

member as early as 1891 when he gave a talk called *The State; Its Functions and Duties*. On October 22, 1891 he participated in discussion of the question “Shall the World’s Fair be Open on Sunday?” On November 5, 1891 he gave an address on the subject of “Woman Suffrage.” Darrow argued in favor of granting suffrage to women. On December 17, 1891 Darrow participated in a discussion on the subject “The Eight-Hour Day.”

The Sunset Club became an important forum for Darrow to express his views and also to meet with prominent men who would become important to his career, such as S.S. Gregory and Henry Demarest Lloyd.

Also in 1891 Darrow accepted a part-time position in the legal department of the Chicago & Northwestern Railway Company. The general counsel for the railroad was William C. Goudy, a prominent Democrat in Illinois. Darrow also became one of John Peter Altgeld’s chief managers and strategists when Altgeld decided to run for governor of Illinois. Altgeld won the election in 1892.

1893

In 1893 Darrow and several prominent Chicago attorneys formed the law firm of Collins, Goodrich, Darrow & Vincent. Their law office was in the famous Rookery Building, a historic landmark located in the Loop community area of Chicago. The building is considered a masterpiece of Burnham and Root, one of the most famous architectural firms of the nineteenth century.

Darrow and Others Pressure Altgeld to Pardon Haymarket Defendants

Darrow arrived in Chicago just about a year after the infamous Haymarket trial. After the remaining defendants exhausted their appeals to the Illinois Supreme Court and the United States Supreme Court, Republican Governor Richard James Oglesby commuted their sentences to life in prison. After Altgeld assumed the governorship in 1893 he faced considerable pressure from the political left to pardon the remaining Haymarket defendants. Darrow personally pressured Altgeld numerous times to issue a pardon. Once Darrow, growing impatient, went to see Altgeld about the matter. Altgeld told Darrow:

“Go tell your friends that when I am ready I will act. I don't know how I will act, but I will do what I think is right.” Then turning to me he added: “We have been friends for a long time. You seem impatient; of course I know how you feel; I don't want to offend you or lose your friendship, but this responsibility is mine, and I shall shoulder it. I have not yet examined the record. I have no opinion about it. It is a big job. When I do examine it I will do what I believe to be right, no matter what that is. But don't deceive yourself: If I conclude to pardon those men it will not meet with the approval that you expect; let me tell you that from that day I will be a dead man.”²⁴

²⁴ THE STORY OF MY LIFE, *supra* note 2, at 100-101.

Altgeld took his time and reviewed all the evidence from the trial because he knew that pardoning the Haymarket defendants, while popular with the left, would arouse indignation from many people in Illinois and the whole country. Eventually Altgeld decided to pardon the defendants which he did on June 26, 1893. But instead of giving a brief explanation justifying the pardon, Altgeld issued a sixty page report in which he sharply criticized Judge Gary who presided over the Haymarket defendants' criminal trial. Altgeld went so far as to state: "the trial judge was either so prejudiced against the defendants or else so determined to win the applause of a certain class in the community, that he could not and did not grant a fair trial."²⁵

While Darrow was convinced the pardon was proper and necessary, he disagreed with Altgeld's justification. He felt that "Altgeld was wrong in laying all the blame to Judge Gary, the trial judge. Undoubtedly his rulings were biased and unfair, but where is the man who, under the lashing of the crowd, is not biased and unfair?"²⁶ Darrow believed that the Supreme Court of Illinois was more to blame.

Pardon Backlash

Altgeld's pardon, and his vilification of Judge Gary, unleashed a firestorm of protest. The press criticized him relentlessly. As he predicted it ruined his political career. It also ruined him financially. In 1891 Altgeld had put most of his wealth into building the 16-story Unity Building in Chicago. He then rented or leased space in the building for offices. Many of the tenants in the Unity Building were angered enough about the pardon to leave. This was financially devastating because Altgeld's wealth was tied to the building. According to Darrow:

"When he pardoned the anarchists many of his best tenants of the big 'Unity' left the building, and it was refilled by young lawyers, radicals and idealists, many of whom could not pay their rent. Any one not able to pay office rent moved to the Unity Building. So Altgeld was obliged to default in his interest, and the bondholders showed him no mercy. In fact, they wanted him to fail. It would be a fine lesson in showing the punishment of evil and the triumph of virtue."²⁷

On November 23 Darrow participated in a discussion of the subject "The Tyranny of Public Opinion" at the Sunset Club.

1894

In March 1894 Darrow became involved in political battle in Chicago. Darrow and other lawyers represented Billy "The Clock" Skakel who was trying to defeat his boss "Bathhouse" John Coughlin in an election for alderman in Chicago's First Ward. The

²⁵ JOHN PETER ALTGELD, *THE CHICAGO MARTYRS: THE FAMOUS SPEECHES OF THE EIGHT ANARCHISTS IN JUDGE GARY'S COURT, OCTOBER 7, 8, 9, 1886, AND REASONS FOR PARDONING FIELDEN, NEEBE AND SCHWAB* 132 (1899).

²⁶ *THE STORY OF MY LIFE*, *supra* note 2, at 102.

²⁷ *Id.* at 105.

First Ward was notorious for corruption. When Skakel looked like he had a chance to win, Coughlin got the election board, controlled Mayor Hopkins' people, to remove Skakel's name from the ballot without granting him a hearing. The board removed Skakel because he had been arrested and fined some years previously for gambling. Darrow and the other lawyers went before a judge to argue that removing Skakel from the ballot was illegal. The judge agreed and Skakel was put back on the ballot. Coughlin ended up winning the election that was held on April 3, 1894. Coughlin (1860 - 1938) was an alderman in Chicago's First Ward from 1892 or 1893 until he died in 1938.

Darrow wrote an article titled "Free Trade or Protection" that was published in *Current Topics* in April. Darrow wrote "Protectionism appeals to the meanest sentiments of man, to the narrowest selfishness and the most sordid greed. It teaches that nations should be enemies instead of friends, and that the good of one may be promoted by the disaster and misfortune of the rest."

In May Darrow was one of several speakers who gave a eulogy at the service of Matthew Mark Trumbull who died on May 10. Trumbull was born in London in 1826 and immigrated to the United States when he was twenty. He was a "Chartist" or a proponent of "Chartism" which was a political and social reform movement in the United Kingdom between 1838 and 1848. It takes its name from the People's Charter of 1838. When he arrived in America he worked as a laborer and later he became a lawyer in Butler County, Iowa. He was elected to the state legislature. Trumbull also served as a captain in the Union Army. By the end of the Civil War, he had been promoted to brevet brigadier general. In his later years he was an author and lecturer.

Pullman Strike

On May 11, 1894, about 3,000 employees of the Pullman Palace Car Company went on strike. Many of the strikers were members of the American Railway Union (ARU), led by Eugene V. Debs. The ARU supported the strike by launching a boycott in which ARU union members refused to run trains with Pullman cars. The boycott started on June 26 and within four days, about 125,000 railroad workers walked off the job. This caused severe disruption of railway service and mail delivery and generated a great deal of violence. It would become one of the most significant labor struggles in United States history. President Cleveland sent in 12,000 United States Army soldiers and they, along with numerous United States marshals, broke up the strike. Debs was charged with conspiracy to obstruct the U.S. mail and contempt of court for disobeying a court injunction. Darrow was soon called upon to represent Debs.

A federal court held Debs and the other defendants in contempt and they received jail sentences ranging from three to six months. In 1895, Darrow and his co-counsel, including Stephen S. Gregory, defended Debs and other defendants on criminal charges for conspiracy to obstruct the U.S. mail. They mounted an aggressive defense and made the prosecution's case seem weak. When a juror became sick, Darrow, who sensed that the defense would prevail, offered to proceed with eleven jurors, but the prosecution dropped the case. In March Darrow and his co-counsel argued a habeas corpus petition

on the defendants' behalf before the United States Supreme Court, but the Court unanimously upheld the contempt citation.

The defense of Debs and the other defendants was the most important case up to this point in Darrow's career.

Prendergast Case

Also in 1894 Darrow took on a controversial case when he worked with several other attorneys to try and save Patrick Eugene Prendergast from being executed for the assassination of Chicago Mayor Carter H. Harrison, Sr. Prendergast went to Carter's home on the evening of October 28, 1893 and shot the mayor several times; he soon afterwards turned himself into the police. Prendergast was clearly mentally ill but he was easily convicted and sentenced to death. Darrow volunteered to assist S.S. Gregory and another attorney to try and block the execution. The legal team used an Illinois statute that required a jury hearing if a defendant appeared to become insane after being sentenced, but before the sentence was carried out. Darrow and James S. Harlan argued before this second jury to spare Prendergast while several prosecution attorneys argued for the death penalty to be carried out. Harlan was the son of United States Supreme Court Justice John Marshall Harlan. The jury found Prendergast to be sane and he was hanged in the Cook County jail.

On October 25 Darrow, Henry D. Lloyd and others participated in discussion about strikes and injunctions at the Sunset Club.

Darrow wrote an article titled "Realism in Art and Literature" that was published in the December issue of *Arena*.

1895

On November 23, 1895 Darrow gave an address titled *The Rights and Wrongs of Ireland* at the Central Music Hall, Chicago. The address was given on the anniversary of the execution of the "Manchester Martyrs"—William O'Mera Allen, Michael Larkin, and Michael O'Brien—who were members of the Irish Republican Brotherhood hanged in Salford, England on November 23, 1867.

1896

On July 14 at the 20th Annual Meeting of the Illinois State Bar Association, Darrow was one of numerous attorneys recommended for membership by the committee on admissions. Others also recommended included Edgar Lee Masters, Frank O. Lowden, and Kenesaw Mountain Landis.

1896 Election

Governor Altgeld was running for re-election and he persuaded a reluctant Darrow to run for Congress during the historic 1896 election.

Darrow first met William Jennings Bryan when the former Nebraska congressman came to Chicago to attend the Democratic National Convention at the Chicago Coliseum. At the time, Bryan was 36 years old and Darrow was 39. At the convention on July 9, 1896, with Darrow looking on, Bryan delivered his famous “Cross of Gold” speech, which is considered by many to be the most famous political speech in the history of the United States. Darrow wrote, “I have enjoyed a great many addresses, some of which I have delivered myself, but I never listened to one that affected and moved an audience as did that.”²⁸ The electrifying speech won Bryan the nomination of his party for President. Darrow said that it produced “the greatest ovation that I had ever witnessed.”²⁹

Darrow did not actively campaign for his own election because it was thought the seat he was running for was safely Democratic. Instead he traveled to other districts to campaign for other Democratic candidates. Darrow recounted that the “district was overwhelmingly Democratic, and I felt sure that with Bryan for president and Altgeld for governor there would be no doubt of my election.”³⁰ However, after the ballots were counted, Bryan lost the election to McKinley, Altgeld lost the governorship and Darrow lost his race. Darrow wrote in his autobiography that he lost by about one hundred votes. The official vote was 22,075 votes for the Republican Hugh Reid Belknap and 21,485 votes for Darrow.

Bryan was also the Democratic nominee for the 1900 presidential election and Darrow campaigned for him again. But Bryan again lost to McKinley. Bryan was not nominated in 1904 but in the 1908 election he was again nominated by the Democratic Party. Bryan asked Darrow to campaign for him by giving some speeches, but Darrow declined.

1897

On January 30 Darrow was one of several speakers including Charles H. Aldrich, former Solicitor General of the United States, at the Commercial Club dinner in Chicago. They spoke on the subject “The Supreme Court of the United States—its place and function in the government. Its permanence and independence are essential to the existence of the Republic.”³¹

Divorce

Clarence and Jessie divorced in 1897 after nineteen years of marriage. Darrow was then 40 years old. It appears that it was Darrow’s idea to get divorced. A biographer wrote that during this time, divorces were much rarer and it could hurt Darrow’s career if his wife initiated the divorce proceedings, so she suggested he file the papers.³² The petition

²⁸ THE STORY OF MY LIFE, *supra* note 2, at 91.

²⁹ *Id.* at 91.

³⁰ *Id.* at 92.

³¹ 3 MICH. ALUMNUS 125 (1897).

³² SENTIMENTAL REBEL, *supra* note 11, at 71.

Darrow filed stated in part that his wife Jessie ““wilfully deserted and absented herself from [C.D.] without any reasonable cause, for the space of two years and upwards, and has since continued and yet continues to absent herself.””³³ The petition for divorce was not true, as Jessie was a dutiful wife who was content to stay at home and take care of their son Paul. It was Darrow who was restless and felt he needed freedom. Darrow agreed to give Jessie the house free of encumbrances and not less than \$150 per month during her life. Darrow recalled that the divorce was not contentious: “This was done without contest or disagreement and without any bitterness on either side, and our son has always been attached to both of us, and she and I have always had full confidence and respect toward each other.”³⁴

Jessie later told Darrow’s biographer Irving Stone that about a year after the divorce “a tearful Clarence came to her lamenting that the divorce had been a mistake.”³⁵ But it was final and Jessie later married Judge Brownlee of Ashtabula, Ohio. Darrow had tried some cases before this same judge.

