loitering" I have very serious doubts. They are so vaguely comprehensive that a person stopping on the street anywhere in the vicinity of a place of business for the purpose of dissuading an employee from continuing in his employment might be convicted of a misdemeanor. I therefore concur in the order denying the writ only upon the ground that the charge of picketing for the purpose of intimidation, etc., gives the police court jurisdiction to try the charge.[51]

During this time, Jim McNamara went to work in the West doing what he was trained to do and set off explosions in Oakland, California and Seattle, Washington. He was then instructed to bring his work to Los Angeles, which was known as the "scabbiest city" in America by union workers.[52] Working with others, Jim was able to secure explosives and bring them to Los Angeles and after checking into a hotel under an alias began to construct three time bombs. The bombs were made from a ten-quart can of nitroglycerin with a clock and battery attached.[53] The bombs would be used to strike a blow against the MMA, Otis and his Los Angeles Times, which was considered the most anti-union paper in the country. During the planning for dynamiting the Los Angeles Times, Jim McNamara was helped by Matthew Schmidt, a radical labor organizer and David Caplan, a San Francisco anarchist.

Otis and the *Los Angeles Times* Targeted

On the evening of September 30, 1910, Jim McNamara placed sixteen sticks of 80 percent dynamite hidden in a suitcase in an alleyway behind the *Los Angeles Times* building known as "Ink Alley." The dynamite was to be triggered by a timer set to 1:00 a.m., but McNamara unknowingly placed the bomb just a few feet from barrels of printer's ink. Printer's ink contains a large quantity of petroleum and is highly flammable. Although Otis would not need additional proof that he was specifically targeted, Jim McNamara later placed time bombs at General Otis's home on Wilshire

[51] Ex parte Williams, 158 Cal. 550, 111 P. 1035 (1910).
[52] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 86.
[53] *Id.*

Boulevard and at the home of the MMA's secretary, Felix Zeehandelaar.[54] Jim McNamara then headed back to San Francisco by train to establish an alibi. When the bomb in Ink Alley exploded at 1:00 a.m., it touched off the biggest fire the city of Los Angeles had ever seen and killed twenty men at the Los Angeles Times. The bomb at Otis's home did not explode until after it was found and carried away by a policeman, but no one was killed. The bomb set at Zeehandelaar's home never exploded and yielded important clues for investigators.

When Jim McNamara learned of the enormity of his crime, he became very frightened, despondent and eventually suicidal. J.J. McNamara was seriously worried that his brother would commit suicide. Jim traveled to several states under aliases and eventually Ortie McManigal, another union member who worked for J.J. setting off explosives, took Jim to Wisconsin on a hunting trip. J.J. wanted McManigal to keep Jim there throughout the hunting season.[55]

Despite the enormous loss of life, this was war and the Iron Workers union was not about to swear off their dynamite campaign. In December, McManigal and Jim McNamara went to Indianapolis to meet with J.J. The union had decided they needed to send a "Christmas present" to anti-labor forces so McManigal was sent to Los Angeles to plant bombs at the Llewellyn Iron Works and Baker Iron Works and at an auxiliary plant of the Los Angeles Times.[56] With Jim McNamara's help, McManigal obtained the explosives and went to Los Angeles. He set off an explosion at the Llewellyn Iron Works that caused $25,000 worth of damage and injured a security guard. He did not sabotage the Baker Iron Works or the *Los Angeles Times* because he found Los Angeles too dangerous.[57]

Jim McNamara had recovered from his despondency over the twenty deaths he caused in the *Los Angeles Times* bombing so well that during the early months of 1911 he and McManigal planted numerous bombs in the East and Midwest. Rather than backing down after the *Los Angeles Times* bombing, in just the month of March, the union bombers set explosives in Illinois, Wisconsin, Indiana, Nebraska.[58]

Investigation

While the *Los Angeles Times* building was still burning, city officials began planning a massive manhunt to catch the perpetrators. By coincidence, William J. Burns, the most famous and to some the most notorious detective in the United States was en-route to Los Angeles to give a speech at a convention when the bombing took place. As soon as he got to Los Angeles, Mayor Alexander hired Burns to find the perpetrators. Burns agreed to take the case on the condition that he would not have to report to anyone including the mayor until he was finished.

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[54] *Id.* at 87.
[55] *Id.* at 92–93.
[56] *Id.* at 93–94.
[57] *Id.* at 94.
[58] *Id.*

Hiring Burns proved very controversial because he had been involved in a huge graft and corruption investigation in San Francisco, which pitted anti-union forces supported by Otis against labor forces. Earl Rogers was hired to defend one of the most important defendants in the graft investigation. The animosity created by the San Francisco investigation was still present when the *Los Angeles Times* was bombed. Because of the negative fallout generated by the graft cases, Otis and the MMA denounced the hiring of Burns. They decided to hire their own investigator and they chose Earl Rogers. This was initially resisted by Burns but he and Rogers agreed to bury the hatchet and cooperate in the investigation.

The intact bomb found at the home of the MMA's secretary, Felix Zeehandelaar, turned out to be a crucial clue in the investigation. It was determined to be 80 percent dynamite which is unusual and almost always made to order. Investigators soon discovered that three men had previously purchased 1,000 pounds of 80 percent dynamite from the Giant Powder Works in San Francisco. The three men gave their names as Leonard, Capp, and J.B. Brice. Detectives soon learned that Leonard was Matthew Schmidt, Capp was David Caplan and Brice was J.B. McNamara.

J.J. McNamara and Ortie McManigal

J.B. McNamara, identified as one of the buyers of the dynamite in San Francisco, was the brother of J.J. McNamara, the secretary of International Association of Bridge and Structural Iron Workers (IABSIW). Prior to the *Los Angeles Times* bombing, Burns already suspected J.J. McNamara and the Structural Iron Workers were involved because his agency had been investigating similar sabotage set off with time bombs at another building.

Burns worked behind the scenes until a series of dramatic successes became public in April 1911. Jim McNamara and Ortie McManigal were arrested on April 11, 1911 in Detroit and they were caught with a suitcase full of explosives that was to be used on a target in Michigan. Jim McNamara and McManigal were taken to the home of a Chicago police officer and held for a time in secret.

Ortie McManigal Confesses

Burns had instructed his agents not to discuss the case with McNamara or McManigal until he was present. When Burns met with McManigal he explained that under the conspiracy laws he was equally guilty of the *Los Angeles Times* bombing even though he was not present when J.J. McNamara planted the dynamite. McManigal was very worried about the fate of his wife and children. On April 13 and 14 Burns got McManigal to give a full confession to all that he knew about the *Los Angeles Times* bombing. The investigation into the *Los Angeles Times* bombing was essentially solved with this confession. But McManigal's confession was not limited to the *Los Angeles Times* bombing. He gave a full confession to his knowledge and participation in a dynamiting campaign waged across the country by the IABSIW that was:

> so fantastic that he was at first regarded as a highly accomplished liar. Without referring to any notes, the prisoner gave the prosecution an astounding memory demonstration, reciting scores of dynamite outrages he had committed in behalf of the union. He told of his movements chronologically, giving dates and places and incidents in connection with the destruction of steel work in process of erection. Upon investigation the story checked up in every detail as to time and place of the explosions.[59]

Specifically, McManigal confessed that he and Jim McNamara had planted dynamite at dozens of open-shop worksites at the direction of J.J. McNamara. McManigal took credit for the sabotage at the Llewellyn Iron Works in Los Angeles and accused Jim McNamara, working under the alias James Brice, along with two anarchists named Caplan and Schmidt, for bombing the Los Angeles Times. Burns had the confession typed up by his stenographer and had it notarized and signed and sworn to by McManigal. Burns kept the confession secret for ten days and used it to convince the authorities in California, Illinois and Indiana to grant extradition so he could bring the McNamara brothers and McManigal to Los Angeles.

McManigal learned how to use dynamite by working in stone quarries for seven years.[60] It was this knowledge of dynamite that led Herbert Hockin to exercise persuasive influence over McManigal. Hockin approached McManigal and demanded that McManigal use his dynamite skills to sabotage job sites of anti-union companies. McManigal was threatened with the loss of employment if he did not comply. McManigal described Hockin as the international organizer of the IABSIW.

Later Darrow would send investigators around the country trying to find loopholes in McManigal's confession, but without success. Ortie McManigal's position as a co-conspirator, confessor, defendant, and then prosecution witness was very similar to Harry Orchard in the 1907 Haywood trial.

Schmidt and Caplan were indicted in 1911 along with the McNamara brothers. Earl Rogers presented the evidence to the grand jury, which resulted in the indictments. But Schmidt and Caplan evaded arrest until 1915. Burns could find no trace of Schmidt until some I.W.W. members were killed by their own bomb in 1915. Burns' detectives discovered that the bomb was made of the same material and was similar in construction to the one used in Los Angeles by Jim McNamara. Schmidt was arrested on February 13, 1915 by Burns and a police captain in Los Angeles. Caplan was arrested five days later. Schmidt was convicted on December 30, 1915 and on January 12, 1916 he was sentenced to life in prison. Caplan's trial began in April 1916 but ended in a hung jury. He was retried and convicted of second degree manslaughter in December 1916 and was sentenced to ten years in prison.