Darrow attended the Illinois State Bar Association meeting held at the Chicago Beach Hotel on July 1 and 2.

1898

On February 3 Darrow gave an address on the topic “The Annexation of Hawaii” at the Sunset Club. Darrow argued against annexation.

Oshkosh Woodworkers Strike

Also in 1898, the 41-year-old Darrow became involved in the second big labor case of this early stage of his career. He was hired to defend Thomas I. Kidd, General Secretary of the Amalgamated Woodworkers International Union, and two other union members after a very contentious strike by woodworkers in Oshkosh, Wisconsin. The workers in several large factories that made sashes, doors, and blinds staged a strike when repeated demands for a wage increase were ignored. The three defendants were charged with criminal and civil conspiracy. A jury acquitted all three defendants. Darrow’s closing argument was regarded as a classic and is published and sold in pamphlet form.

Darrow’s father, Ammirus, married Katherine Donahue in Wisconsin on September 8, 1898.

1899

In 1899 Darrow published his first book, *A Persian Pearl and Other Essays*. The book contains five essays including *A Persian Pearl* an examination of one of Darrow’s favorite works, the “Rubaiyat of Omar Khayyam.” Other essays include “Realism in

³³ *Id.*

³⁴ THE STORY OF MY LIFE, *supra* note 2, at 33.

³⁵ *Id.*

Literature and Art,” “Robert Burns,” and “Walt Whitman.” The last essay called “The Skeleton in the Closet” was described by a reviewer: “The skeleton is an uncomfortable combination of desecrated ideals and a bad conscience, with an insistent plea for the betterment of character almost insistently disregarded by its possessor.”³⁶

Darrow’s book was published by Elbert Hubbard, the operator of The Roycroft Shop of East Aurora, New York. Darrow would become friends with Hubbard. The book was received favorably by some reviewers: “To follow the thought of Mr. Clarence S. Darrow through the five essays which make up the book named from first of them ‘A Persian Pearl’ . . . is to find the critical faculty of the lawyer at its best.”³⁷

Darrow spoke at a memorial for Robert Ingersoll in Chicago in the summer of 1899. Darrow said of Ingersoll:

Robert G. Ingersoll was a great man; a wonderful intellect; a great soul of matchless courage; one of the great men of the earth Robert G. Ingersoll gave his life, his splendid energy, his matchless eloquence, to the cause of humanity. From the beginning he was the friend of human liberty. Whether on the field of battle fighting against the slavery of the black man or on the rostrum pleading for the right to think, to act, to live, he was always the friend of human liberty. . . . it will be written of him that more than any other man, perhaps, that ever lived, he refused to use his splendid powers for any cause in which he did not believe. We cannot measure the influence of Robert Ingersoll. His life and work will remain to liberate mankind and to benefit you and me.³⁸

On December 22, 1898, Thomas G. Crosby, a 13-year-old boy shot and killed a deputy sheriff who was trying to evict him and his 66-year-old mother by adoption from their home in Chicago. Darrow and another attorney defended the Crosbys in a trial widely followed in Chicago. The boy was acquitted but his mother was convicted of manslaughter. Darrow and William Prentiss represented her in 1901 on an appeal before the Supreme Court of Illinois. The court reversed the conviction and remanded the case because there was insufficient evidence to sustain a conviction for manslaughter.³⁹

1900

Darrow continued to give speeches and participate in debates about political and social issues. Darrow was a sharp critic of conspiracy laws and injunctions because of how they were used against Eugene Debs in the 1884 Pullman strike and Thomas Kidd in the 1898 woodworkers strike. In March he testified before the House of Representatives on a bill that would limit the meaning of the word “conspiracy” and would help labor by putting restrictions on the use of injunctions and restraining orders during labor strikes.

³⁶ *Briefs on New Books*, 27 DIAL: A SEMI-MONTHLY J. LITERARY CRITICISM, DISCUSSION, AND INFO. 54 (1899).

³⁷ *Id.*

³⁸ *Chicago’s Tribute to Ingersoll*, 17 FREE THOUGHT MAG., 520, 523-24 (1899).

³⁹ *Crosby v. People*, 59 N.E. 546 (Ill. 1901).

Miss Nellie Carlin, a graduate of the Chicago College of Law and admitted to practice in 1896, did some legal work for Darrow, Thomas & Thompson. According to a 1900 article, “During her practice Miss Carlin has been connected with the firm of Darrow, Thomas & Thompson, who speak in the highest praise of her ability.”⁴⁰ According to another source, Carlin practiced law with Darrow’s firms from 1895 to 1910.⁴¹

Nellie Carlin went on to hold several prominent positions. At one time she became the second president of the Women's Bar Association of Illinois. In 1915 she was appointed Public Guardian of Cook County for children. She ran for municipal judge in 1914 and in 1917 she was appointed an assistant state's attorney.

The *Chicago American*, founded by William Randolph Hearst, printed its first edition on July 4, 1900. Darrow and Altgeld’s firm were hired to help incorporate Hearst’s new paper. Darrow would help represent Hearst’s newspapers for several years.

1901

On May 19, 1901 Darrow gave a speech to a black audience at the Men’s Club in Chicago titled *The Problem of the Negro*. Darrow was characteristically pessimistic about race relations. He also made remarks that were very controversial at the time when he discussed interracial marriage. He believed it was the “final question of the race problem” and he asked “Is there any reason why a white girl should not marry a man with African blood in his veins, or is there any reason why a white man should not marry a colored girl? If there is, then they are right and I am wrong.”⁴² As with many of his speeches and presentations this one was published.

After the 1896 election and the financial disaster with the Unity building, Altgeld had to return to the practice of law. Following the Debs trial, Darrow had formed a very successful law partnership with William O. Thompson. Darrow convinced Altgeld to join the firm. In July 1901 it was announced in the Chicago legal news that the partnership had been formed. Out of respect they named the firm Altgeld, Darrow & Thompson.

Unger Case

Darrow participated in a sensational case in Chicago in 1901 called *People v. Unger*.⁴³ Dr. August M. Unger was a medical doctor who concocted a plan with one of his patients, Marie Defenbach, to defraud insurance companies. Ms. Defenbach would take out large life insurance policies on herself and Unger would give her a drug that would make her lapse into a coma and she would be declared dead. Another body would be secured and quickly cremated. But something went very wrong and Defenbach died on August 25, 1900 under suspicious circumstances. Unger and two other conspirators,

⁴⁰ THE WOMAN’S JOURNAL: BOSTON, Jan. 27, 1900.

⁴¹ SENTIMENTAL REBEL, *supra* note 11, at 36.

⁴² *The Problem of the Negro*, 2 INT’L SOCIALIST REV. 321, 325 (1901).

⁴³ *People v. Unger*, Criminal Court of Cook County, Ill., No. 61606-A (1901).

Francis W. Brown and Frank H. Smiley, were arrested and charged with conspiracy to defraud various insurance companies. During the investigation it was discovered that Doctor Unger's brother died in New York in September, 1899 under circumstances similar to the death of Marie Defenbach. Darrow was hired to defend Brown. Despite Darrow's efforts, the defendants were convicted on June 10, 1901 and sentenced to an indeterminate sentence. But Darrow convinced the judge that Unger was much more culpable and with the consent of the state's attorney, the verdict against Brown was set aside, and instead he was sentenced to pay a fine of \$2,000.

In 1901 Darrow and several other attorneys represented two editors of the *Chicago American* newspaper after they were jailed for contempt of court by a judge who was angry because the paper criticized a court decision he made. The contempt decision was appealed to Judge Edward F. Dunne on a writ of habeas corpus. In December Judge Dunne held that no contempt had been committed.

Darrow wrote an article titled *Conduct and Profession* that was published in *The Rubric*.

1902

Darrow wrote an essay about Leo Tolstoy titled "Tolstoi."⁴⁴

1902 was an especially important and tough year for Clarence Darrow. He was deeply saddened when his mentor John Peter Altgeld died on March 12, 1902. Altgeld was just finishing a speech at a pro-Boer mass meeting in Joliet, Illinois when he became dizzy and had to be assisted from the stage. He was taken to a hotel and his condition did not appear to be too serious, but shortly before midnight he became unconscious and later died from a cerebral hemorrhage. Upon hearing the news, Darrow raced to Joliet. He told news reporters that the governor died as he had lived, pleading the cause of the lowly. Darrow gave a eulogy at Altgeld's funeral. He clearly felt the loss of his friend:

My dear, dead friend, long and well have we known you, devotedly have we followed you, implicitly have we trusted you, fondly have we loved you. Beside your bier we now must say farewell. The heartless call has come, and we must stagger on the best we can alone. In the darkest hours we will look in vain for your loved form, we will listen hopelessly for your devoted, fearless voice. But, though we lay you in the grave and hide you from the sight of man, your brave words will speak for the poor, the oppressed, the captive and the weak; and your devoted life inspire countless souls to do and dare in the holy cause for which you lived and died.⁴⁵

Darrow continued to pursue writing. He wrote a series of articles for Hearst's *Chicago American* newspaper called *Easy Lessons in Law*. He used this publishing opportunity to

⁴⁴ Clarence Darrow, *Tolstoi*, 1 RUBRIC, 21-38 (Jan. 1902).

⁴⁵ THE STORY OF MY LIFE, *supra* note 2, at 457 (citing Clarence Darrow, Remarks at the Funeral of John P. Altgeld (Mar. 14, 1902)).

illustrate two shortcomings in the law that he wanted reformed: the Doctrine of the Fellow Servants and the Doctrine of Assumed Risk.

On February 28, 1902 in Chicago, a pedestrian named Mary E. Spiss was walking on a sidewalk near a very large sign for Hearst's *Chicago American* newspaper when a heavy wind hit the sign pulling some stone away from the building which hit Ms. Spiss. She suffered serious injuries including a broken thigh and arm. The Chicago city council had granted Hearst permission to put up the sign even though it violated a city ordinance. Darrow helped defend the *Chicago American* in a personal injury action. The jury found Hearst's paper liable and awarded the plaintiff \$8,000. Darrow also helped represent Hearst's paper when it appealed the judgment to the Illinois Court of Appeals but the court affirmed the judgment and the amount of damages.⁴⁶

In June Darrow helped defend three lawyers indicted for conspiracy for bribing jurors to return favorable verdicts for the Chicago Union Traction Company. All the defendants were convicted although several defendants successfully appealed.⁴⁷

Darrow Again Runs For Political Office

Altgeld had been a passionate advocate for municipal or public ownership of utilities, and Darrow also believed in this cause. After Altgeld's death, a group was formed to help elect politicians to the Illinois legislature who believed in public ownership of utilities. The group was first called the Public Ownership Party, but changed its name to the Public Ownership League. The League chose the 45-year-old Darrow to run in Chicago's Seventeenth District for a seat in the Illinois House of Representatives. According to a 1905 source the 17th district was "largely populated by Russian Jews."⁴⁸ The League was dissatisfied with Democratic politicians it believed were too cozy with corporations, and thus not sufficiently anti-monopoly.

Darrow ran on a platform of public ownership of utilities, home rule for municipalities, support of initiatives and referendum and nomination by direct vote of the people. He was endorsed by the *Chicago Daily News*. Darrow won the election in November 1902, although he could not take his seat for several weeks because he was working on behalf of the coal miners before the Anthracite Coal Strike Commission.

Darrow only introduced one bill while he served in the Illinois Legislature. The bill, which passed, raised the limit for recovery for negligent death from five thousand dollars to ten thousand dollars.

⁴⁶ Hearst's *Chicago American v. Spiss*, 117 Ill. App. 436 (Ill. App. Ct.-1st 1904).

⁴⁷ *O'Donnell v. People*, 110 Ill. App. 250 (Ill. App. Ct. 1st 1903); *Gallagher v. People*, 71 N.E. 842 (Ill. 1904).

⁴⁸ CHARLES SELIGMAN BERNHEIMER, *THE RUSSIAN JEW IN THE UNITED STATES: STUDIES OF SOCIAL CONDITIONS IN NEW YORK, PHILADELPHIA AND CHICAGO, WITH A DESCRIPTION OF RURAL SETTLEMENTS* 278 (1905).