Infernal Machine

[59] ALFRED COHN & JOE CHISHOLM, TAKE THE WITNESS 197 (1934).
[60] Ortie McManigal, The National Dynamite Plot 9 (1913).

In his written and published confession, McManigal describes the "infernal machine" that came to be the weapon of choice in the bombings. Hockin came to McManigal for another sabotage job and described:

> the invention by one of the union men of a clockwork device by which an explosion could be set at any hour to take place at any time within twelve hours. This . . . gave the man ample time to get hundreds of miles away from the scene before the explosion occurred. This was the celebrated clock machine which J.B. McNamara used in destroying the *Los Angeles Times* building and killing twenty men working there. Both J.B. and I used these machines exclusively after their invention.
>
> The clock used was a small Tattoo alarm, from which the alarm clapper and the silencer was removed. To the winding key of the alarm was soldered a small L-shaped piece of brass. The clock was attached to a light board or cardboard. To this board was also affixed a dry battery. To one battery post was connected a wire to the other of which was soldered a small piece of brass and this was also attached to the board in such a manner that when the alarm key unwound as the alarm went off, the brass soldered to the key came in contact with the brass fixed to the wire, thus making a circuit. The other post of the battery was occupied by a wire from the fulminating cap. The other cap wire was wound around the ring of the clock.[61]

McManigal identifies J.B. McNamara as the inventor of the infernal machine.[62] To complete the device Hockin had acquired nitro-glycerin which he referred to as "soup."[63] The biggest advantage of using an infernal machine was that it allowed the perpetrator to be far from the site of the explosion and thus, beyond suspicion; however, it also had the advantage that "not a vestige of the infernal machine remained after our explosions. Not so much as a clock wheel or a piece of wire was ever found when the explosion was successful."[64]

Sometime after McManigal was partnered with J.B. McNamara, he learned that Hockin had been withholding money due him by not paying him the full amount allotted by the union. By the time he discovered this, he figured that Hockin had stolen $525.[65]

J.J. McNamara and IABSIW Headquarters in Indianapolis

J.J. McNamara was arrested on April 22 in Indianapolis when detectives interrupted a meeting of the IABSIW's executive board in the union's office in the American Central

[61] *Id.* at 38–39.
[62] *Id.* at 42.
[63] *Id.* at 39.
[64] *Id.* at 43.
[65] *Id.* at 49.

Life Building. J.J. McNamara was taken to a police station where Burns was waiting. At the police station, McNamara was arraigned by a police court judge. The judge had been given extradition papers by Los Angeles deputy district attorney Joseph Ford that were signed by the governors of California and Indiana requesting that McNamara be sent to California to stand trial for the murders caused by the *Los Angeles Times* bombing.[66] Ford would later help prosecute Clarence Darrow for bribery. The judge quickly agreed to McNamara's extradition despite his protests and he was taken away by detectives from Los Angeles and Chicago. The extradition of J.J. McNamara was primarily based on murder charges but when he got to Los Angeles, he was indicted instead as a coconspirator for the bombing of the Llewellyn Iron Works.[67]

Besides the actual explosions that were setoff, the bombing campaign endangered innocent people in another way. The saboteurs repeatedly "carried suitcases filled with cans of nitroglycerine on passenger trains (and even street cars)" and during one of his jobs in Los Angeles, McManigal "carried two such explosive-filled cases from Chicago on the Los Angeles Limited train."[68]

Union Claims J.J. McNamara Kidnapped

Union leaders in the IABSIW and AFL proclaimed that J.J. McNamara had been kidnapped just as Haywood, Moyer and Pettibone had been kidnapped in 1906 after the assassination of the former governor of Idaho. Indiana state law required that the individual subject to extradition have been in the requesting state during the time that the crime occurred but J.J. McNamara was not in California during the bombings.[69] California's extradition law required that the fugitive be under arrest in the other state. But the extradition request from the Los Angeles County district attorney to the California governor was based on a false statement by wire on April 15 from Burns that McNamara was under arrest in Indiana but he was not arrested until April 22.[70] This was done to get J.J. McNamara out of Indiana as quickly as possible to prevent a union attorney from filing habeas corpus. Numerous participants of the scheme to get J.J. McNamara out of Indiana and into California were soon arrested on kidnapping charges. Those arrested included Walter Drew, Joseph Ford, William Burns, A.G. Badorf, James Hossick and Frank Fox, the driver of the car that whisked McNamara out of state.

A grand jury refused to indict most of those arrested. Burns and Hossick were indicted but the charges were later dismissed. Congressman Victor Berger demanded a congressional investigation into the alleged kidnapping of McNamara but the House Rules committee rejected the demand. Later, because of his opposition to World War I, Berger was indicted and convicted for violating the Espionage Act in February 1918. While under indictment, he was elected by Wisconsin voters to the House of

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[66] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 102.
[67] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 107–08.
[68] Oscar Lawler, The Bombing of the Los Angeles Times: A Personal Reminiscence, 6 Claremont Quarterly 25, 26–27 (1959) [hereinafter *Lawler, Personal Reminiscence]*.
[69] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 108.
[70] *Id.*

Representatives, but Congress held special hearings and denied him his seat. Wisconsin held a special election and Berger was elected again by Wisconsin voters but Congress again declared the seat vacant. His conviction was later overturned by the United States Supreme Court. Clarence Darrow testified on Berger's behalf during special hearings held in 1919 "Concerning the Right of Victor L. Berger to be Sworn in as a Member of the Sixty-Sixty Congress."

In a book he later wrote about the investigation of the *Los Angeles Times* bombing, Burns describes his plan for getting the suspects out of Indiana: "I devised a plan for bringing this about, and laid out such a devious journey from Indianapolis and Chicago to the Coast that I felt sure the foxiest of lawyers would not be able to catch up with us."[71] Burns' "devious journey" with his prisoners is very similar to the journey the prosecution used before the Haywood trial to keep Darrow and the defense team from trying to obtain habeas corpus relief for Steve Adams, one of the most important potential defense witnesses in that case.

The union headquarters were searched not only by police detectives but also by Burns and Walter Drew, the NEA's commissioner, who had been trying to destroy the union for years. The presence of Burns and Drew greatly angered the union. The investigators searched the basement of the American Central Life Building and broke open a vault that contained about two hundred pounds of dynamite, fuses, and most significantly, numerous small alarm clocks very similar to the clock found on the un-detonated bomb Jim McNamara planted in Los Angeles. Burns, Drew and a group of detectives also went to a barn outside of town that, according to McManigal, McNamara had used to store explosives. J.J. McNamara had told the barn's owner he needed the barn to store union paperwork. In the barn they found two quarts of nitroglycerin and seventeen sticks of dynamite.[72] McManigal's confession also led the detectives to Tiffin, Ohio where they searched a shed belonging to McManigal's father and recovered 541 one-pound sticks of dynamite.[73]

Indianapolis was an interesting location for a labor versus capital battle during this time period. It was a "stronghold of organized labor" with nine international unions headquartered in the city.[74] But in 1904 an employers' association was formed that was one of the most effective open shop organizations in the whole country.[75]

Olaf Tvietmoe

Olaf Tvietmoe, secretary-treasurer of the Building Trades Union in California, was a significant figure in the events leading up to the Los Angeles Bombing and the subsequent legal proceedings. Based in San Francisco, Tvietmoe was probably the most powerful labor leader on the West coast. He was also the leader of the popular Asiatic

[71] WILLIAM J. BURNS, THE MASKED WAR 148 (1913).
[72] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 110.
[73] *Id.*
[74] *Id.* at 113.
[75] *Id.*

Exclusion League, a racist organization that produced propaganda attacking workers of Asian ethnicity such as Chinese, Japanese and Korean.

Nicknamed "the Viking" because he emigrated from Norway as a teenager, he was six feet tall and weighed over 300 pounds and was fiercely committed to labor struggles in the West. Tvietmoe led the General Strike Committee in Los Angeles tasked with unionizing that city's iron workers. Tvietmoe was also politically connected through his friendship with P.H. McCarthy, the mayor of San Francisco, who was also the president of the Building Trades Council. [76]

Beyond his political and union power, Tvietmoe is significant to the *Los Angeles Times* bombing case because Tvietmoe and his ally Anton Johannsen were "widely believed to have arranged for the Times bombing."[77] Tvietmoe is also very important to the case because it is believed that Tvietmoe was involved in the attempts to bribe potential jurors in the pending trial of the McNamara brothers. Thus, Tvietmoe is a central player in the later bribery charges against Clarence Darrow.

Clarence Darrow is Called

For organized labor, the McNamara case was in many ways a repeat of the high profile Haywood, Pettibone and Moyer murder case that played out from 1906 to 1907. To labor the same capitalist forces behind the Haywood prosecution were also behind the McNamara prosecution. There were numerous similarities. Both cases involved militant unions not afraid of violence which were accused of setting of a bomb that resulted in murder, private detective agencies were hired to investigate, union men were quickly arrested and taken across state lines many miles away from their home to face trials in which they could face the death penalty. Since Darrow and his co-counsel succeeded in saving Big Bill Haywood from the gallows despite the strong belief that the prosecution would win, it was no wonder that labor wanted Clarence Darrow to defend the McNamara brothers.