Darrow showed a great deal of integrity when he voted against a bill that would have appropriated \$5,000 for the widow of former Governor Altgeld. Darrow explained his opposition to the bill:

No man ever lived whom I respected and loved outside my blood relations as I did John P. Altgeld. There is no woman more worthy of respect than the woman who is to be relieved in this bill. I know, and we all know, what John P. Altgeld sacrificed for the State of Illinois and for his devotion to duty as he saw it and as he believed it to be; and no man ever followed his duty more devotedly than did John P. Altgeld. A few weeks ago I voted against a bill to erect a monument to the memory of a good and great woman who lived and died in Illinois (Frances E. Willard). I voted against the appropriation to give \$5,000 to the Swedes and Finns who doubtless were in need. I do not intend to vote against all appropriations. . . . But I do not see how we have the right to vote the money that must be paid by the property holders of this State, great and small, to any private individual, no matter how much I respect them, no matter how high they stand in the common esteem. Much as I regret it, I believe that this sort of legislation is not proper legislation and that there is nothing for me, at least, to do but to vote no on this bill.⁴⁹

Darrow served with several members of the Illinois Legislature who would later be important players in Illinois and Chicago politics. One was Anton (Tony) Joseph Cermak. Cermak would later run for mayor of Chicago and be elected in 1931 ending the Republican Party's power in Chicago. On February 15, 1933, while Cermak was standing near President-elect Franklin D. Roosevelt just after a speech in Miami, Florida, an assassin named Giuseppe Zangara tried to shoot Roosevelt but he shot Cermak instead. Cermak was hit in the lung and seriously wounded. Several other people besides Cermak were also wounded. Accounts vary with some saying a woman died but others saying she was seriously wounded but survived. Cermak died on March 6. Zangara was later tried, convicted and executed.

It was not in Darrow's nature to be a politician and he would serve just one term in the Illinois Legislature.

Anthracite Strike of 1902

In May 1902 one of the most important labor strikes in the history of the United States began when nearly 150,000 members of the United Mine Workers of America (UMW) went on strike in the Anthracite coal region of Pennsylvania. The strike led to shortages of coal as well as much higher prices and the situation became very serious when winter approached. President Theodore Roosevelt became very concerned and tried to get both sides to negotiate. Eventually both sides agreed to let President Roosevelt choose an arbitration commission and to be bound by the commission's findings. This led to the UMW ending the strike on October 23, 1902 after 163 days. John Mitchell, the president of the UMW, asked Darrow to represent the union and Darrow became the lead union attorney before the commission. Although not all of the miners' demands were met, the

⁴⁹ The Public, at 3 (No. 262) (April 11, 1903).

strike was considered a success and further enhanced Darrow's reputation as a labor attorney.

In December 1902 Darrow published *The Breaker Boy* as an *Easy Lesson on the Law* story in the *Chicago American*. The short story told a tale of child labor in anthracite coal mines through the example of 11-year-old Johnny McCaffery, who had to go work in the coal mines after his father was killed in a mine accident.

Tolstoy

Darrow came to be deeply influenced by the non-resistance philosophy of Leo Tolstoy.⁵⁰ In 1902 Darrow published *Resist Not Evil*. He explained in the preface to this work: "It is not claimed that the following pages contain any new ideas. They were inspired by the writings of Tolstoy, who was the first, and in fact the only, author of my acquaintance who every seemed to me to place the doctrine of non-resistance upon a substantial basis."

Darrow was increasingly gaining fame as a writer and speaker on social issues. A 1903 review stated:

No recent sociological work by an American writer has excited more comment and discussion than 'Resist Not Evil,' by Clarence S. Darrow. Mr. Darrow has something to say, he is not afraid to say it, and he writes delightful English, making it a pleasure to read anything from his pen.⁵¹

Controversial Prison Speech

Darrow gave a controversial address to prisoners in the Cook County jail in Chicago in 1902. A stenographic copy of his talk was published in *Crime & Criminals: Address To The Prisoners In The Cook County Jail & Other Writings On Crime & Punishment*. Darrow conveyed to the prisoners his belief that free will was a myth and criminals were not to blame for their circumstances. Darrow's beliefs were so radical that in the preface Darrow wrote:

Some of my good friends have insisted that while my theories are true, I should not have given them to the inmates of a jail. Realizing the force of the suggestion that the truth should not be spoken to all people, I have caused these remarks to be printed on rather good paper and in a somewhat expensive form. In this way the truth does not become cheap and vulgar, and is only placed before those whose intelligence and affluence will prevent their being influenced by it.

He began by telling the prisoners:

⁵⁰ Count Lev Nikolayevich Tolstoy.

⁵¹ Darrow's "Resist Not Evil", 3 INT'L SOCIALIST REV.: MONTHLY J. INT'L SOCIALIST THOUGHT 573 (1903).

If I looked at jails and crime and prisoners in the way the ordinary person does, I should not speak on this subject to you. The reason I talk to you on the question of crime, its cause and cure, is because I really do not in the least believe in crime. There is no such thing as a crime as the word is generally understood. I do not believe there is an sort of distinction between the real moral condition of the people in and out of jail. One is just as good as the other. The people here can no more help being here than the people outside can avoid being outside. They are in jail simply because they cannot avoid it on account of circumstances which are entirely beyond their control and for which they are in no way responsible.

Darrow ended his speech by blaming those on the outside for prisoners being in jail:

There should be no jails. They do not accomplish what they pretend to accomplish. If you would wipe them out, there would be no more criminals than now. They are a blot upon civilization, and a jail is an evidence of the lack of charity of the people on the outside who make the jails and fill them with the victims of their greed.

Both *Resist Not Evil* and *Address To The Prisoners In The Cook County Jail* were published by Charles H. Kerr Publishing Company,⁵² a publisher still in existence, that proudly boasts of being a publisher for radical, socialist and labor history works.

Darrow had a short bio published in the 1901-02 *Who's Who in America*. This biographical source was just two years old, having been founded in 1899.

1903

Not much is known about the lives of Darrow's brothers and sisters. In the 1903 edition of the *Yearbook and List of Active Members of the National Education Association*, his sister Jennie Darrow Moore was listed as a Teacher in First Grade at the McCosh School in Chicago. His older sister Mary Darrow Olson was listed as the Principal of McCosh School. Mary had begun teaching in Chicago in 1884.

Darrow spoke out against anti-Semitism after brutal crimes were committed during a pogrom against Jews in Kishinev, Russia on April 6 & 7, 1903. Over the course of three days, a mob attacked Jews, committing rapes and murder including the murder of babies. The local government not only failed to protect the victims but some of the leaders of the mob were government officials. Between 45 and 60 people were murdered, over 600 injured, over 1500 shops destroyed, 12,000 homes damaged and about 2000 families left homeless. Darrow joined Jane Addams and Peter Sissman as speakers denouncing the atrocities at the Star Theater in Chicago on April 18.

In November 1903 Darrow represented a labor union during the Chicago City Railway strike.

⁵² See Charles H. Kerr Publishing Company, <http://www.charleshkerr.net> (last visited Mar. 16, 2010).

Ruby Hammerstrom

After a speech he gave in 1899, Darrow spoke with his friend John R. Gregg and his wife. Gregg was the creator of the Gregg Shorthand system in 1888. With the Greggs that day was a woman named Ruby Hammerstrom who was 16 years younger than Darrow. Ruby was an aspiring journalist in Chicago. He was attracted to Ms. Hammerstrom and they eventually began dating.

Ruby and Clarence Darrow were married on July 16, 1903 by Judge Edward Dunne, a friend of Darrow, who would later become the mayor of Chicago and Governor of Illinois. For their honeymoon they went first to Canada and then to Europe, visiting several countries before returning almost three months later.

Edgar Lee Masters

In 1897 Darrow met Edgar Lee Masters when Masters, a poet and attorney, sent a case to Darrow's firm. In 1898, Darrow offered Masters a position in his firm but Masters turned the offer down. In 1903 Masters reconsidered Darrow's offer and they formed a law partnership. Darrow and Masters had a stormy relationship, but the partnership lasted until 1911.

According to a biography of Masters, he resented Darrow because Darrow did not pull his weight in the work that needed to be done outside of the court room and even more so because Darrow failed to put some client payments into the firm's general account.⁵³ Masters became even angrier at Darrow in 1905 when Masters, Darrow and his son Paul Darrow became involved in a banking scheme and Masters lost \$5,000.⁵⁴

Another source of contention between Darrows and Masters was that shortly after Masters joined the firm, Darrow hired Cyrus Simon, a disgraced attorney who had been convicted for jury bribery in 1902 when he worked as a lawyer for the Chicago Union Traction Company. Darrow had wanted to bring Simon in as a full partner but Masters objected. Apparently Masters was especially against adding Simon to the firm's name. Simon was also Jewish and at this time Jews were effectively barred from many established Chicago law firms. Darrow and his partners compromised and Simon was brought in as a junior partner but his name was not added to the firm nor on its stationary. Simon acted in the capacity of a claims agent by collecting on overdue bills owed to the firm. Eventually the firm discovered Simon was pocketing money and some of the partners wanted to prosecute him but Darrow let him resign without publicity.

Their relationship would become more strained in 1906 when Darrow went to Idaho to defend William D. Haywood and several other defendants charged with the murder of the former governor of Idaho. Darrow spent about two years on the case while Masters had to run the Chicago firm. Darrow supposedly earned a fee of \$50,000 but only \$14,000 was deposited in the account for Darrow, Masters and Wilson. Masters could see from the

⁵³ HERBERT K. RUSSELL, EDGAR LEE MASTERS: A BIOGRAPHY 50 (2005).

⁵⁴ *Id.*

firm's financial records that Darrow was withholding money from the Haywood case, and he contacted the labor union that was paying for Haywood's legal defense to have them send the money to the Chicago law firm instead of directly to Darrow.⁵⁵ Darrow threatened to quit his partnership with Masters and refused to give up all the Haywood defense money. Masters never managed to account for the money and this "helped create an enmity with Darrow" that was never resolved.⁵⁶

In 1915, Masters published *Spoon River Anthology*, a collection of poem "epitaphs" for over 200 citizens of fictional Spoon River, Illinois who had died. The work established Master as a gifted writer.

Darrow Declines Running for Mayor of Chicago

The Chicago mayoral election was scheduled for April 1903 and the Union Labor Party and asked Darrow to run for mayor.⁵⁷ There was a great deal of discussion about Darrow's potential candidacy in the newspapers but Darrow declined to run because he thought it would split the progressive vote and allow a Republican to win.

In December 1903 Darrow published a story of fiction titled *Little Louis Epstine* in the magazine *The Pilgrim*. Louis was nine years old, poor and Jewish. He had lost one hand in an accident when he was much younger. One day in the winter he stayed out in the cold selling newspapers because he wanted to earn enough money to buy a small Christmas present for his mother. This lead to frostbite and he had to have his remaining hand amputated. Darrow wrote it as a sad reality check on the traditional cheery Christmas tale.

1904

Iroquois Theater Fire

On the afternoon of December 30, 1903 a fire tore through the supposedly "fire-proof" Iroquois Theater in downtown Chicago during a play. Within minutes about 575 people, mostly women and children, were dead. Many of the badly injured would soon die bringing the final death toll to 602. The horrific death toll led to the indictment of several people for manslaughter and some for malfeasance.

Darrow helped several of the defendants as he "worked behind the scenes to find ways to quash the indictments and, as far as it can be determined, never appeared personally in court."⁵⁸ None of the defendants were convicted. The Iroquois Theater Company faced as many as 272 lawsuits but the company was insolvent and the relatives of the victims went uncompensated. Darrow also helped defend the producers of the musical comedy that was showing when the fire started. The company that built the Iroquois Theater paid a

⁵⁵ *Id.*

⁵⁶ *Id.* at 51.

⁵⁷ Some sources refer to it as the Independent Labor Party.

⁵⁸ NAT BRANDT, CHICAGO DEATH TRAP: THE IROQUOIS THEATRE FIRE OF 1903, 129 (2003).

settlement of \$29,750 and this was the only civil defendant to pay any compensation to the victims' relatives.

Farmington

Ammirus Darrow died at age 86 on April 24, 1904 in Chicago. Later in the same year, Darrow's semi-autobiographical novel titled *Farmington* was published. He had actually completed *Farmington* while on his honeymoon trip to Europe. In it, the author "John Smith" writes about his father and memories from his boyhood. *Farmington* was first published by A. C. McClurg & Co., a publisher in Chicago made famous by their original publishing of the works of Edgar Rice Burroughs, including his *Tarzan of the Apes* novels. Darrow's book would eventually go through seven editions by five different publishers.

Darrow wrote a note for the second edition in which he attempted to answer a question asked by many who read his book: "From both the old neighbors and the new have come the query as to whether I am not John Smith. If these companions do not know, how is it possible for me to tell?"⁵⁹

Some critics of *Farmington* believed it was a cynical portrayal of small town life and how parents raise their children. In his note on the second edition, Darrow seemed to be surprised at some of the criticism: "I cannot withhold an expression of my satisfaction for the kind reception of this little book, and still now and then critics have found traces of a cynicism and pessimism that I did not know were there."⁶⁰

Darrow had first tried to publish *Farmington* with the title *The Story of My Life*. William Dean Howells had sent the manuscript to Harper & Brothers, but they turned it down. Howell sent their rejection letter to Darrow which stated in part:

"We regret to say that after due consideration, we are unable to reach a favorable decision in the matter of publishing the 'Story of my Life' by Mr. Darrow, the manuscript of which was kindly submitted by you. Our readers speak of it as well written, marked by really good workmanship; the pictures are vivid, scenes of life and character admirable, the humor delightful; but that it is cold and depressing, contains unnecessary philosophizing, and the general effect is disheartening. We doubt, therefore, if it would have a sale that would justify the expense of publication."⁶¹

At the Democratic Convention held in Saint Louis in July 1904 there was nearly universal support for Alton B. Parker, Chief Judge of the New York Court of Appeals, to be nominated for president. The only opposition came from William Randolph Hearst and his supporters. Darrow seconded Hearst's nomination on behalf of the Illinois delegation to the convention. However, Parker was nominated on the first ballot.