Darrow Very Reluctant

After the McNamara brothers were arrested and taken to California, labor organizations immediately got together in Indianapolis and decided to send for Clarence Darrow. But Darrow was very reluctant to take the case. Darrow met with them in Indianapolis and told them how difficult the defense would be and that it would have to be backed by organized labor. He told them that he would have to discuss the situation with Samuel Gompers, the head of the American Federation of Labor (AFL).

The AFL leadership quickly realized that labor needed Darrow again. Samuel Gompers contacted Darrow by telegraph to plead for him to take the case, following up with a long

[76] *Id.* at 80.
[77] PEOPLE V. CLARENCE DARROW, *supra* note 3, at xxvi.

distance phone call, which in 1911 was costly and seldom use.[78] Darrow recounts that after Gompers and other AFL executive board members asked him to take the case:

> I urged them to get some one else. Of course I realized that the men should be defended, but I felt that I had done my share of fighting. It was not easy to combat the powerful forces of society in the courts, as I had been doing for many years, and I was now weary of battling against pubic opinion. . . . I had fought through so many conflicts that I felt the need of rest from such strenuous work. Besides, it had been only three years since I came out of the Idaho cases, with their two years of strain and labor, together with all the anguish that I had endured and survived.[79]

Besides battling the prosecution and private detectives in the Haywood case, Darrow became gravely ill from mastoiditis prior to his defense of Steve Adams in an important related case. Darrow eventually had to withdraw from the Adams defense because of his health. Darrow was in danger of dying had his conditioned worsened.

Darrow Agrees But Sets Conditions

Despite Gompers's pleading, Darrow was still reluctant until the AFL leader warned him "You will go down in history as a traitor to the great cause of labor if now, in our greatest hour of need, you refuse to take charge of the McNamara case."[80] Darrow eventually agreed to take the case but he set certain conditions. He must be in charge and be able to choose his own co-counsel, the AFL had to turn the defense into a nationwide cause and they had to guarantee a fund of at least $200,000 with Darrow himself to get $50,000 out of this amount as his fee.[81] Gompers and the AFL agreed and Darrow was soon engaged in another trial that would grip the nation's attention. The $200,000 legal fund was an astonishing amount of money at the time and Darrow would be sharply criticized for asking for this much money. This large defense fund would become especially controversial as events unfolded. It would equal about $4,500,000 in 2009.

Darrow had good reasons to be reluctant to take the case. He knew it would be a tremendous workload. He learned during the Haywood trial that the prosecution would be able to marshal considerable resources. But more importantly he was deeply troubled about the case because "[h]e was certain that his clients were guilty. Worse, he was convinced they would be hanged."[82] Darrow was an ardent opponent of capital punishment and the thought that one of his clients would be executed horrified him. Darrow also believed that Burns had already gathered a very strong case against the defendants.[83] In addition to the prosecution's "rock solid" case, Darrow would be fighting for his clients in an environment even more unfriendly than the one he

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[78] *Id.* at 121.
[79] CLARENCE DARROW, THE STORY OF MY LIFE 173–74 (1996) [hereinafter STORY OF MY LIFE].
[80] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 121–22.
[81] *Id.* at 122.
[82] *Id.* at 123.
[83] *Id.*

encountered in Idaho during the Haywood trial. As Darrow came to find out, "Los Angeles was not like any other town he had ever seen. The forces of capital, backed by Burns and the police and courts, were everywhere."[84]

Clarence and Ruby Darrow made the trip west and first stopped in San Francisco on May 23, 1911 and stayed with friends for two days before leaving for Los Angeles. Darrow quickly hired local attorneys to act as his co-counsel. He hired LeCompte Davis, a very well regarded criminal defense lawyer in Los Angeles, and Joseph Scott a lawyer and president of the Los Angeles School board. Scott was also a well-known Catholic attorney which was important because the McNamaras were Irish. Job Harriman, a well known labor lawyer and leading socialist figure, had initially been hired by the McNamaras and he remained on the team after Darrow took over. Darrow also hired Cyrus McNutt, a former Indiana judge and a pro-labor attorney with knowledge of Indiana law.

Public Relations Battle

To counter the resources of the prosecution, Darrow and the McNamaras' supporters needed to win the public relations battle. They had learned this during the Haywood trial and put this lesson to good use for the upcoming murder trial. They had to burnish the image of the defendants and tarnish the prosecution by raising the suspicion of a frame-up. The defense did this by harnessing the power of the Socialist party and the AFL led by Samuel Gompers.[85] The primary communication media for the Socialist party was its weekly publication *Appeal to Reason* with a circulation of 400,000.[86] *Appeal to Reason* dispatched George Shoaf, its best investigative reporter to Los Angeles and published forty thousand copies of its paper weekly, which were distributed to Los Angeles residents.[87] Shoaf had been the paper's "war correspondent" during the Haywood trial and he, along with others, continually promoted the theory that the Times explosion was the result of a gas explosion and not deliberate sabotage.[88]

Gompers, as head of the AFL, put the full force of his power and prestige into the public relations battle, harshly criticizing Burns and the prosecution and publicly proclaiming the defendants' innocence. The public relations activities of the defense and its supporters focused mainly on J.J. McNamara and the suspect circumstances of how he was brought to Los Angeles. They continually publicized the accusation that J.J. McNamara had been kidnapped. In contrast, his brother was largely ignored. Harry Chandler, publisher of the *Los Angeles Times* and General Otis's son-in-law, became increasingly worried that they were losing the public relations battle and that many residents of Los Angeles believed that the defendants had been framed.[89]

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[84] *Id.* at 131.
[85] *Id.* at 127.
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.* at 129–30.

Labor members across the country were convinced that the McNamara brothers were framed and illegally taken to Los Angeles. The theory that the explosion was actually caused by leaking gas and was not sabotage at all gained considerable support. Labor believed that Otis and the anti-union elements used this accident to frame the McNamaras in order to discredit labor. A more paranoid theory was that Otis intentionally caused the explosion so he could blame organized labor. To support the innocent defendants, labor leaders declared May Day 1911 as "McNamara Day" and demonstrations were held around the nation. In Los Angeles, 20,000 McNamara supporters marched by the jail where the McNamaras were held pending trial.

Propaganda Movies

The arrest of the McNamara brothers was so important to labor that it resulted in their first labor propaganda movie in the United States. At the beginning of the 20th century, business employers quickly came to realize the power of motion pictures and many "anti-labor films began to appear during and after 1907; and their plots fitted precisely into the propaganda campaign of the open-shoppers."[90] In these films, labor problems were blamed on either "jealousy, laziness, or drunkenness on the part of the workers or to mob violence incited by foreign agitators."[91] The open-shop theme permeated the films in which unions were denigrated, strikes were seen as futile and strike leaders were "dynamiters, killers, aliens who not only gained nothing for the workers but left them worse off than before."[92]

The labor movement had become so alarmed at the number of anti-labor movies that the AFL raised the problem at its annual convention in 1910. It endorsed resolutions directing union members to vigorously protest to local theater management when these types of movies were shown and if that did not work to "resort to other methods."[93] The AFL also urged labor to make its own films. The first propaganda film produced by labor, *A Martyr To His Cause,* was about the arrest of the McNamara brothers for the *Los Angeles Times* bombing. The film focused on J.J. McNamara who was much more likable than Jim McNamara. The film was subtitled *Incidents in the Life and Abduction of Bridge and Structural Ironworkers* and was produced by the Essanay Film Mfg. Co. of Chicago and became part of labor's public relations defense of the McNamara brothers.[94] The film premiered on September 23, 1911 at the American Theater in Cincinnati and during its run at this theater it was seen by an estimated 50,000 people.[95] It was also seen by many people in other cities. When Clarence Darrow later entered the case, he was already an outspoken proponent of the closed shop. Walter Drew and the NEA's open shop movement would be enough to ensure animosity between Darrow and the business elements supporting the prosecution.

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[90] Philip S. Foner, A Martyr to His Cause: The Scenario of the First Labor Film in the United States, 24 Labor History 103 (1983) [hereinafter *A Martyr to His Cause*].
[91] *Id.*
[92] *Id.*
[93] *Id.* at 104.
[94] *Id.* at 106.
[95] *Id.*

Earl Rogers

When Darrow first went to Los Angeles to defend the McNamara brothers, he asked Earl Rogers to assist him but Rogers could not do so because he had played such a prominent role in the investigation of the bombing. Rogers believed that he would be disqualified from assisting the defense even if he wanted to.[96] According to one source, Darrow had previously referred to Rogers as the "greatest jury lawyer of his time."[97]

Another reason Rogers probably would not defend the McNamara brothers when asked by Darrow was because he was directly affected by the *Los Angeles Times* bombing. Rogers's daughter, Adela, writes in her biography of her father, that Earl Rogers' law office was just across the street from the *Los Angeles Times* building and he was in his office when the bomb went off.[98] He was one of the first people to arrive on the scene. Rogers witnessed victims trapped in the fire and heard their screams. He recounted to his daughter that the worst part of it was seeing the victims' "faces appearing in the windows of the editorial and city rooms like distraught fugitives from a graveyard . . . ."[99] She also believed that her father had agreed to help the prosecution investigate the bombing because their good friend, Harvey Elder, an editor at the Times, had died in the fire. Not only did Rogers see the immediate aftermath of the bombing he actually participated in the rescue attempts. Adela describes what she saw later in the morning when she made it to the scene:

> My first look at Papa made me cry aloud. Black with soot, his clothes in ribbons, his face raw and swollen with burns, he was holding his right arm away from his body and his hand looked like a piece of raw steak on the end of it. . . . Papa was talking to himself through clenched teeth. The murdering fiends, he kept saying. The paranoiac assassins. They defeat their own ends, which are righteous. This butchery of workingmen and women—as brutal and useless as the St. Bartholomew massacre, it will turn all decent people who sympathize with their cause from them. . . . These men who must turn loose the red-handed slayer—do they expect us to believe they can govern? That they have a right to freedom? They have to be chained like dogs that bite![100]

Rogers and Adela heard that Harvey Elders had jumped from the building. They walked to the hospital where they found out that he had died an hour before. She writes that

> Perhaps this makes it possible to see why my father and I had trouble adjusting to Clarence Darrow's point of view about the McNamaras, which was to figure so vitally later on. I always saw Harvey Elder on one side of the screen and J.B. McNamara on the other. . . . Darrow was

[96] TAKE THE WITNESS, *supra* note 59, at 206.
[97] *Id.* at 2.
[98] ADELA ROGERS ST. JOHNS, FINAL VERDICT 370 (1962).
[99] *Id.* at 371.
[100] *Id.* at 372.

> looking at it from the broad humanitarian standpoint. People who got in the way of humanity's progress must be dynamited out of it.[101]

Rogers was still wearing bandages on his hands when he and others met with city leaders about how to proceed with the investigation into the bombing. A 1934 biography of Rogers asserts that he was in fact instrumental in gathering evidence about the *Los Angeles Times* bombing. According to this source, when the Merchants & Manufacturers Association met the day after the explosion, they had raised $100,000 for the investigation and this whole amount was given to Rogers when he was appointed as a special deputy district attorney.[102] Rogers, with his assistants, used the dynamite which came from the unexploded "infernal machine" that had been planted at the home of the MMA's secretary, Felix Zeehandelaar, to trace the origin of the dynamite to an explosive factory close to San Francisco. It was this link that eventually led to the McNamara brothers being arrested. While Burns and others received credit for solving the bombings, the businessmen who hired Rogers credited him with discovering the first evidence that directly linked the Iron Workers union to the bombing.[103]

Pre-Trial Strategy

One of the biggest problems for the defense was the confession of Ortie McManigal. In another parallel to the Haywood trial, Darrow made numerous attempts to get McManigal to recant his confession. He enlisted Ortie's wife Emma and an uncle George Behm to help persuade McManigal to deny his confession. To counter this, the prosecution put pressure on both Emma and Behm such as requiring them to testify before a grand jury. McManigal refused to reconsider his confession despite the pleading of his wife Emma and uncle. This was a tremendous setback for the defense. Darrow could see that the prosecution's case was even more compelling than he originally thought; furthermore, there were several witnesses and other evidence to corroborate McManigal's confession.

The prosecution and defense deployed agents to check into all aspects of the case to the extent their resources made possible. Darrow even put his brother-in-law, Bert Hammerstrom, to work on the case as an undercover agent during the summer in 1911. A particularly important potential witness for the prosecution was Kurt Diekelman, a hotel clerk in Los Angeles, who could testify that he talked to Jim McNamara when he registered at the hotel under the name J.B. Brice.[104]

Diekelman had moved to Albuquerque, New Mexico, and worked at a café. He was visited by a man going by the name of Bert Higgins of the McNamara defense team who offered to pay Diekelman to move to Chicago. Diekelman accepted the offer of a free train ticket and one hundred dollars for expenses. In Chicago, Higgins admitted to Diekelman that he was in fact Bert Hammerstrom. The efforts of Darrow's brother-in-law were short-lived however because a Burns' detective, Guy Biddinger, persuaded

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[101] *Id.* at 4.
[102] TAKE THE WITNESS, *supra* note 59, at 196.
[103] *Id.*
[104] Some accounts spell his name as Bryce.

Diekelman to move back to New Mexico where he could more easily be available to testify in the McNamara trial.

The defense soon realized that the case gathered against Jim McNamara was by far the strongest. While J.J. McNamara could be tied to the Llewellyn Iron Works sabotage, he was probably not facing the death penalty as his brother surely was.

Dictograph

The prosecution covertly installed a "dictograph," an early eavesdropping device, in the Los Angeles County Jail to listen in on conversations between Ortie McManigal and anyone who visited him. This came to light when the defense discovered a wire that ran from a window in an unoccupied cell where McManigal met visitors.[105] The defense did not have any evidence except a picture of the wire. But when District Attorney Fredericks was asked about it he said "I should not wonder a bit if it's true" and "There should be nothing unusual about that. There's just a round disk attached to the window shade, or against the pane, so that no one would notice it, and the wire leading to some other place."[106]

Ortie McManigal's uncle, George Behm, was taken before a grand jury after visiting McManigal in jail. He later claimed to a friend "They asked about things I said to Ortie that I never spoke before in my life."[107] Behm was mystified "I said them in that room and no where else."[108]

Case Unwinnable

It was around this time that Darrow "became convinced that that it would be impossible to win either case without engaging in tactics that would be costly—and of questionable legality."[109] Darrow's team sent an agent to the Giant Powder Works to contact a witness named George Phillips who could testify that he had sold explosives to Jim McNamara.[110] Phillips was promised money if he change his story and threatened with murder if he did not.[111] The defense team also tried to get potential witnesses to leave the state and therefore be unavailable to testify. Darrow even approached Guy Biddinger, a former police officer in Chicago, who was now one of Burns' most important detectives. Biddinger had participated in the arrest of Jim McNamara and Ortie McManigal in Detroit. Darrow offered Biddinger money to turn over prosecution evidence to the defense. But Darrow's efforts proved costly because Biddinger was actually double crossing Darrow and turning the money and information over to Burns. He was also giving Darrow disinformation to spread doubt and confusion to the defense. Biddinger would later testify against Darrow in his two bribery trials.

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[105] *Spied on McManigal in Cell*, New York Times, Dec. 1, 1911. p. 5.
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 157.
[110] *Id.* at 160.
[111] *Id.* at 161.

With Jim McNamara's guilt more and more obvious, Darrow was faced with several options. One option suggested by a few supporters was to plead them guilty. However, Darrow had been hired by Gompers and the AFL. Gompers had publicly proclaimed that he believed the McNamaras were innocent numerous times and the AFL had raised money based on that claim. And the money collected by the McNamara supporters came from the pockets of union wage earners, which was a substantial sacrifice for many of them. Labor had stridently claimed that the McNamaras had been framed and kidnapped. The AFL had also denounced violence as a legitimate means of achieving their goals. A guilty plea would be devastating to the labor movement.

McNamara Brothers Trial Begins

The McNamara brothers had entered not guilty pleas on July 6, 1911. The trial, which many considered the "trial of the century" began on October 11, 1911. The trial was presided over by Judge Walter Bordwell. The prosecution consisted of John D. Fredericks, the District Attorney of Los Angeles County and W. Joseph Ford, assistant district attorney. At the beginning, the defense asked that the defendants be tried in separate trials. The prosecution then proceeded to try Jim McNamara first.

Jury Selection

Jury selection in Los Angeles during this time proceeded with a court clerk selecting slips of paper with the names of about sixteen hundred men out of a jury wheel.[112] Women were excluded. Enough names were pulled for the first jury panel and these names were put in a tin box on judge's desk. The clerk would shake the box and pull out names of the jurors to be examined by both sides. On September 29, the clerk pulled the first 125 names out of the jury wheel. The judge made an initial cut of the list, removing those who could not serve during a long trial, which resulted in a shortened list of forty three names.[113] Darrow recounts his thoughts about jury selection:

> This was, as usual, a difficult task. The case had been given such wide publicity, and feelings were so high on both sides, that it was practically impossible to find any one who had no opinion and seemed able to offer both sides a fair consideration of the case at hand.[114]

If the case did go to trial, it was going to be a heated battle. There was no love lost between Darrow and the prosecution team of Fredericks and Ford. This was evident on November 10, 1911 when Darrow and Fredericks got into a dispute during jury selection voir dire. Darrow was opposed to a venireman who was the superintendent of a company in which Harry Chandler, the son-in-law of Harrison Gray Otis, had an ownership interest. This lead to the following exchange:

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[112] *Id.* at 179.
[113] *Id.* at 180.
[114] STORY OF MY LIFE, *supra* note 79, at 179.