⁵⁹ FARMINGTON, *supra* note 6, at v.

⁶⁰ *Id.* at vii.

⁶¹ Letter from William Dean Howells to Clarence Darrow (Jan. 21, 1904) (on file with the University of Minnesota Law Library).

Turner v. Williams

In 1903 and 1904 Darrow and Masters worked on their most significant case, *United States ex rel. Turner v. Williams*.⁶² John Turner was an English anarchist and union organizer who came to the United States in 1903 to give speeches and gather information on trade unionism. Turner was arrested in New York City on October 23, 1903 after he gave a speech at a mass labor meeting. He was arrested pursuant to a warrant issued by the Secretary of the Department of Commerce and Labor of the United States. At the Ellis Island immigration station a board of special inquiry found Turner to be an alien anarchist and by a unanimous decision ordered him to be deported from the country. The legal authority to deport Turner came from a federal statute enacted on March 3, 1903 in response to the assassination of President McKinley.⁶³ The act authorized the exclusion of “anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States or of all government or of all forms of law, or the assassination of public officials.”⁶⁴ Turner’s arrest and deportation proceedings generated protests in several cities. Turner’s appeal to the Secretary of Commerce and Labor was dismissed and he appealed to the United States Supreme Court.

Darrow and Masters submitted a 187-page written brief and both gave oral arguments before the Court in Turner’s appeal. They were opposed by Assistant Attorney General James Clark McReynolds, who in 1914 became a Justice on the United States Supreme Court. McReynolds served on the Court until 1941 and he gained a reputation as one of the most ardent opponents of Franklin Roosevelt’s New Deal legislation.

Darrow and Masters tried to show that Turner was a philosophical anarchist and was not the type of person the statute was enacted to exclude. They also argued that the statute was unconstitutional on several grounds, including that it violated the First Amendment. But the Court disagreed. *Turner v. Williams* is still good law.

1905

In September 1905 Darrow was approached by Upton Sinclair, who wanted legal advice about whether his book *The Jungle*, which he was preparing to publish, would subject him to libel charges. The book, about the extremely unsanitary and dangerous conditions and corruption in Chicago’s meat slaughtering and processing plants, was published in 1906. Sinclair had originally intended the book to expose the harsh and unfair working conditions endured by the poor, especially immigrants. But the general public found the exposure of the unsanitary and dangerous food handling practices even more sensational and disgusting. The book was so influential it is credited with leading to passage of the federal Meat Inspection Act and the Pure Food and Drug Act of 1906, which led to the establishment of the Food and Drug Administration.

⁶² *United States ex rel. Turner v. Williams*, 194 U.S. 279 (1904).

⁶³ Immigration Act of March 3, 1903, ch. 1012, § 2, 32 Stat. 1213, 1214.

⁶⁴ *Id.*

In 1905 Darrow, Upton Sinclair, Jack London, William English Walling, and other socialists formed the Intercollegiate Socialist Society. In 1921 the organization changed its name to the League for Industrial Democracy. Later the youth wing of this group became the Students for a Democratic Society.

While vacationing in Colorado, Darrow wrote his only novel, a short book called *An Eye for an Eye*. The story is about Jim Jackson, who while losing a struggle with poverty and harsh circumstances, murdered his wife in a fit of rage by hitting her with a fire poker. Darrow incorporated his themes of man's lack of free will and the futility and cruelty of capital punishment. Jackson was convicted and sentenced to death. When his execution neared, Jackson reflected that "If ther'd been forty scaffolds right before my eyes, I'd have brought down the poker just the same." A later reviewer of *An Eye for an Eye* believed it deserved a "trophy not only for sociological veracity but also for genuine literary achievement."⁶⁵

Mayor Edward Dunne, who as a judge had married Clarence and Ruby in 1903, appointed Darrow as special counsel for traction affairs for the city of Chicago. Both Dunne and Darrow favored municipal ownership of the Chicago street railway system. In October 1905 Darrow wrote an article titled *The Chicago Traction Question* that was published in *The International Quarterly*. The article advocated municipal control of the street railways in Chicago. Darrow also criticized a very powerful financier, Charles Yerkes, who controlled much of the streetcar system in Chicago. Darrow explained the financing and profits of the streetcar companies:

These companies are in the daily receipt of \$50,000. Everybody familiar with legal affairs understands that a good many high-priced lawyers can be employed from such receipts. Everybody is also wise enough to understand that under the complex administration of law by our courts high-priced lawyers can make plenty of trouble upon almost any proposition.⁶⁶

Darrow was already well-known enough that in July 1905 he participated as a speaker in Venice California at the "Venice Assembly" a two month series of educational presentations given by eminent men and women. Earl Rogers, a famous criminal defense lawyer in California who would help defend Darrow in 1912 and 1913 against charges of jury bribery, also participated in the speaking series in Venice.

In 1905 Darrow became associated with *TO-MORROW* magazine which styled itself as a magazine "For People Who Think." In its first edition in January 1905 the magazine stated that "Clarence S. Darrow will contribute an article each month on vital topics of general interest." Darrow wrote an article titled "Literary Style" for the magazine that was published in 1905. The managing editor was Parker H. Sercombe who was rather notorious as a proponent of free love.

⁶⁵ ABE C. RAVITZ, CLARENCE DARROW AND THE AMERICAN LITERARY TRADITION 85 (1962).

⁶⁶ Clarence S. Darrow, *The Chicago Traction Question*, 12 INT'L Q. 13, 20 (1905-1906).

Darrow's oldest sibling, Edward Everett Darrow retired in 1905 after teaching high school in Chicago for 30 years.

1906

In January 1906 Darrow, as special counsel for traction affairs, and several other attorneys represented the city of Chicago in an appeal before the United States Supreme Court. The controversy involved whether an amended Illinois law gave an irrevocable grant from the state to two railway companies of the right to use city streets for street railway purposes for a term of ninety-nine years. The Court decided in favor of the railway companies on the issues involving the constitutionality of the law and the jurisdiction of the Federal Court but the merits of the case were decided in favor of the city.⁶⁷

Sometime in 1906 Darrow met and became very good friends with George Burman Foster a professor of philosophy of religion at the University of Chicago from 1905 until his death in 1918. Darrow considered Foster, a famous theologian during his time, one of the most learned men he had ever met.

Haywood Trial

On December 30, 1905 the former governor of Idaho, Frank Steunenberg, was assassinated when a bomb exploded as he opened the gate to his yard. The Western Federation of Miners (WFM) was quickly blamed for the assassination because in 1899 Governor Steunenberg had declared martial law during a wave of labor violence. After an investigation, three members of the WFM, William "Big Bill" Haywood, Charles H. Moyer, and George Pettibone, were arrested in February 1906 in Colorado and extradited under legally dubious proceedings to Idaho to stand trial for murder. Darrow and another lawyer were hired to defend the men. Darrow and his co-counsel unsuccessfully argued before the United States Supreme Court that the arrest and extradition of the defendants to Idaho was illegal.⁶⁸ Darrow then traveled to Idaho to prepare for several murder trials.

1907

Darrow also defended Steve Adams, a self-confessed assassin for the WFM, during two murder trials in Idaho related to the Steunenberg assassination. The prosecution wanted to pressure Adams to corroborate the confession of the main witness against Haywood and the other defendants. Somehow Darrow got Adams to stand firm. Haywood was acquitted. Pettibone was tried next and he too was acquitted. The prosecution then dropped the charges against Moyer. Both of Steve Adams' murder trials ended in mistrials.

Darrow Becomes Seriously Ill

⁶⁷ Blair v. City of Chicago, 201 U.S. 400 (1906).

⁶⁸ Pettibone v. Nichols, 203 U.S. 192 (1906).

Just before the start of Steve Adams' second trial in October, Darrow developed a very painful problem with his inner ear. He sought local medical attention, but none of the doctors could diagnose the problem. Mastoiditis was suspected but Darrow lacked two key symptoms – swelling and fever. His condition worsened and he eventually had to remove himself from the Pettibone trial and seek medical care. For a time the illness was considered life threatening. Darrow traveled to California for treatment and was operated on in early January 1908 for mastoiditis and he made a successful recovery.

The Haywood murder trial was the most sensational in Darrow's career up to this point. Although he was increasingly well-known because of the 1894 Pullman Strike, the 1902 Anthracite Strike and the resulting arbitration commission hearings, and through his public speaking and writings, it was the Haywood and related trials that launched Darrow into the national spotlight. The Haywood trial was even followed overseas.

Also in 1907 Darrow caused a controversy in the state of Washington: "Clarence S. Darrow, the well-known Socialist lawyer of Chicago, created considerable comment recently when he refused to rise in his seat while 'The Star Spangled Banner' was being sung in the Silver Grill restaurant of the leading hotel in Spokane, Wash."⁶⁹

It was reported that the other guests were greatly incensed over Darrow's defiance.

1908

Mary Field Parton

In 1908 Darrow met a young woman named Mary Field who was a Hull House social worker. Mary Field was born in Kentucky in 1878 and her family later moved to Detroit. She graduated from the University of Michigan in 1900; soon after she worked in several slum settlement houses in Chicago. Their friendship soon blossomed and for a time they carried on an affair. In 1911 Mary fell in love with a San Francisco newspaperman named Lemuel Parton and they were married in 1913. Darrow and Mary Field Parton would remain friends for the rest of Darrow's life. Darrow's relationship with Mary Field Parton was known to Ruby and it pained her throughout their marriage.

On June 10 Darrow spoke at an anti-prohibition and pro-union rally in Sedalia Missouri that was organized by the Sedalia Federation of Labor.

On October 31 Darrow and Mayor David S. Rose of Milwaukee gave speeches at a large anti-prohibition meeting in Cincinnati.

Christian Ansoff Rudowitz

A legal case with international importance arose in 1908 when the Russian consul in Chicago requested the extradition of a Russian refugee named Christian Ansoff

⁶⁹ VICTOR L. BERGER, *BERGER'S BROADSIDES* 97 (1912) (quoting the *Milwaukee Sentinel*).

Rudowitz⁷⁰ who was living in Chicago. The Russians alleged that Rudowitz was wanted for murder, arson, burglary, robbery and larceny that occurred in a village in a Baltic province during the winter of 1905-06. This was part of a wave of political terrorism, strikes, peasant unrest, and mutinies that is referred to as the 1905 Russian Revolution. The 35 year-old Rudowitz admitted to joining the Russian Social Democratic party in 1905. He participated in raids to acquire arms for the coming revolution. The Russians requested Rudowitz be turned over under the extradition clause of the 1907 treaty between Russia and the United States.

Extradition hearings were held before United States Commissioner Mark A. Foote in Chicago. The case was closely followed by the political left in Chicago, and news coverage carried the story to other parts of the country and even overseas. Darrow, Peter Sissman, Northwestern University Professor Charles C. Hyde, and Isaac A. Horwich represented Rudowitz before Foote without charge. Rudowitz's supporters were concerned for his welfare but also worried his deportation would endanger political asylum in the United States.

Foote listened to two weeks of testimony and on December 7 ruled that Rudowitz could be extradited. The decision was roundly denounced by radical newspapers. Darrow and Hyde sought a meeting with Secretary of State Elihu Root. Root declined to meet with them because the State Department did not hear oral arguments in extradition cases; however, it would read a written brief. The defense sent Root their brief and another brief submitted by John H. Wigmore, dean of Northwestern University Law School. On January 26, 1909 Secretary Root decided that Rudowitz's crimes were political in nature and he was therefore not extraditable under the treaty between the United States and Russia.

An article about Chicago written in 1908 mentioned that Darrow got into quarrel with Mayor Dunne and Darrow resigned his position as special traction counsel. Darrow resigned on November 7, 1908.

Paul Darrow

Paul Darrow was far different in personality than his famous father. After he graduated from Dartmouth, Paul decided against becoming a lawyer or getting involved in politics. Instead he chose a much more private life and went into business. Paul married Lillian Anderson whom he had met when she worked as a secretary in his father's law office. Paul and his wife moved to Estes Park, Colorado in 1908 where they had three daughters Jessie, Mary and Blanche. While in Colorado, Paul successfully managed the Greeley Gas & Fuel Company in which both he and his father had a financial involvement. It was a small company with about sixteen employees which provided gas to the city of Greeley. Paul and his family moved back to Chicago in 1930.

Darrow gave a speech at a 1908 Labor Day celebration in New York City on the open shop versus closed shop controversy. In a closed shop the employer agrees to only hire

⁷⁰ Some sources spell his name as Rudovitz.

union members, and employees have to stay in the union to remain employed. Darrow had publicly supported the closed shop for several years.

1909

Darrow published an article called “The Holdup Man” in February 1909 in the *International Socialist Review*. The article illustrates Darrow’s views about the causes of crime and the futility of criminal punishment.

Early Opponent of Prohibition

Darrow hated prohibition because it went so thoroughly against his libertarian instincts. Well before federal prohibition was enacted there had been a growing movement to prohibit the sale of alcohol. Darrow saw the movement gaining steam and he began to publicly speak out against it. Over the years he protested against prohibition both in his speeches and in his writings.

On May 2 Darrow gave a speech about prohibition at the Opera House in Youngstown Ohio. Darrow told the audience: “Now, I have practiced law a good many years, and have helped to pick out a good many juries. Anybody can try a case, but you must have a good jury. If I had to defend a criminal case I would never let a prohibitionist on the jury, not if I could help it. A lawyer who would let one of them on a jury, if he could avoid it would be guilty of malpractice.”

On November 14 Darrow’s older sister Mary Darrow Olson died in Chicago at age 58. Mary had begun teaching in Chicago in 1884 and served as principal of the McCosh school for 25 years.⁷¹

On December 4 Darrow delivered an address called “Liberty vs. Prohibition” in New Bedford, Massachusetts. Darrow spoke shortly before the town was to vote on a law prohibiting the sale of alcoholic beverages. The address was later published in pamphlet form and the introduction to the pamphlet states that “This city, with Worcester and others, changed from ‘dry’ to ‘wet’ by a large majority in the election held a fortnight later.”

1910

Darrow debated Arthur M. Lewis on the topic "The Theory of Non-resistance" on February 6, 1910. The debate was later published as a pamphlet.

NAACP

Because of his advocacy of equal rights for blacks, Darrow was invited to speak at the second annual National Negro Conference held in New York from May 12 to 14, 1910.

⁷¹ HARRIET TAYLOR UPTON, HARRY GARDNER CUTLER, HISTORY OF THE WESTERN RESERVE, VOLUME 1, at 221 (1910).

At this meeting the National Negro Conference adopted a plan of permanent organization and became the National Association for the Advancement of Colored People (NAACP).

During the conference Darrow caused a great deal of controversy when he advocated interracial marriage. He also stirred up controversy with other things he said:

The efforts which the National Negro Committee, including in its membership many of the most prominent clergymen and sociologists of this city, made yesterday afternoon and evening to urge the negroes of this country to develop themselves through industrial education, were rudely interrupted in the conference's session last night in Cooper Union.

Clarence Darrow, who was counsel for Moyer, Haywood, and Pettibone, the Colorado dynamiters, did the interrupting. When it came to be his turn to speak, Mr. Darrow coolly advised the seven or eight hundred negroes who had crowded into Cooper Union to hear the speeches that the best way for them to better their condition in the South and the country was to "stop working."⁷²

Darrow told the crowd, "What the South wants by its acts of disenfranchisement is not to make the negro leave the South, but to make the negro keep his place."⁷³ Darrow continued:

"If I were going to advise the negroes of this country what to do. I would advise them to follow the example of the whites and get along without working. Why do you go to the industrial schools? Do you want more work? . . . You won't get more wages for it. The whites won't give you any more wages. They don't give more wages to horses."⁷⁴

Darrow's comments:

were received with increasing whoops of laughter from the younger of the 800 negroes and with blinking surprise by the older and more staid. To the clergymen and sociologists on the platform, however, many of whom had in speeches immediately preceding Mr. Darrow's, advised the negroes that the solution of the race problem would come about gradually if both races were patient and tried to learn to understand each other, this new tone was in the nature of a bombshell.⁷⁵

The NAACP was incorporated on May 25, 1911. In the September 1911 issue of the NAACP's official magazine *The Crisis* Darrow is listed as a member of its General Committee. Beginning in 1912 it appears that this committee was changed to the NAACP's Advisory Committee and Darrow was named as a member in subsequent years beginning as early as February 1912.

⁷² *Socialist Advises Negroes to Strike; Speech by Clarence Darrow Stirs Sociologists in Cooper Union to Warm Protest*, N.Y. TIMES, May 13, 1910, at 2.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

Darrow and several other attorneys represented Fred D. Warren during an appeal to the Circuit Court of Appeals, Eighth Circuit. Warren, a well-known socialist, was convicted for sending “nonmailable matter” through the mail because he sent an envelope which displayed writing that was of a “scurrilous, defamatory, and threatening character.” Warren was sentenced to six months hard labor and a \$1,500 fine. The Eighth Circuit upheld the conviction.⁷⁶

1911

In 1910 about 40,000 clothing workers in Chicago’s men’s clothing industry went on strike for nineteen weeks. The focus of the strike was Hart, Schaffner and Marx, the largest company that refused to join the Chicago Wholesale Clothiers Association (an organization of large firms). An agreement was reached by representatives of the workers and Hart, Schaffner and Marx on March 13, 1911. The agreement setup an arbitration board to rule on shop grievances. The arbitration board consisted of Clarence Darrow who represented the workers and Carl Meyer who represented the company. The clothing workers strike led to the formation in 1914 of the Amalgamated Clothing Workers of America.

Darrow’s article “Why Men Fight for the Closed Shop” is published in September.⁷⁷

Bombing of the Los Angeles Times

On October 1, 1910 the *Los Angeles Times* building was destroyed by dynamite, killing twenty employees. Eventually several union members were arrested and charged with the crime. Sometime around May 1911 Darrow reluctantly agreed to defend two brothers, John J. McNamara and James McNamara, who were accused of the bombing. Darrow and his co-counsel eventually came to the conclusion that the McNamaras were guilty and the prosecution had built an overwhelming case. In a shock to labor supporters Darrow and the defense had their clients plead guilty in a plea deal so that James, who actually planted the dynamite, would escape the death penalty. Darrow would come to regret taking the case, because it ended with his indictment for jury bribery.

When labor supporters of the McNamara brothers asked Darrow to defend the accused he was arguing a case involving *Charles H. Myerhoff v. Kankakee Manufacturing Company*. Myerhoff was an elderly Civil War veteran who invested most of his life savings with the defendants. Myerhoff, and numerous other small businesses and individuals, had been persuaded to invest by slick and deceptive brochures that made false claims about the company’s assets. Myerhoff lost his entire investment and sued the company’s board for fraud. Myerhoff claimed they had defrauded him of \$5,000. Darrow defended Kankakee Manufacturing’s board. A jury found for Myerhoff and assessed his damages at \$7,475. The defendants appealed to the Illinois Appellate Court.

⁷⁶ Warren v. United States, 183 Fed. 718 (8th Cir. 1910).

⁷⁷ Clarence Darrow, *Why Men Fight for the Closed Shop*, 72 AM. MAG., 545-51 (1911).

Darrow helped represent the defendants on appeal but the court found no reversible error and affirmed the judgment.⁷⁸

1912

On January 29 Darrow was indicted for jury bribery in Los Angeles. In May 1912 Darrow was tried in the first of two trials for allegedly bribing a juror in the McNamara case. Darrow hired Los Angeles-based Earl Rogers, one of the best criminal defense attorneys in the country. Darrow was acquitted.

On September 12 Darrow gave a lecture on Industrial Conspiracies in Portland Oregon. His speech was later published. In December Darrow gave an address about the abolitionist John Brown at the Radical Club in San Francisco.

1913

Darrow faced a second bribery trial which began on January 20. He turned again to Earl Rogers but Rogers, an alcoholic, had to pull out of the case early on because he was ill. Darrow was forced to conduct much of his own defense work. He hired O.W. Powers, a former judge from Utah, to help in his defense. Without Rogers to dissuade him during his closing argument to the jury, Darrow tried to defend or at least explain why the *Los Angeles Times* building was bombed and why labor supporters turned to violence. This was a mistake and Darrow came closer to being convicted in this trial. The trial ended on March 8, 1913 with a hung jury voting 8 to 4 for conviction and the judge declared a mistrial.

On March 27th Darrow gave an address "On Land and Labor" at a Single Tax League mass meeting in Los Angeles. In June the address was published in the *Everyman*.

The McNamara case and the Harriman run for mayor influenced Frank Wolfe, a member of the McNamara defense team, to produce a movie released in September 1913. Titled "From Dusk to Dawn" Clarence Darrow has a prominent role playing an attorney who defends a union member charged with conspiracy. The film was a commercial success.

Darrow Returns to Chicago

Darrow could still face a third bribery trial but eventually the prosecutor decided to drop the charges if Darrow agreed to leave Los Angeles and not return. Darrow returned to Chicago with his legal career in shambles; he had spent all the money he earned in the McNamara case in defending himself in the two bribery trials. He formed a new law partnership with Peter Sissman, a Jewish Russian immigrant and socialist. They would remain law partners for twelve years.

Darrow also began giving speeches at Chautauqua meetings. Chautauqua was an adult education movement in the United States. The lecture series was very popular in the late

⁷⁸ Myerhoff v. Tinslar, 175 Ill. App. 29 (Ill. App.-2nd 1912).

19th and early 20th centuries. Darrow would come to rely on Chautauqua lecture fees in the years to come.

After Darrow returned to Chicago, the first important case he worked on was the defense of Isaac Bond, a black man accused of killing a white woman. Bond was convicted but the jury rejected the prosecution's demand for the death penalty and Bond was sentenced to life in prison. Darrow helped Bond appeal to the Illinois Supreme Court in 1917 but the court affirmed the conviction.⁷⁹ Several years later Darrow unsuccessfully took up Bond's case with the pardon board.

Darrow defended a suspect accused with several others of committing arson for purposes of insurance fraud. The defendants were convicted by a jury in August and sentenced to the Joliet penitentiary. Their convictions were upheld by the Supreme Court of Illinois in 1914.⁸⁰

In September Darrow and Charles Moyer, president of the Western Federation of Miners, called on Governor Ferris of Michigan to help settle a strike in the Michigan Copper District by arbitration.

Darrow gave an address about Henry George at the Henry George Anniversary Dinner of the Single Tax Club in Chicago on September 19th. His address was later published.

Also in 1913 Darrow and Francis S. Wilson participated in a wrongful death action against the city of Chicago.⁸¹ The case arose in 1904 from a tragic accident in which a boiler near a city street, managed and controlled by the city of Chicago, rolled over and killed a child six years old.

1914

On January 11 Darrow gave an address on Voltaire to the Chicago Society of Rationalism. His address was published in *Everyman* magazine. Darrow wrote that in his preparation for the address he drew freely from the biography *The Friends of Voltaire* written by Evelyn Beatrice Hall using the pseudonym S.G. Tallentyre. Published in 1906 Darrow called it "one of the greatest biographies ever written."

Darrow and Charles Erbsstein helped defend Louise Van Keuren who was charged with murder for killing her estranged husband on June 4, 1913 after he tried to break into her apartment. On March 14, 1914 Mrs. Van Keuren was found not guilty by the jury after less than an hour of deliberation.

On May 4 Darrow spoke at a meeting of the Cooper Union on the tenth anniversary of the organization of the New York Woman's Trade Union League. Among his remarks

⁷⁹ People v. Bond 118 N.E. 14 (Ill. 1917).

⁸⁰ People v. Covitz, 104 N.E. 887 (Ill. 1914).

⁸¹ Carlin v. City of Chicago, 177 Ill. App. 89 (App. Ct. 1913).

Darrow told the crowd that the war between capital and labor was “a war in which it is worth while to sacrifice anything, even life.”⁸²

In June 1914 the warden at Joliet Prison in Illinois invited Darrow to speak to the prisoners.

Darrow Quickly Changes from Pacifist to War Supporter

World War I dramatically and rapidly changed part of Darrow’s political and social philosophy:

When, in violation of their express treaty, Germany sent her great army into Belgium, I at once felt that the whole world should help drive her back to her own land. Up to this time I had believed in pacifism. Not only because I never wanted to fight, but because I considered it a sound philosophical doctrine that should rule men and states. For many years I had been an ardent reader of Tolstoy, and regarded myself as one of his disciples. When Germany invaded Belgium I recovered from my pacifism in the twinkling of an eye.⁸³

Darrow’s sharp turn away from pacifism and his embrace of military might to defeat Germany alienated him from many on the left.

In 1914 Darrow wrote a short article titled “The Cost of War” in which he explained his view that the destruction of private property caused by the war would benefit the working class.⁸⁴ Darrow believed that the rebuilding would employ people and raise wages. Darrow began his article by stating:

“A long with the many other regrets over the ravages of war is the sorrow for the destruction of property. As usual, those who have nothing to lose join in the general lamentation. There is enough to mourn about in the great European Holocaust without conjuring up imaginary woes. So far as the vast majority of people are concerned, the destruction of property is not an evil but a good.”⁸⁵

On June 14 Darrow delivered the Baccalaureate Address to the graduating law students of Valparaiso University. Darrow spoke in his typical blunt style and talked about his social philosophy, his views about the professional life of lawyers and about the American legal system.