FREDERICKS: I don't think that's ground for challenge.
DARROW: We are not challenging. We just submit that this man, an employee, is not qualified to sit.
FREDERICKS: I have taken men situated just the other way.
DARROW: Not in this case you haven't. You haven't taken any employee of the McNamara brothers....
FREDERICKS: I don't like Mr. Darrow's accusation of unfairness.
THE COURT: I am sorry he made it.
DARROW: I believed it when I made it and I believe it now.
FREDERICKS: If there is anything personal in this matter, I suppose we can tend to that somewhere else.
DARROW: There is nothing personal, and if there was we certainly could tend to it somewhere else.[115]

The defense did not want Judge Bordwell in charge of the trial. Bordwell was a Republican member of the Los Angeles establishment who lived in the very exclusive California Club. Bordwell had presided over the grand jury that indicted the defendants and the defense believed the grand jury was used to pressure McNamara supporters such as Ortie McManigal's wife Emma. Early on, the defense had even requested that he step aside and allow another judge to handle the trial but Bordwell refused. During jury selection, Bordwell ruled against the defense on numerous issues. One of the sharpest clashes between Darrow and Judge Bordwell involved the judge's refusal to exclude two veniremen who had admitted that they thought the *Los Angeles Times* had been dynamited and was not caused by a gas leak and that those indicted were presumed guilty instead of presumed innocent. Bordwell took several days to rule on their status so the two veniremen continued to stay with other jurors. At one point, Darrow refused to continue until the judge ruled on their status. Bordwell decided in favor of the prosecution and the two veniremen were allowed on the jury. Bordwell refused to allow Darrow to ask them anymore questions. Jury selection continued for about two months.

First Bribery Attempt

Darrow had hired an investigator named Bert Franklin to investigate the potential jurors for the trial. Franklin, a former detective for the L.A. county sheriff and the U.S. Marshal had actually approached Darrow for work and Darrow hired him as his chief jury investigator. Darrow recounts in his autobiography that the "investigations of jurors was placed in the hands of Bert Franklin, a Los Angeles detective, who had at one time been connected with the city or county administration, and had done a good deal of work of this kind."[116] But Franklin went beyond merely gathering information about the potential jurors. It is at this point that some believe Darrow engaged in attempts to bribe a potential jury member. After Franklin obtained a list of the initial juror pool of 43 men, he went to visit a potential juror on the list, Robert Bain, who Franklin knew. Bain was seventy years old and he and his wife were struggling to make ends meet. Franklin first spoke

[115] Roger M. Grace, District Attorney John D. Fredericks Takes on Clarence Darrow, Metropolitan News-Enterprise, Apr. 16, 2007, at 7, http://www.metnews.com/articles/2007/perspectives041607.htm
[116] STORY OF MY LIFE, *supra* note 79, at 176.

with Mrs. Bain and offered her and her husband money if Robert would get himself placed on the jury and vote to acquit the McNamaras.[117] She broached the subject with her husband and later that night Franklin met with Robert Bain and gave him four hundred dollars and promised to pay another thirty-six hundred dollars after Bain voted to acquit during the trial.[118]

Evidence in Indianapolis

Ever since J.J. McNamara was arrested and the Iron Workers' Union offices in Indianapolis were searched, the evidence seized during that raid was held by local prosecutors in Indianapolis. The Los Angeles prosecutors and the NEA were very worried about this because Indianapolis was very pro-union and the prosecution believed that important potential evidence was being turned back over to the union. At one point, Frank C. Baker, the county prosecutor in Indianapolis allowed Leo M. Rappaport, a union attorney, who was going to visit John McNamara in jail to take some of McNamara's bank records, including check stubs of payments to Ortie McManigal.[119] Rappaport later admitted that, at McManigal's urging, he destroyed some of the important banking documents.[120]

The only way for the Los Angeles prosecution team to safeguard and then gain access to this evidence was for the federal government to get involved. But at this time in the nation's history the federal government's power was much more limited than today and the acts of sabotage were matters of state law.[121] A very important reason the prosecution wanted to get its hands on the evidence in Indianapolis was that McManigal's confession had to be corroborated with other evidence.

Oscar Lawler was a young lawyer who had served in the Justice Department of the Taft administration and Taft held him in high regard. During the L.A. bombing investigation Lawler had left the Justice Department and started working with the Merchants and Manufacturers Association to help the government prepare the legal case against the McNamaras. Lawler later recalled that according to McManigal's confession many aspects of the dynamite campaign were recorded in documents in the union's files in Indianapolis. Furthermore, "District Attorney Fredericks was fully aware of the high corroborative value of the files as evidence, and gravely concerned as to their loss or spoliation."[122]

To protect the potential evidence in Indianapolis, the Los Angeles prosecutors and their supporters needed a legal basis that would allow the federal government to get involved. This is what General Otis had in mind when he met with President Taft in Los Angeles on October 17, 1911. Otis was a well-known supporter of Taft who was campaigning for

[117] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 181.
[118] *Id.* at 182.
[119] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 115.
[120] *Id.*
[121] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 198.
[122] *Lawler, Personal Reminiscence*, *supra* note 68, at 26.

reelection. Otis and Lawler convinced Taft that the McNamaras and other members of the Iron Workers' Union had broken federal laws during their acts of sabotage. A federal grand jury was convened to investigate the union. The prosecutors found their legal basis in the law that Darrow despised—conspiracy. The grand jury charged the union with engaging in an unlawful conspiracy to transport dynamite across state lines. This allowed Justice Department lawyers to gain access to the union's documents and other evidence seized when J.J. McNamara was arrested. This evidence was then turned over to the prosecution in Los Angeles.

The Indianapolis evidence considerably strengthened the case against both McNamara brothers and directly implicated J.J. McNamara and other union officials in many other crimes. To make matters worse, Burns and the prosecution "gained control of an exceptionally dangerous witness" named Frank Eckhoff, a good friend of J.J. McNamara who was involved with some of J.J.'s sabotage activities and who even helped hide Jim McNamara for a time after the *Los Angeles Times* bombing.[123]

Dynamite Plot Against President Taft Alleged

The push for federal involvement gained strength when it was discovered that twenty-five sticks of dynamite had been placed on the El Capitan Bridge located about twenty-five miles from Santa Barbara, a few hours before Taft's train was to cross it on the way from San Francisco to Los Angeles.[124] Depending on one's point of view, this was either an attempt on the President's life by anarchists or labor supporters, or it was a devious scheme to frame labor by labor opponents and further blemish their cause and gain support for federal involvement in the prosecution of the unions. The El Capitan Bridge incident is still a matter of historical controversy.

Mayoral Campaign

An interesting and potentially pivotal wild card during this time was that Darrow's co-counsel, Job Harriman, was running for mayor of Los Angeles. If he won, it could potentially turn the whole case around. The defense's hopes were raised when Harriman unexpectedly won the primary election in October. Although the general election was still to follow, it was nevertheless a significant achievement for a socialist candidate to win a mayoral primary in the most anti-union city in the United States.

Lincoln Steffens and Edward W. Scripps

The murder trial took a significant turn when Darrow met with the journalist Lincoln Steffens and Edward W. Scripps, the founder of the E.W. Scripps Company, at Scripps' ranch near San Diego. Scripps introduced Darrow and Steffens to his theory of the struggle between labor and capital with its superior resources. Scripps saw the union men who engaged in violence as belligerents just as soldiers were during wartime. They should be treated differently than someone who commits murder for personal gain. He

[123] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 202.
[124] Another account states that thirty-nine sticks of dynamite were planted.

developed this theory in a paper in which he explained this concept of "Belligerent Rights."[125] This prompted Steffens to press for a settlement of the case and with Darrow's blessing, Steffens began to pursue this possibility.

Steffens would try to negotiate a settlement in which Jim McNamara would plead guilty as long as he would not be executed and J.J. McNamara would be freed. However, John Fredericks, the prosecuting attorney was adamant that J.J. McNamara would not escape prison because he was the Secretary of the IABSIW and he helped direct its nationwide bombing campaign. If J.J. McNamara was allowed to walk out of the courtroom, it would absolve the IABSIW of the criminal conduct of waging a nationwide dynamite campaign. This would make negotiating a plea deal very difficult for the defense.

Steffens had to act as if he were doing this alone and not with Darrow or the rest of the defense's blessing. Steffens eventually got some business leaders to secretly assent to plea negotiations, including Harry Chandler of the Los Angeles Times. In addition to gaining the convictions of the McNamara brothers, the pro-prosecution side viewed the plan as a way to beat the Socialists by defeating Job Harriman in the upcoming mayoral election. Both Darrow and the prosecution side operated with plausible deniability during the negotiations. But Darrow was fully aware that the mayor's race could be decided by the plea deal.

Fredericks demanded that Jim McNamara had to plead guilty to bombing the *Los Angeles Times* and be sentenced to life in prison. His brother J.J. McNamara had to plead guilty to directing the dynamiting of the Llewellyn Iron Works for which he would receive a 10-year prison sentence. The plea negotiations were so secretive that Darrow did not even tell his own clients about the defense efforts. Not a word of the plea negotiations was given to Job Harriman and his mayoral campaign. Business leaders in Los Angeles including General Otis, Harry Candler, Thomas E. Gibbon of the Los Angeles Herald, and Otto F. Brant of the Title Insurance and Trust Company discussed the matter with District Attorney Fredericks. Perhaps surprisingly, Walter Drew of the NEA, was more open to a plea deal than some anti-union business leaders in Los Angeles.