In December Darrow was hired to represent Carleton Hudson, a wealthy resident of Chicago, who was arrested at the request of the New York police as a fugitive from

⁸² *1,000 Shout in Dark in Cooper Union Row*, N.Y. TIMES, May 5, 1914, at 3.

⁸³ THE STORY OF MY LIFE, *supra* note 2, at 210.

⁸⁴ Clarence Darrow, *The Cost of War*, 15 INT’L SOCIALIST REV. 361-62 (1914).

⁸⁵ *Id.* at 361.

justice for committing forgery in New York nearly twenty years before.⁸⁶ In New York Hudson had used the name Carleton H. Betts.⁸⁷

1915

Darrow wrote an article titled "If Man Had Opportunity" that was published in the January-February edition of *Everyman*.

In March Darrow and another attorney represented Newton C. Dougherty in a request for a pardon before Illinois Governor Dunne. Dougherty had spent seven years in prison after being convicted of forgery committed while he was the Superintendent of Schools for Peoria County. Governor Dunne granted the pardon.

Around May 1915, Darrow and several other attorneys successfully represented a corporation in a lawsuit over a \$100,000 promissory note before the Supreme Court of California.⁸⁸

In 1915 William Hale Thompson (1869 - 1944) was elected mayor of Chicago and served until 1923. Known as "Big Bill" his administration became notorious for corruption. He would also be elected mayor again in 1927 and serve until 1931. Darrow would defend several members of the Thompson administration who faced criminal charges. Thompson was the last Republican to be elected mayor of Chicago.

Darrow and other lawyers offered to defend Margaret Sanger who was under federal indictment for violating postal regulations by advocating birth control in her magazine *Woman Rebel*. But Sanger turned them down because "I was convinced that the quibbles of lawyers inevitably beclouded the fundamental issues; I had to move people and persuade them emotionally."⁸⁹

Pethick Trial

On May 6, 1915 a 22 year old man named William Russell Pethick⁹⁰ was working as a deliveryman in Chicago when he delivered groceries to the Coppersmith family. At the home were Ella Coppersmith, age 28, and her 2 year old son Jack. Ella attempted to pay Pethick with a ten dollar bill and a dispute arose over the change. At one point Pethick reached for Ella's blouse and she hit him in the face. Pethick grabbed a butcher knife and stabbed her repeatedly. He also fractured her skull with a hammer. As she lay dying her 2 year old son came into the kitchen. Pethick, thinking the boy could identify him, slashed his throat killing him. He then sexually abused the body of Ella Coppersmith.

⁸⁶ *Twenty Years a Fugitive.; Betts, Rich Chicagoan, Arrested on Old New York Warrant.*, N.Y. TIMES, Dec. 4, 1914, at 1.

⁸⁷ *Betts Admits Identity; But Chicagoan Held as Fugitive Says His Real Name Is Hudson.*, N.Y. TIMES, Dec. 5, 1914, at 15.

⁸⁸ *California-Calaveras Mining Co. v. Walls*, 170 Cal. 285 (1915).

⁸⁹ *THE AUTOBIOGRAPHY OF MARGARET SANGER* 185 (2004).

⁹⁰ At least one source spells his name Pethrick.

Darrow followed the news about the murders and was fascinated by the case. He was convinced that Pethick was mentally ill. He offered to defend the accused and Pethick's father gladly accepted. Darrow knew that a jury would likely convict his client instead of finding him not guilty by reason of insanity. Darrow surprised the prosecution by having Pethick plead guilty on the first day of trial. Darrow then pleaded with the judge to take into account Pethick's mental defects to mitigate punishment. He hired experts to testify about Pethick's mental problems. In the end the judge sentenced Pethick to life in Joliet prison instead of the death penalty.

Eastland Disaster

Early on the morning of July 24, 1915 the third worst disaster in U.S. maritime history occurred when the passenger ship Eastland overturned in about twenty feet of water next to the dock on the Chicago River. The ship, which had a reputation for being unstable, had about 2,500 on board and about 844 people died. The enormous loss of life led to federal and state criminal charges including criminal conspiracy and resulted in civil litigation. Darrow defended the ship's Chief Engineer, Joseph Erickson. Darrow's defense was based on the theory that the ship must have been resting on an underwater obstruction. During the course of the federal trial this was proven not to be true. In February 1916 a federal judge found the defendants not guilty of criminal conspiracy to operate an unsafe ship. Erickson died in April 1919 before he could face state criminal charges. Civil litigation dragged on for twenty years before the final lawsuit was decided in 1935.

In 1915 Darrow and another attorney assisted the Northern California Branch of the NAACP in an unsuccessful effort to suppress the showing of the racist movie *The Birth of a Nation* in Los Angeles. At these early screenings the movie was titled *The Clansman* because it was based on the novel *The Clansman: An Historical Romance of the Ku Klux Klan*, written by Thomas F. Dixon, Jr. and published in 1905.

On May 17 Darrow testified before Commission on Industrial Relations which was setup in the aftermath of the Los Angeles Times bombing. The purpose of the commission was to investigate the conflict between labor and business that led to the bombing and other violence. The commission held 154 days of hearings involving hundreds of witnesses.

Darrow and many others were named as Honorary Vice-Presidents for the *Exhibition and Celebration to Commemorate the Fiftieth Anniversary of the Emancipation of the Negro* which was held at the Coliseum in Chicago from August 22 to September 16th, 1915.⁹¹

Around 1915, Darrow and a group of friends formed the "Biology Group" which met once a week to listen to lectures on various scientific and other topics. The group met many times in Darrow's apartment near the University of Chicago. Many of the lecturers were professors at the university. The group stayed in existence until at least 1925.

⁹¹ HISTORY AND REPORT OF THE EXHIBITION AND CELEBRATION TO COMMEMORATE THE FIFTIETH ANNIVERSARY OF THE EMANCIPATION OF THE NEGRO: HELD AT THE COLISEUM, CHICAGO, ILLINOIS, AUGUST 22ND TO SEPTEMBER 16TH, NINETEEN HUNDRED AND FIFTEEN (1915).

1916

Darrow wrote an article titled "An Appeal for the Despoiled" that was published in *Everyman* in January.

On February 16 Darrow was one of the speakers at the annual banquet of the Women's Bar Association of Illinois.

On April 30 Darrow delivered an address at the Open Meeting of Railroad Men in Chicago. Extracts of his speech were published in June under the title "Straight Talk to the Rails" in the *International Socialist Review*.

Darrow Defends Gangster

In 1916 Darrow defended Jacob "Mont" Tennes, "a particularly violent Chicago gangster"⁹² who was being investigated for illegal gambling activities related to transmitting the results of horse races. Tennes' wire service, which transmitted the race results to bookies in Illinois, was so profitable that it prompted Judge Kenesaw Mountain Landis of the United States District Court, Northern District of Illinois, to launch an investigation. On October 2, 1916 Tennes, without a subpoena, was surrendered by his special counsel, Clarence Darrow. Tennes took Darrow's advice and refused to answer incriminating questions. Judge Landis ended the investigation when he concluded local gambling was not within the jurisdiction of the federal courts and the interstate transmission of sporting news was not a crime. In 1921 Judge Landis was appointed to be the first commissioner of Major League Baseball and he served as commissioner until 1944.

John Howard Moore

Darrow was devastated when his brother-in-law John Howard Moore committed suicide on June 17, 1916 in Chicago. Moore was married to Darrow's sister Jennie. Moore, who was born in 1862, was a high school teacher and also a prolific writer of some renown on the subjects of evolutionary biology and ethics. His most important books were *The Universal Kinship* (1906) and *The New Ethics* (1907). Darrow was very fond of Moore and delivered a eulogy at his funeral that was later published.

Darrow wrote an article titled "Nietzsche" that was published in the June-July issue of *Athena*.

Darrow wrote a short article titled "Punishment" for *The Chrysalis* a publication by inmates of state and federal institutions.

⁹² WILLIAM POUNDSTONE, *FORTUNE'S FORMULA: THE UNTOLD STORY OF THE SCIENTIFIC BETTING SYSTEM THAT BEAT THE CASINOS AND WALL STREET* 4 (2006).

Darrow's article "Crime and Economic Conditions" was published in the *International Socialist Review* in October.

In November 1916 Darrow argued before the United States Supreme Court on behalf of Charles H. Ramsay. Ramsay had previously traveled from Colorado to Illinois to testify as a witness in a case. A few minutes after Ramsay testified, an individual named Stewart served process on Ramsay for an unrelated matter. Darrow successfully argued that process could not be served in this manner because a witness coming from another state or jurisdiction, is exempt from the service of civil process while in attendance upon court, and during a reasonable time in coming and going.⁹³ *Stewart v. Ramsay* is still good law.

1917

On January 7 Darrow debated Professor Scott Nearing on the question "Will Democracy Cure the Social Ills of the World?" Darrow argued in the negative. Scott Nearing (1883 - 1983) was a radical economist, writer, educator and political activist.

Darrow became increasingly vocal in his belief that America should enter World War I. He gave speeches and wrote in support of the Allies and the need to defeat Germany.

A letter Darrow wrote to his friend Daniel Kiefer on June 28, 1917 was published in *The Liberal Review*. Kiefer had criticized Darrow for turning away from pacifism and supporting America's involvement in World War I. Darrow wrote in reply to Kiefer's criticism:

I did write a book advocating non-resistance. Most of the things I said in that book, I still believe. I hated war then and I do today. My error, then, as I see it now, was the belief that you could make a general rule of life that would cover every case. This, I believe, is the fundamental error of the pacifist.⁹⁴

Oscar DePriest

In 1917 Maclay Hoyne, Illinois State Attorney for Cook County, began investigating corruption in Chicago. Because of Hoyne's investigation, Oscar DePriest,⁹⁵ a black alderman from Chicago's Second Ward, and a strong supporter of Mayor Thompson, was indicted on conspiracy charges for protecting illegal gambling and prostitution operations.⁹⁶ DePriest, born in Alabama in 1871 to former slaves, was Chicago's first black alderman. Darrow worked with Edward H. Morris, a prominent black attorney in Chicago, to defend DePriest. Morris, born the son of a slave in Kentucky in 1859, was the fifth black to pass the Illinois bar. Darrow was able to persuade the all-white jury to acquit

⁹³ *Stewart v. Ramsay*, 242 U.S. 128 (1916).

⁹⁴ Clarence Darrow, *Brief for the War*, LIBERAL REV., July, 1917.

⁹⁵ DePriest's last name is often spelled De Priest. He used the spelling DePriest in a letter he wrote to Darrow in 1931.

⁹⁶ SENTIMENTAL REBEL, *supra* note 11, at 272-73.

DePriest. In 1928 DePriest was elected to Congress as a member of the Republican Party. He was the first black elected to Congress since Reconstruction.

On March 11 Darrow debated his good friend George Burman Foster at the Garrick Theater on the topic "Is Life Worth Living?" Foster argued that it was while Darrow took the negative side.

Darrow's article "Schopenhauer" was published in the *Liberal Review* in March.

Although Darrow fully supported America's involvement in World War I he protested against the suppression of anti-war and socialist literature by the U.S. Postal Service. Albert Sidney Burleson was appointed Postmaster General by Woodrow Wilson in 1913. During World War I Burleson strongly enforced the Espionage Act by ordering local postmasters to remove and send to him any illegal or suspicious material such as radical publications which included socialist material. Anti-war material was banned from delivery. In July 1917 Darrow, representing the Socialist Party, and several others including Frank P. Walsh, Morris Hillquit, Seymour Stedman and Amos Pinchot went to Washington D.C. to meet with Postmaster Burleson to discuss the matter. Despite their pleas they were unable to persuade Burleson to remove the ban on what he considered subversive literature. Darrow complained to President Wilson who wrote a letter to Darrow on August 9, 1917 in which he told Darrow "You may be sure I will try to work out with the Postmaster General some course with regard to the circulation of the Socialistic papers that will be in conformity with the law and good sense."

On September 15 Darrow spoke at the first meeting of the American Alliance for Labor and Democracy held at Madison Square Garden in New York. The group, headed by Samuel Gompers, president of the American Federation of Labor, was formed to campaign "against pacifist propaganda in the United States."⁹⁷ Darrow told those in attendance:

If President Wilson had not defied Germany he would have been a traitor, and any man who refuses to back the President in this crisis is worse than a traitor. . . . Before this country declared war the pacifists complained that we should not have sold ammunition to the allies. I agree with them. They are correct. We should not have sold ammunition to the allies. We should have given it away. The United States was slow to enter this war. . . . But now that she is in she will remain until German autocracy has been destroyed. . . . Our friends, the pacifists, tell us that this war is the creation of Wall Street; in other words, that it is a rich man's war. How any sane man can make such a claim as this, I do not see.⁹⁸

The investigations of Maclay Hoyne, Illinois State Attorney for Cook County, led to the indictment of Charles C. Healey,⁹⁹ chief of the Chicago Police, who was indicted on charges of malfeasance in office and as a conspirator in a plot to nullify anti-gambling

⁹⁷ *Charges Traitors In America Are Disrupting Russia*, N.Y. TIMES, Sept. 16, 1917 at 1.