In his autobiography, Darrow recalls:

> LeCompte Davis and John D. Fredericks, the State's attorney, were very good friends, and we felt that Davis might talk with Fredericks in perfect confidence, and that we might get one or two more opinions. Mr. Steffens and I went to San Diego and consulted Mr. E. W. Scripps, the well-known publisher of a large chain of newspapers. He was our friend, and a man of great ability. He felt as we did, that if a plea of guilty could be entered and the lives of the defendants be saved, it would be best for all concerned. Then I sent for Fremont Older, of San Francisco, strong, sturdy, intelligent, and gentle, and a wonderful friend; he was indeed like the shadow of a great rock in a weary land. Judge Cyrus McNutt, of Los

[125] Disquisition, Belligerent Rights in Class Warfare, May 1, 1911, *available at* E.W. Scripps Papers: 1868-1926, http://media.library.ohiou.edu/scripps/.

> Angeles, was consulted, and urged me to try to bring about an agreement. There were others who might have been trusted, but we dared not take many into our confidence for fear that in some way the plan would leak out.[126]

Second Bribery Attempt

During the plea negotiations, Fredericks believed he had evidence that Darrow had bribed Robert Bain. Furthermore, he knew that Bert Franklin, working for the defense, had tried to bribe another potential juror named George Lockwood. When approached by Franklin, Lockwood, unlike Bain, became outraged, refused to take a bribe, and, more importantly, he immediately reported this to the prosecution. In fact, Lockwood was a friend of Fredericks. The prosecution instructed Lockwood to keep quiet about the bribery attempt as the defense would most likely call again if he was chosen to serve on the jury. Just as predicted, Franklin, unaware of the plea negotiations between the defendants and the prosecution, tried again to bribe Lockwood. This time Lockwood, working under the direction of the prosecution, went along with the bribery scheme. The deal was supposed to take place in downtown Los Angeles in the morning before Lockwood was due in court.

Bribery Attempt

On Tuesday, November 28, 1911, Lockwood went downtown to meet with Franklin and another person named White to receive the initial payment but Franklin recognized Los Angeles detectives watching them and hurried the group down the street. As they were quickly leaving, another individual came hurriedly towards them but it was not a detective:

"It was Clarence Darrow. What was Darrow doing there? Why had be come to the scene of the bribe? It was a question that would linger for eighty years."[127]

Darrow reached the group but before they could say anything, Sam Browne, chief detective for the Los Angeles County Attorney, reached between them and arrested Franklin and the others except Darrow and they were taken to the prosecutors' office. Both Lockwood and White were released on the agreement that they would testify against Franklin.[128] Darrow bailed Franklin out at a cost of ten thousand dollars. He then spent another ten thousand dollars to hire Henry Gage, former Governor of California and one of the areas best defense lawyers, to defend Franklin using McNamara defense funds. Browne would later testify that Darrow said to him "do the best you can and I will take care of you."[129]

Plea Deal Deadline

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[126] STORY OF MY LIFE, *supra* note 79, at 181.
[127] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 237.
[128] *Id.* at 237.
[129] *Id*. at 329.

News about the attempted bribe quickly broke and spread around the country. However, Darrow's presence was kept secret for the time being. The attempted bribery significantly raised the stakes in the McNamara plea negotiations. The deadline set by the prosecution was Friday, December 1, 1911. If the defendants did not agree to the plea deal by that date, the deal was off and they would have to take their chances at trial. The bribery news would make it much more likely that the defendants would be found guilty by a jury. Another complication was that the election for the mayoral race was the following Tuesday. The prosecution wanted the plea deal done before the election because it would hurt Harriman's Socialist party ticket.

Plea Deal

Thursday, November 30, 1911 was Thanksgiving Day and before they sat down to a holiday meal at the jail, the McNamara brothers met with their attorneys who tried to persuade them to plead guilty. They were told that both their cases were un-winnable because of new factors including Franklin's bribery charge along with the fact that the defense's reenactment of the bombing with a miniature model of the *Los Angeles Times* building showed that the explosion was caused by dynamite and not a gas leak as the defense had claimed.[130] They decided to wait until after the meal to make a decision.

It took a significant amount of persuasion to get the brothers to agree to the plea deal. Jim offered to sacrifice himself and face the death penalty to spare his brother J.J. Darrow and LeCompte Davis tried numerous arguments to get the brothers to see that a guilty plea was the best option. At one point:

> Darrow then advanced a final and possibly even more powerful argument—one that would never be known or understood by the public. The district attorney was convinced that Johannsen, Tvietmoe, and Clancy were behind the dynamiting, and he was prepared to prove it in court. A trial and a conviction of the San Francisco union leaders would be devastating to the effort to organize labor in the West. But in exchange for the guilty pleas, . . . Fredericks would forgo any effort to indict those men. Johannsen, Tvietmoe, and Clancy would therefore remain free to devote their powerful voices to the cause of labor.[131]

Eventually the brothers agreed to the plea deal. They would plead guilty the next day in court. Under the plea deal, Jim McNamara would be sentenced to life in prison and his brother J.J. would receive a ten year sentence. Job Harriman and his mayoral campaign continued their election efforts, unaware of this important development.

On Friday, December 1, 1911, both brothers were brought to the Los Angeles Superior Court where their attorneys were already waiting. It was fourteen months to the day since the *Los Angeles Times* bombing. Jim and J.J. McNamara withdrew their not guilty pleas.

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[130] *Id.* at 246.
[131] *Id.* at 249.

Jim McNamara then pled guilty to bombing the *Los Angeles Times* building. J.J. McNamara pled guilty to bombing the Llewellyn Iron Works in Los Angeles. Both brothers were to be sentenced on Election Day the following week.

In his 1932 autobiography, Darrow recounts:

> We purposely drew out the examination of jurors several days after the negotiations were complete. The procedure was, however, fully agreed upon two or three days before another complication set in. When all the parties of the two sides felt certain that the case was to be disposed of immediately, the man who had been placed in charge of the examination of jurors, Bert Franklin, was arrested on the charge that he had handed a prospective juror four thousand dollars on one of the main streets of Los Angeles, as the juror was on his way to the courthouse. Franklin was arrested on the spot and taken to jail. He then protested his innocence and asked us to furnish bail, and so we put up a cash bond, whereupon he was released. In spite of what had happened, the State carried out the agreement to accept a plea of guilty for J. B. McNamara with a life-sentence, and a plea in a separate case by J. J. McNamara with a ten-year sentence.[132]

Labor Betrayed

The shocking news quickly spread through Los Angeles and to the rest of the country. It is difficult to overestimate the demoralizing effect the plea deal had on McNamara's labor supporters. Labor supports across the country felt betrayed and it sent the labor movement into turmoil. Not only had they supported the McNamaras vocally, but they had contributed their hard earned money for their defense. The news was especially difficult for the Socialist and the Harriman supporters. Before the news hit, the race was too close to call but because of the plea deal, Harriman ended up losing by twenty thousand votes. The guilty pleas greatly benefited the business community, prevented the Socialist party from gaining the power it was so close to attaining, and set the labor movement in Los Angeles back twenty years.[133] The National Socialist Party adopted a provision banning the advocacy of violence at its May 1912 convention.[134] William "Big Bill" Haywood**,** a firm believer in using violence to further labor's cause, objected to this provision and he was eventually expelled from the National Executive Committee because of his opposition.

When the plea deals became public, the AFL was meeting at its convention in Atlanta and the meeting had been dominated by the McNamara trial with fundraising efforts being made, including asking workers to give up a whole week's wages to support the McNamaras' defense. The AFL leadership felt betrayed, especially Samuel Gompers, who put his reputation on the line by insisting that the McNamaras were innocent.

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[132] STORY OF MY LIFE, *supra* note 79, at 183.
[133] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 273.
[134] *Id.* at 274.

Sentencing

The McNamara brothers were sentenced on December 5, 1911. At the sentencing hearing, Prosecutor Fredericks read a statement Jim McNamara had asked him to read:

> On the night of September 30, 1910, at 5:45 p.m. I placed in Ink Alley, a portion of the Times Building, a suit case containing sixteen sticks of 80 per cent dynamite, set to explode at 1 o'clock in the morning. I did not intend to take the life of anyone. I sincerely regret that these unfortunate men lost their lives, and if giving of my life could bring them back I would freely give it.[135]

Jim McNamara was sentenced to life in prison and J.J. McNamara was sentenced to fifteen years. Darrow later wrote that "the judge insisted upon giving Joseph J. McNamara a fifteen-year sentence instead of the one that had been agreed to by the State."[136] The McNamara brothers were sent to San Quentin prison on December 10, 1911.

After the guilty pleas, the film *A Martyr To His Cause* was pulled out of circulation and apparently no copy of the film exists now.[137] However, a copy of the movie's scenario was located in correspondence of the AFL and is reproduced in the article *A Martyr To His Cause: The Scenario of the First Labor Film in the United States*.[138]

Several people involved in the McNamara plea negotiations take credit for the plea deal. W.W. Robinson states that in 1958, Darrow's co-counsel LeCompte Davis told him that: "I saved the McNamara boys. It was my greatest victory. I was the man. I got Otis to agree. Even though the McNamaras had killed all those people, I saved them from hanging. The lawyers gave me the credit."[139]

Judge Bordwell Criticizes Lincoln Steffens and Explains Plea Deal

Lincoln Steffens considered himself a pivotal player in the plea negotiations for the McNamara brothers. For Steffens, the McNamara case was "one of the major concerns of his life. Three chapters of his *Autobiography* center on the case."[140] Steffens takes credit for orchestrating the plea deal but his version of events was sharply contradicted by Judge Bordwell. Steffens was vocal about his involvement in the plea negotiations and Judge Bordwell obviously learned of Steffens claims. The same day he sentenced the McNamara brothers to prison, Judge Bordwell took the unusual step of releasing a statement about the pleas in which he categorically refutes Steffens claims and explains the effect the bribery allegations had on plea negotiations:

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[135] BOMBS AND BRIBERY, *supra* note 2, at 24.
[136] STORY OF MY LIFE, *supra* note 79, at 183.
[137] *A Martyr to His Cause*, *supra* note 90, at 106.
[138] *Id.* at 103.
[139] BOMBS AND BRIBERY, *supra* note 2, at 33.
[140] Herbert Shapiro, Lincoln Steffens and the McNamara Case: A Progressive Response to Class Conflict, 39 Am. J. Econ. & Soc. 397 (1980).

> In the first place the claim or suggestion that the termination of the cases was due to himself [Lincoln Steffens] and other outsiders who undertook to influence the officers of the court—other than the judge—is without justification in fact.
>
> I wish also to denounce the claim of that gentleman, and of other persons for him that the change of pleas in these cases from not guilty to guilty was due to his efforts, as groundless and untrue. He is correct in the statement that the court was not a party to the negotiations for what he terms a 'compromise' of these cases' but there is no ground for any claim that he induced the prosecution to come to an agreement in the matter. The District Attorney acted entirely without regard to Mr. Steffens and on lines decided upon before the latter arrived on the scene.
>
> As to the defense, the public can rely on it that the developments last week as to bribery and attempted bribery of jurors were the efficient causes of the change of pleas which suddenly brought these cases to an end. The District Attorney could have had J.B. McNamara's plea of guilty long ago if he had been willing to dismiss the case against his brother, but he refused, insisting that the latter was guilty and should suffer punishment.
>
> The first proposition from those interested in the defense was that J.B. McNamara should change his plea from not guilty to guilty on condition that he should not be sentenced to death, and that his brother should go free. The District Attorney would not agree. Afterwards emissaries from the defense brought the District Attorney the proposition that J.B. McNamara would plead guilty and be sentenced to death, if the court so ordered, provided that his brother should be saved. But the District Attorney still would not agree. Those interested in the defense continued to urge his acceptance of this last proposition for ten days or more, and until the bribery development revealed the desperation of the defense and paralyzed the effort to save J.J. McNamara by sacrificing his brother. Then it was that the change of pleas of these men was forthcoming.[141]

Clarence Darrow Indicted

As stressful as the McNamara case and the guilty pleas had been for Darrow, his time in Los Angeles would get much worse. In late January 1912, Bert Franklin pled guilty to trying to bribe Lockwood, was fined $4,000, and cut a deal with the prosecution. On January 29, 1912, he testified before a grand jury and implicated Clarence Darrow in the bribery attempts. About 4:00 p.m. that same day, Clarence Darrow surrendered to an indictment for bribery involving Robert Bain and George Lockwood. Darrow knew the indictments were coming and he had already hired Earl Rogers to defend him. Darrow would face two bribery trials in 1912 and 1913.

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[141] BOMBS AND BRIBERY, *supra* note 2, at 26–27.

Professional Ethics

Because of the very large fee involved and the ultimate guilty pleas, Darrow's handling of the McNamara defense came under fire because of how it reflected on the legal ethics of the law profession. John H. Wigmore, scholar and dean of Northwestern Law School and a prominent expert on the law of evidence, was compelled to comment on Darrow's defense in the McNamara case. Wigmore forcefully expressed his views in a 3-page article entitled *The Limits of Counsel's Legitimate Defense*.[142] Wigmore raised what he believed to be the most important implication of the case in regard to the legal profession: "What are the limits of legitimate defense which counsel may use for an accused?"[143]

Wigmore was very critical that Darrow was given a defense fund of $200,000 even though many believed Darrow knew the defendants were guilty. Wigmore declared that the perpetrator of the bombing of the Los Angeles Times building:

> deliberately killed a score of defenseless beings, under circumstances which have never been regarded as anything but plain' murder outside of the tenets of Machiavelli or the Hindu thugs or Stevenson's dynamiters. Now we know who did it. But *Clarence Darrow knew it from the first.* His interview published in the dispatches of December 5 says: "When I took this case last March I foresaw this plea of guilt." And yet HE SPENT ONE HUNDRED AND NINETY THOUSAND DOLLARS Of laboring men's innocent money TO SECURE AT ANY COST THE ESCAPE OF MEN WHOM HE KNEW TO BE GUILTY OF THIS COARSE, BRUTAL MURDER-a murder which has been universally condemned by labor unions and all other classes from the Atlantic to the Pacific as placing its perpetrators beyond the limit of sympathy or protection.[144]

Darrow always denied that he knew from the beginning that the McNamara brothers were guilty, but it was a common criticism. Wigmore asked, "Does our system allow this? How can he defend it? How can he defend *himself?* As we figure it, he *must* defend himself—or be recognized no longer in the ranks of an honorable profession."[145]

In an editorial in the *The Bar*, the official Journal of the West Virginia Bar Association entitled *Does the American Bar Stand For It?*, the opening paragraphs proclaim:

> In a very special sense the case of Clarence Darrow has become a pivotal, illustrative case in Professional Ethics. It is being studied by the nation. It will not down. He was managing a case that brought him under the eye of the whole country. He was representing clients, guilty of the most diabolical crime, that were ever brought to the bar of a court of justice. They had deliberately murdered twenty-one men, as a single item in a long

[142] 17 Virginia Law Reg. 743 (1911-1912).
[143] *Id.*
[144] *Id*. at 744.
[145] *Id.* at 745.

> train of similar crimes that were without parallel in their devilish and destructive intent and effect.
>
> He either knew or he did not know from the beginning that they were guilty. As the case is being studied the popular sense has settled down to the conviction that he knew. And that conviction has put the legal profession on trial. If he knew does Mr. Darrow's attitude and management of that case represent the conception of the legal profession as to the rights, duties, privileges and relations of a lawyer to a guilty client.
>
> The question the country is asking is: *Does the legal profession stand for this?*[146]

The editorial concluded:

"The American Bar does not stand for this. The American Bar does not accept Mr. Darrow's example as representative of the ideals and privileges of the profession. And while it is not the disposition or the practice of the legal profession to condemn a man unheard, if Mr. Darrow remains quiet under the indictment that the public has made and is making against him, it is incumbent on the American Bar to repudiate both him and his methods and we hope it will do so in no uncertain terms."[147]

Darrow's defense of the McNamaras is discussed in what has been described as the first case book for the study of professional ethics: *Cases and Other Authorities on Legal Ethics* by George P. Costigan published in 1917. In a 1918 review of this case book, the reviewer writes: "This is one of the American Case Book series, and is the first attempt, so far as the reviewer is aware, to provide a selection of cases as the basis for a course of instruction in legal ethics."[148] The casebook contains nine pages devoted to Clarence Darrow, including a summary of the McNamara case, and Darrow's subsequent trials for allegedly bribing jury members in the case. When Darrow learned that the author was going to publish an account of the McNamara case in the book, he wrote a statement, which Costigan included in the casebook.

Dynamite Conspiracy Trials

The legal fallout from the dynamiting campaign continued even while Darrow was facing bribery charges. In February 1912, a federal grand jury in Indianapolis indicted fifty-four union men for a nationwide campaign of bombings. Of those indicted, fifty-one were members of the IABSIW. The indicted men included President Ryan, Secretary J.J. McNamara, Olaf Tvietmoe, Ortie McManigal, and other top officials and local officers of the IABSIW. Forty-five of those arrested actually went to trial. They were charged with transporting dynamite and nitroglycerin aboard passenger trains engaged in interstate

[146] 19 The Bar (West Virginia) 8 (No. 3) (1912).
[147] *Id.* at 12.
[148] 16 Mich. L. Rev. 214 (1918).

commerce and with conspiracy "to commit an offense against the United States."[149] According to the government, they were guilty of aiding and abetting and were principals in the sabotage because they hired the dynamiters. The NEA put in significant effort and resources to assist the government in preparing for the trial. The trial came to be known as the Dynamite Conspiracy trials.

The trial, which began on October 1, 1912 was considered the "largest criminal conspiracy trial" in American history up to that time and consisted of 499 witnesses for the prosecution, 188 witnesses for the defense, five thousand pages of documentary exhibits, and twenty-one thousand pages of testimony.[150] The government introduced evidence of ninety explosions of which sixty-one were directed at NEA members. The judge let the evidence of sabotage in because it tended to show "a larger conspiracy to destroy and injure open-shop work"— a very important evidentiary victory for the prosecution.[151] Ortie McManigal pled guilty but became the key witness for the prosecution. McManigal proved a very effective witness who stood up well under cross-examination and whose testimony was strongly corroborated by other evidence. The defense was not allowed to introduce evidence of employer mistreatment as a defense of provocation.