⁹⁸ *Id.* at 3.

⁹⁹ Sometimes spelled Healy.

laws. Others were also indicted including an underworld bail bondsman named Billy Skidmore. Darrow and Charles Erbstein defended both Healey and Skidmore during their trial in October. To the surprise of many Healey and the others were acquitted.

In October former Populist Senator Richard F. Pettigrew of South Dakota was indicted for violating the Espionage Act because of anti-war comments made to a reporter. Darrow assisted Charles O. Bailey¹⁰⁰ (1860 - 1928) in the defense of Pettigrew. After much legal maneuvering, the case against Pettigrew was dropped in November 1919.

On November 1 Darrow gave an address in Chicago titled “The War” under the auspices of the National Security League. This was a public service organization founded in 1914 to lobby for increased and improved preparation for America’s defense against enemies at home and abroad. Most of Darrow’s speeches supporting America’s entry into World War I were made under the auspices of the National Security League. As he did in all his speeches about the war, Darrow spoke in strong terms about the need to fight and win: “Although we were slow and reluctant to do our part, still, America has drawn the sword, and that sword will not be sheathed until Prussian militarism shall be destroyed.”

One of Darrow’s biographers believes that Darrow’s strong showing of patriotism and his very vocal support of the war did more than anything else to repair his reputation from the damage inflicted by being accused and tried for jury bribery: “The war was momentous for Darrow personally, for it not only hastened his reputation’s rehabilitation, but propelled him into eminent circles in which he had never before been welcome.”¹⁰¹ The war thrust Darrow the radical into a very unlikely position:

As Darrow stomped the country making pro-war speeches, he became a spokesman for government policy. By 1918 he had even become a part of the government’s propaganda machine, in the most curious turn of his career. He was the darling of the establishment, courted by high government officials and by the President of the United States himself, with whom he had a private meeting on August 1, 1917, less than one month after America entered the war.¹⁰²

1918

At least as early as 1918 Darrow brought William H. Holly into his law firm. They practiced law together in the firm of Darrow, Sissman, Holly & Carlin. Holly would become one of Darrow’s closest friends.

Darrow gave an address about “Voltaire” on February 3 in the Cort Theater.

¹⁰⁰ See Woods Fuller Shultz & Smith P.C., Our Founding Partners, <http://www.woodsfuller.com/about/partners.cfm> (last visited Mar. 16, 2010).

¹⁰¹ TIERNEY, *supra* note 8, at 291.

¹⁰² *Id.* at 292.

In March Darrow participated in a series of “patriotic education lectures” for public school teachers in New York.¹⁰³ The same lecture series was given in Chicago and “All the teachers of the two cities are required to attend and [a] record of their presence will be kept as for their usual classes.”¹⁰⁴ The speakers in New York were sent from Chicago and the speakers in Chicago came from New York. The lecture series was arranged by the Chicago and New York Boards of Education.

In April Darrow defended Professor William Isaac Thomas who had been arrested for disorderly conduct because he was found in a hotel room with the much younger wife of an army officer who had left in February to fight in Europe. Darrow successfully argued before the Morals Court that although the two were found in a hotel room together it did not constitute disorderly conduct. Thomas was a pioneer in the field of sociology. He was a professor at the University of Chicago from 1897 until he was fired in 1918 after his arrest. In 1927 he served as President of the American Sociological Society.

A private dinner party was given in Darrow’s honor on April 18 to celebrate his 61st birthday. Darrow gave an address at the party and, as usual, he did not let festivities brighten his pessimistic views. He told those present:

The one thing that gets me, perhaps more than anything else, is the terrible cruelty of man. . . . The thing I see everywhere present is the cruelty of man. . . . We seem to get pleasure in torturing our fellow-men. And here with you, who I am sure are higher intellectually than the average people, or you wouldn’t be my friends and appreciate me—even here I venture to say that most of you enjoy telling or hearing some disagreeable thing about your fellow-men. Why is it?¹⁰⁵

On June 14 Darrow gave an address at a Flag Day celebration. The event commemorates the adoption of the flag of the United States.

Travels to Europe to Support Allies

So prominent was Darrow in advocating for the Allies in World War I that in 1918, when the British government asked for the names of prominent Americans to travel to Europe to speak in favor of the war, Darrow’s name was put forward. Darrow accepted the invitation and on July 21, 1918 he set sail for Europe. He said before he left:

I shall tell the people over there that while America was very slow in getting into the war there were a great many people here, outside of those who were hereditary friends of the Central Powers or enemies of England, who had always been with the Allies, and who were impatient to get into the war earlier. I believe we should have gone in when Belgium was invaded. . . . Americans feel almost as strong for the French and English, to say nothing of the others, as for themselves.

¹⁰³ *Lectures for Teachers; Patriotic Series Starts Today Here and in Chicago*, N.Y. TIMES, Mar, 18, 1918, at 11.

¹⁰⁴ *Id.*

¹⁰⁵ CLARENCE DARROW VERDICTS OUT OF COURT 274-75 (Arthur and Lila Weinberg, eds.) (1963).

They are resolute, determined, and never leave a job unfinished. And no matter how long it takes this country will never stop until Prussian militarism has been destroyed.¹⁰⁶

Darrow spent three months in Europe. An important result of the trip was that Darrow came to believe that the British and French governments had deliberately spread propaganda by claiming repeatedly that the German military committed war crimes. This was later found to be the case as Germany had been repeatedly accused of committing war crimes against Belgium children as well as others. Darrow wrote in his autobiography:

I discredited the stories told of outrages by the Germans, suspecting them of being manufactured to create public opinion, and I never hesitated to say so. Later on, when I visited the warring countries at the height of the conflict, I was confident that they were not true.

Reading and experience have taught me that when governments prepare for war the first unit they mobilize is the liars' brigade. One celebrated Eastern divine went up and down the land exhibiting moving-pictures of German atrocities. He must have known that they were faked; the audience must have believed that the Germans, just before cutting off the Belgian children's hands, called in the photographers to witness and kodak the deeds. I did not tell these tales in my speeches. Reports of the presence of mutilated Belgian children then living in Chicago were constantly coming to my ears. I always offered a hundred dollars if the informant would bring one to my office or take me to see one. No one ever came back for the reward.¹⁰⁷

Although Darrow became increasingly disillusioned by what he perceived as war propaganda he did not have to publicly change his position about the war because it ended a few months after he returned to the United States.

In July Darrow was appointed to serve on the State Constitution Committee as part of the Illinois State Bar Association Committees for 1918-1919.

On August 17, 1918 after a 4 month trial, 100 members of the Industrial Workers of the World (IWW), including Big Bill Haywood and Vincent St. John, were convicted for violating the Espionage Act.¹⁰⁸ Haywood was sentenced to 20 years in Leavenworth Prison and fined \$20,000. St. John was sentenced to ten years. Darrow represented St. John on several appeals before the Circuit Court of Appeals, Seventh Circuit in 1918 and 1920.¹⁰⁹ St. John served two and a half years in prison before receiving executive

¹⁰⁶ *To Tell our War Ideals; Clarence Darrow to Make Speaking Tour of England and France*, N.Y. TIMES, July 22, 1918, at 10.

¹⁰⁷ THE STORY OF MY LIFE, *supra* note 2, at 213.

¹⁰⁸ Haywood v. United States, 268 Fed. 795 (7th Cir. 1920).

¹⁰⁹ United States v. St. John, 254 Fed. 794 (7th Cir. 1918); St. John v. United States, 268 Fed. 808 (7th Cir. 1920).

clemency on June 27, 1922. Haywood served a year at Leavenworth, but while out on appeal in 1921, he jumped bond and fled to the Soviet Union, where he remained until his death in 1928.

Darrow debated Professor John C. Kennedy on the question “Are Internationalism and the League of Nations Practical and Desirable Schemes for Ending War?” The debate was later published as a pamphlet.

Darrow’s good friend George Burman Foster died on December 22, 1918. Darrow spoke at a memorial service held for Foster at the Garrick Theater on January 12, 1919. Darrow’s strongly held view that human beings do not have free will or control over their lives influenced his comments about his friend: “He and I debated the meaning of life. I remember hearing him say on this platform, in almost a burst of frenzy: ‘I am the captain of my soul!’ But, George Burman Foster is dead! No man is captain of his soul; he is not even a deck hand on a rudderless ship; he is a bubble cast up for an instant on an angry sea, then lost in the air and waves, to be seen no more.” Darrow and Foster had been scheduled to debate “Is There Immortality” the following week.

On December 30 it was announced that Darrow was one of several people appointed to a Citizen’s Commission created by the Board of Education in Chicago.

1919

At age 62, Darrow had another very busy year. On January 26 he debated Professor John C. Kennedy on the topic “Will Socialism Save the World?” in Chicago. Darrow argued that it would not. Kennedy was at various times a professor of economics at Cornell University and the University of Chicago and a housing investigator for the Chicago Association of Commerce, Secretary of the Socialist Party of Illinois, and an alderman in Chicago.

On March 2 Darrow was one of the speakers at the annual banquet of the Judea Woman’s Club.

In March, Darrow and Peter Sissman worked on the appeal of eleven Italian immigrants, who held anarchist views, and who had been convicted in Wisconsin for assault and being armed with a loaded revolver with intent to commit murder. In September 1917 they had been arrested after an altercation with a minister who was holding a meeting in Milwaukee to support the United States war effort. When the police intervened shots were fired and two of the demonstrators were killed. On November 24th, four days before their trial was to begin, a suspicious package was found outside the minister’s church. It was taken to the police station and about ten minutes later it exploded killing nine police officers and one civilian. Two of the police officers who were killed had been involved in the arrest of the eleven defendants.

The defendants were denied a change of venue despite the heavy newspaper coverage of the bombing and the general belief that it was related to the dispute with the minister. All

eleven defendants were convicted and sentenced to twenty-five years of hard labor. Darrow and Sissman submitted a written brief and argued before the Wisconsin Supreme Court. The court held that there was not enough evidence to prove a conspiracy among the defendants. The court reversed the convictions of nine of the defendants and affirmed the convictions of two defendants who were found to have firearms when they were arrested.¹¹⁰

After his 1895 speech *The Rights and Wrongs of Ireland* and its publication in pamphlet form, Darrow was viewed as being sympathetic to the Irish cause of independence from Britain. Eamon de Valera (1882 – 1975), an Irish politician and patriot born in America, consulted with Darrow in Chicago just a few weeks after he escaped from Britain’s Lincoln Jail on February 3, 1919. Éamon de Valera was an important figure in the Easter Rising, the Irish War for Independence from Britain, and the Irish Civil War. He later became Prime Minister (Taoiseach) of Ireland from 1951 to 1959 and President from 1959 to 1973.

Darrow was drawn into another sensational murder trial in Chicago when he defended Emma Simpson who shot and killed her husband in April 1919 in a crowded Chicago courtroom during alimony proceedings. During the trial Darrow told the all-male jury “You’ve been asked to treat a man and a woman the same – but you can’t. No manly man can.” The jury deliberated for half an hour before finding Emma Simpson insane.

Victor L. Berger

In 1919 a case with interesting political ramifications drew Darrow’s attention. The case involved Victor L. Berger, a Socialist politician from Wisconsin, and four other Socialists who were indicted under the Espionage Act in February 1918. Berger was a founding member of the Socialist Party of America and an influential Socialist journalist. In 1910, he became the first Socialist elected to the U.S. House of Representatives when Milwaukee voters elected him.

In 1918 while under federal indictment, Milwaukee voters again elected Berger to the House of Representatives. In February 1919 Berger and the other four defendants were convicted of violating the Espionage Act because of their opposition to the entry of the United States into World War I. Judge Kenesaw Mountain Landis presided over the trial and he sentenced Berger to 20 years in federal prison.

In June of 1919 Darrow testified on Berger’s behalf before a special committee of the House of Representatives.¹¹¹ On November 10, 1919, the House of Representatives declared Berger was not eligible to take the oath of office or to hold a seat as a Representative because he was a convicted felon and war opponent. In response, Wisconsin held a special election to fill the vacant seat, and on December 19, 1919

¹¹⁰ *Bianchi v. State*, 171 N.W. 639 (Wis. 1919).

¹¹¹ *Victor L. Berger: Hearings Before the Special Committee Appointed Under the Authority of House Resolution No. 6 Concerning the Right of Victor L. Berger to be Sworn in as a Member of the Sixty-sixth Congress* (1919).