The prosecution won a significant victory. Out of the forty defendants whose case was decided by a jury, thirty-nine were convicted. This included all but two members of the IABSIW's leaders and local leaders.[152] The principal defense attorney, Newton W. Harding, commented that "Perhaps there never has been a trial of such magnitude in which the prosecution was so thoroughly prepared."[153] The defendants were sentenced to prison terms ranging from one to seven years except for five defendants who received suspended sentences.

Frank M. Ryan and twenty-nine others who were convicted appealed to the Seventh Circuit Court of Appeals, which upheld the conviction of twenty-four defendants including Ryan but reversed and remanded for the other six.[154] Olaf Tvietmoe's conviction was reversed for insufficiency of the evidence because part of the Pacific coast files were missing. Frank Ryan's seven year prison sentence was later commuted by President Woodrow Wilson on April 6, 1918.

Walter Drew later wanted to sue the IABSIW for damages in civil court but this was dropped. He was also unsuccessful in getting the widows and children of those killed in the *Los Angeles Times* bombing to sue for damages.[155]

Aftermath of the Dynamite Campaign

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[149] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 123.
[150] *Id.* at 124.
[151] *Id.*
[152] *Id.* at 125.
[153] *Id.*
[154] Ryan v. United States, 216 F. 13 (7th Cir. 1914).
[155] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 126.

The dynamite campaign cost the union more than it gained. The Dynamite Conspiracy trials cost the IABSIW "at least $150,000" and this was in addition to what individual ironworkers had already contributed to the McNamara defense fund.[156] If these costs are added to the money that was paid to the dynamiters to carry out the sabotage campaign, each explosion ended up costing the union about $2,000.[157] Most of the explosions caused about $1,000 or less of damages and some of the larger businesses had dynamite insurance and they could pass on the cost of insurance premiums in the contract price.[158] Although the NEA businesses did have to pay for added security, it appears that each explosion cost the IABSIW twice as much as it cost the NEA businesses that were bombed.[159] The union even continued to pay $25 per week to each imprisoned union leader except Hockin.

By 1915, the NEA was stronger than ever. It controlled proportionally more of the steel erection business than before the fight started, its open shop workforce was more experienced and some of the businesses were protected by dynamite insurance. A comprehensive study of the dynamite campaign concluded:

> it is reasonable to assume that the campaign of destruction might have been continued indefinitely without causing a change of the attitude of the Erectors' Association. On the contrary the dynamite outrages increased the determination of members of the Erectors' Association not to have any further dealings with the union.[160]

The NEA's commitment to the open shop principle earned it the title of "the most class-conscious and belligerent national [employer] association" in the country.[161] While sabotage by dynamite could not make it change its open shop commitment, pro-labor legislation and judicial rulings did. The NEA was the "implacable foe" of the IABSIW from 1906 until the New Deal.[162] And while it continued in existence all the way until 1957, its open shop campaign was reduced to "insignificance"[163] when in 1937, the United States Supreme Court upheld the constitutionality of the National Labor Relations Act in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*[164] In 1969, a new National Erectors Association was formed but this new NEA was "the polar opposite" of its predecessor because it was restricted to members who recognized and bargained with the International Association of Bridge and Structural Iron Workers.[165]

The dynamite campaign by the IABSIW was termed the "The Crime of The Century" and the *Los Angeles Times* bombing captured the public's attention nationwide and even

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[156] NATIONAL ERECTORS AND IRON WORKERS, *supra* note 13, at 123.
[157] *Id.* at 124.
[158] *Id.* at 123.
[159] *Id.*
[160] *Id.* at 124.
[161] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at vii.
[162] *Id.*
[163] *Id.*
[164] 301 U.S. 1 (1937).
[165] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at vii.

overseas as it "stirred the public mind as few labor wars have done."[166] However, there were other labor wars which resulted in far greater loss of life and property damage but are much less well-known. The dynamite campaign took place over a six year period and with the exception of the twenty victims of the *Los Angeles Times* bombing, no one else was killed and the property damage was relatively light. In comparison, the Colorado Coal Field Strike and War of 1913-1914 caused seventy-four recorded deaths in a seven month period.[167]

Commission on Industrial Relations

The bombing of the *Los Angeles Times* and the murder of twenty people was so shocking and traumatic that calls were made to investigate the causes of the conflict between labor and industry. On December 30, 1911, a group of reformers led by Jane Addams and Rabbi Stephen S. Wise, sent President Taft a petition, signed by numerous social reformers, professors and some businessmen and requesting that he create a commission to investigate the conflict that led to the bombing. The "Petition to the President for a Federal Commission on Industrial Relations" was published concurrently in *The Survey*.[168] Among the signers of the petition was Louis D. Brandeis, future United States Supreme Court Justice. President Taft agreed to form such a commission but he did not announce the names of commission members he chose until December 1912, which was after he had lost his re-election bid to Woodrow Wilson.[169] This allowed Wilson to choose his own members. Wilson chose as the commission chairman, Frank P. Walsh of Missouri. The term "industrial relations entered the American lexicon in 1912 when President William Howard Taft proposed and Congress approved the creation of a nine-person investigative committee called the Commission on Industrial Relations."[170]

The commission was given a $100,000 budget and it held 154 days of hearings involving hundreds of witnesses to testify. Among those called to testify were Clarence Darrow, General Otis, Walter Drew, William Haywood and numerous others with either pro-labor or pro-business viewpoints. The commission published its results in an eleven volume report in 1916. The Final Report opens with this introduction:

> The question of industrial relations assigned by Congress to the commission for investigation is more fundamental and of greater importance to the welfare of the Nation than any other question except the form of our government. The only hope for the solution of the tremendous problems created by industrial relationship lies in the effective use of our democratic institutions and in the rapid extension of the principles of democracy to industry.[171]

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[166] NATIONAL ERECTORS AND IRON WORKERS, *supra* note 13, at 130.
[167] *Id.* at 131.
[168] The Survey, vol. 27 (October, 1911—March, 1912).
[169] PEOPLE V. CLARENCE DARROW, *supra* note 3, at 275.
[170] Bruce E. Kaufman, THE ORIGINS & EVOLUTION OF THE FIELD OF INDUSTRIAL RELATIONS IN THE UNITED STATES 3 (1993) [hereinafter ORIGINS & EVOLUTION].
[171] 1 U.S. Commission on Industrial Relations, Final Report of the Commission on Industrial Relations, at 17.

The commission was dominated by the head of the commission, Frank P. Walsh, who displayed an obvious pro-labor stance. He later became the general counsel for the Iron Workers Union, a position he held from 1918 until his death in 1939. Commission members, John R. Commons and Florence Jaffray Harriman, issued a dissenting report because they believed Walsh and the pro-labor members placed too much of the blame for industrial strife on employers and their recommendations for change were too radical. The commission's final report was not enthusiastically received and Congress was upset enough to cut off its funding. One source states that because of its "liberal leanings," the opinions of the Commission on Industrial Relations work were ignored by Congress.[172] Walsh was also heavily criticized by the press.

Ortie McManigal

After the McNamara case and the dynamite trials, Ortie McManigal's "wife divorced him, his family disowned him, and he became a pariah among his former union brothers, his name as much a euphemism for 'traitor' as Benedict Arnold or Vidkun Quisling."[173] McManigal would later claim he had originally confessed because Burns had promised to support McManigal's family while he was in jail. According to one source, McManigal was later rewarded by the NEA with "quite a substantial sum of money" because as Walter Drew saw it, it would set a bad example if someone who turned state's evidence was not compensated.[174]

McManigal found that he was basically unemployable so he moved to Honduras where he worked for several years. In 1915, Burns stated in an unrelated trial that McManigal was working for the Burns detective agency overseas.[175] In 1932, McManigal returned to Los Angeles but changed his name to W.E. Mack and worked as a watchman at the County Hall of Records, a building he had once been directed to dynamite.[176] He retired in 1944 and for the occasion, the Los Angeles County Board of Supervisors presented W.E. Mack with a resolution praising his "long, faithful and efficient services rendered to the people of this County."[177]

McNamara Brothers

After their sentencing, both brothers were sent to San Quentin state prison near the city of San Rafael. Jim was transferred to Foslom prison for a time but for medical reasons was sent back to San Quentin. Surprisingly, prison in some respects transformed the reputations of the McNamara brothers. Jim became interested in leftist politics and found the Communist Party to his liking. He came to be viewed as a political martyr by communists.

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[172] ORIGINS & EVOLUTION, *supra* note 157, at 9.
[173] DENNIS MCDOUGAL, PRIVILEGED SON: OTIS CHANDLER AND THE RISE AND FALL OF THE L.A. TIMES DYNASTY 63 (2001).
[174] WITHOUT BLARE OF TRUMPETS, *supra* note 15, at 125.
[175] *Id.*
[176] *Id.*
[177] *Id.*

J.J. McNamara was paroled after ten years. He rejoined the Ironworkers union but he never regained his former prominence. He was indicted for blackmail in 1925 but was not sent back to prison. He was also arrested in 1925 for operating an illegal still but he avoided near certain conviction because of an illegal search warrant. In what must have been a bitter blow, he was expelled from the union in 1928 for allegedly stealing $200.

Jim McNamara died from cancer on March 8, 1941 in San Quentin Prison. J.J. McNamara died two months later in Butte, Montana on May 8, 1941.