Berger was elected. On January 10, 1920, the House again refused to seat him and the seat remained open until Republican William H. Stafford defeated Berger in the 1920 general election. In 1921 the United States Supreme Court overturned the convictions because Judge Landis should have recused himself because of his prejudice against Germans.¹¹² Berger ran again for Congress and defeated Stafford in 1922 and was reelected in 1924 and 1926.

Darrow Justifies Constitutional Violations During War

On November 9, 1919 Darrow gave a speech titled “War Prisoners” in Chicago. Perhaps surprisingly Darrow defended the prosecution of individuals who tried to interfere with the United State’s military effort in World War I. Darrow justified the prosecutions as necessary in a time of war:

I have heard many men, and women, for whom I have a high regard, complain of the violation of “Constitutional rights” during the war. Now, I try to be honest with myself, at least. I have no doubt but what constitutional rights were violated over and over again during the war, and since—and before. In the main, I, as one individual, was willing to see constitutional rights violated during the war. I would have hoped, and did wish that there might be fewer of those violations; that the barbarous and medieval penalties might be less severe, and of course that all the people I know would escape—but that is a personal emotion. At the same time, believing as I did in this war, that it was just and necessary, that the first law of individuals and nations is self-preservation, I did not worry so much about the means of self-preservation.

Typhoid Jennie

In December 1919 it was announced by the American Medical Liberty League that a 65 year old woman in Chicago named Jennie Barmore had been identified as a carrier of typhoid. Barmore, who had a disabled husband, was quarantined in her house and prohibited from cooking or serving food to anyone even though she made a living by taking in boarders. Barmore and the American Medical Liberty League decided to fight the order of the health officer and Darrow agreed to take the case. A judge heard the case and in November 1920 declared that Barmore was a menace to the health of Chicago and quarantine was necessary. In June 1921 her defense filed an application for a writ of habeas corpus, claiming she was unlawfully restrained of her liberty at her home by the commissioner of health, and an epidemiologist of the department of health. But the Supreme Court of Illinois ruled against her.¹¹³

1920

Darrow the Pessimist

¹¹² Berger v. United States, 255 U.S. 22 (1921).

¹¹³ People ex rel. Barmore v. Robertson, 134 N.E. 815 (Ill. 1922).

On January 11 Darrow gave a lecture titled “The Consolations of Pessimism” to the Rationalist Educational Society in Chicago. A pessimist for a good deal of his life, Darrow was well-versed in the benefits of holding this view point. He told the audience “The pessimist takes life as he finds it, without the glamour that false creeds and false teachers and foolish people have thrown about it.” Towards the end of his talk he said:

“The pessimist expects nothing. He is prepared for the worst. It is something like getting vaccinated so you will not get the small-pox. If you are well vaccinated with pessimism, nothing much troubles you. You say, ‘Oh, well, it might be worse.’ Whenever the pessimist is disappointed, he is happy, for it is better than he thought.”

On February 8 Darrow debated Professor Frederick Starr on the question “Is the Human Race Getting Anywhere?” Professor Starr was an Anthropologist at the University of Chicago.

On March 28 Darrow debated Professor Starr on the question “Is Life Worth Living?” in Chicago. Darrow argued in the negative. In his introduction the chairman stated that the topic of the debate is “the great philosophy of pessimism, of which Mr. Clarence Darrow is the greatest living exponent.”

On May 3 Darrow spoke at a convention of the International Ladies’ Garment Workers’ Union in Chicago. Darrow denounced Attorney General Alexander Mitchell Palmer for trying to discredit organized labor by issuing reports such as his “May Day scare, which had no foundation in fact.” Palmer had predicted that Communists would try to overthrow the United States government on May Day 1920. Palmer issued his prediction because the previous year a series of bombings had been perpetrated by sending bombs through the U.S. mail to be delivered on May Day 1919. Palmer’s prediction led to the mobilization of the National Guard and the New York City Police Department. Palmer was ridiculed when May Day 1920 passed without the predicted violence.

Palmer was understandably worried about potential bombings because on June 2, 1919, several bombs were detonated by anarchists in eight American cities. One of the bombs seriously damaged Palmer’s own home.

Darrow gave an address to the Rationalist Society of Chicago called “Insects and Men: Instinct and Reason” that was published by Haldeman-Julius.

On November 28 Darrow and Professor Frederick Starr debated the topic “Is Civilization a Failure?” This was one of the rare debates when Darrow argued in the affirmative. The debate was held under the Auspices of the Workers University Society

Prohibition

By 1916 nineteen states had laws prohibiting the manufacture and sale of alcoholic beverages. Pressure grew to enact a federal prohibition. The movement gained strength during World War I because many breweries were owned by German-Americans. Wayne

Wheeler, general counsel and lobbyist for the Anti-Saloon League, lobbied the federal government to investigate the large number of breweries owned by alien enemies.

Congress passed the 18th Amendment in December 1917. It banned the manufacture and sale of “intoxicating liquors” but it did not ban the possession, consumption or transportation of the same. A partial ban was instituted to save grain for the war effort. This limited production to seventy percent of the year before, and the alcohol content of beer was limited to 2.75 percent. But the anti-alcohol forces were not satisfied and a year later Congress enacted the Volstead Act. This defined an intoxicating beverage as anything stronger than 0.5 percent alcohol. This effectively banned the sale of alcoholic beverages such as wine, beer, and whiskey. At midnight on January 16, 1920 the federal prohibition law went into effect. Darrow continued to write and speak out in protest against prohibition.

Red Scare

Following the 1917 Bolshevik Revolution in Russia and the end of World War I in November 1918, a “Red Scare” took place in the United States. Communists, socialists and anarchists were viewed as threats capable of inciting the overthrow of the United States government. This was the first Red Scare period, which is distinct from the McCarthy period in the 1940s and 1950s.

On June 2, 1919 two people were killed when bombs were set off simultaneously in eight cities across the country. One of the bombs partially destroyed the home of Attorney General Palmer. This attack and other bombings were attributed to anarchists. Foreigners were viewed with suspicion and many aliens were deported during these years of unrest. Darrow became very worried that hysteria was leading to civil liberties violations. He was especially concerned about the violations of free speech because many of the arrests were based on public demonstrations or on revolutionary publications which should have been protected speech under the First Amendment.

Benjamin Gitlow

Benjamin Gitlow was a member of the Left Wing faction of the Socialist Party. In 1918, that faction was expelled from Socialist Party and Gitlow, John Reed, and James Larkin established the Communist Labor Party. In November 1919 Gitlow and Larkin were arrested and charged with violating the New York State Criminal Anarchy Act for publishing the *Left Wing Manifesto* in the July 5, 1919 issue of the *Revolutionary Age*. The government alleged the manifesto called for the overthrow of the United States government by force, violence and illegal means.

According to Gitlow, the Communist Party executive committee decided to hire Clarence Darrow to defend him. Darrow took the case without even meeting Gitlow. Darrow was assisted by Charles Recht. Despite the efforts of the defense, Gitlow was convicted and sentenced to five to ten years at hard labor in Sing Sing prison.

Darrow did not work on any of Gitlow's appeals. Other attorneys filed several appeals and the Gitlow case went to several higher courts and eventually to the United States Supreme Court. The Court affirmed Gitlow's conviction but the case is significant because it is considered the first decision announcing the incorporation doctrine under which some protections under the Bill of Rights also apply to the states.¹¹⁴ Gitlow eventually denounced Communism and published a book *I Confess: The Truth About American Communism*. He became a popular anti-Communist writer and lecturer during the 1940s and 1950s.

Darrow defended Arthur Person in April 1920 in Rockford Illinois. Person, born in Sweden, was charged with violating an Illinois law that prohibited joining an organization that called for the violent overthrow of the government. Person was acquitted in a jury trial.

People v. Lloyd

Several months after the Person trial, Darrow and several other attorneys defended twenty members of the Communist Labor party arrested and charged in Illinois with violating an Illinois statute that made it unlawful to advocate reformation or overthrow of the existing form of government by violence or other unlawful means.¹¹⁵ They were convicted and sentenced to various terms of one to two years and fined. Darrow and co-counsel appealed the case to the Illinois Supreme Court but the court upheld the convictions.¹¹⁶ On November 29, 1922, Illinois Governor Len Small pardoned the defendants.

1921

On January 16 a statement denouncing anti-Semitism titled "The Peril of Racial Prejudice: A Statement to the Public" was published in newspapers across the United States. The statement was signed by more than one hundred prominent citizens of "Gentile extraction and Christian faith" including William Howard Taft, Woodrow Wilson, Warren G. Harding and Clarence Darrow.

Darrow gave a speech before the third annual meeting of the American Liberty League. The speech was published in 1921 with the title "How Liberty Is Lost."

Eugene Debs

Eugene Debs was convicted in 1918 for violating the Espionage Act because of an anti-war speech he gave in Canton, Ohio in June 1918 and for interfering with military recruitment."¹¹⁷ Debs was sentenced to ten years' imprisonment. Debs appealed his case

¹¹⁴ Gitlow v. New York, 268 U.S. 652, (1925).

¹¹⁵ 1919 Ill. Laws 420, S.H.A. ch. 38, §§ 558-564.

¹¹⁶ People v. Lloyd, 136 N.E. 505 (Ill. 1922).

¹¹⁷ Debs v. United States, 249 U.S. 211, (1919).

up to the United States Supreme Court but in an opinion by Justice Holmes, the Court affirmed the verdict.¹¹⁸

Darrow had written to Debs offering to help but Debs declined the offer because he was angered by Darrow's support of America's involvement in World War 1. But Darrow later worked to get Debs pardoned or have his sentence commuted. He visited Debs in the penitentiary in Atlanta. Darrow also traveled to Washington D.C. to appeal to President Wilson and Attorney General Palmer on Debs' behalf. Both Wilson and Palmer, who were Democrats, refused to help Debs. Later to Darrow's surprise Republican President Warren G. Harding commuted Debs' sentence to time served and he was released on December 25, 1921. Darrow later wrote about Harding and his Attorney General Harry M. Dougherty:

I had always admired Woodrow Wilson and distrusted Harding. Doubtless my opinions about both in relation to affairs of government were measurably correct; still, Mr. Wilson, a scholar and an idealist, and Mr. Palmer, a Quaker, kept Debs in prison; and Mr. Harding and Mr. Dougherty unlocked the door. I know at least two men who understood this: Lincoln Steffens and Fremont Older. So far as I am concerned, I never think of either Harding or Dougherty without saying to myself: "Well, they pardoned Debs!"¹¹⁹

Darrow and co-counsel defended several bank robbers charged with murder after a shootout with local towns people following a botched robbery in Kosciusko County, Indiana.¹²⁰ The robbery and shootout occurred on December 29, 1920 and one of the towns people wounded in the shootout later died. The defendants were convicted but they avoided the death penalty and received life sentences. Darrow participated in the defendants' appeal but their convictions were upheld by the Supreme Court of Indiana.¹²¹

Darrow defended several labor leaders charged with instigating violence during a strike in Chicago by local members of the International Upholsterers and Trimmer's Union. The strike began in August 1919 and ended in 1920. Darrow helped defend Edwin E. Graves, the International union's vice president, and Roy Hull, business agent for Local 111. On May 10, 1921 Graves and Hull were found guilty and sentenced to one to five years in prison and fined \$2,000 each. Prior to the trial Graves unsuccessfully fought extradition from Massachusetts.¹²²

In the fall of 1921 Darrow and another attorney represented a practitioner of naprapathy before the Supreme Court of Nebraska. Doctors of naprapathy are connective tissue specialists that evaluate and treat neuro-musculoskeletal conditions but they are not

¹¹⁸ *Id.*

¹¹⁹ THE STORY OF MY LIFE, *supra* note 2, at 73.

¹²⁰ Florence S. Stauffer, *Darrow Defends Bank Bandits Here in 1921*, <http://yesteryear.clunette.com/darrow.html> (last visited Mar. 16, 2010).

¹²¹ *Burns v. State*, 136 N.E. 857 (Ind. 1922).

¹²² *Ex parte Graves*, 128 N.E. 867 (Mass. 1920).

medical doctors. The practitioner was convicted for the illegal practice of medicine and the Supreme Court of Nebraska affirmed the conviction.¹²³

Darrow worked with two other lawyers including George A. Cooke, former Chief Justice of the Illinois Supreme Court, in a high-profile divorce case. They represented Harold F. McCormick, President of the International Harvester Company, in divorce proceedings with his wife Edith Rockefeller McCormick, the daughter of John D. Rockefeller. The couple divorced on December 28, 1921.

1922

At age 65 Darrow's book *Crime: Its Cause and Treatment* was published. The book presents Darrow's mechanistic views about human behavior and refutes free will. Darrow also wrote about the relatively new medical science of endocrinology that he believed offered insights into how secretions of ductless glands in the body affect human behavior.

At the annual meeting of the Illinois State Bar Association in 1922 a group debated the question of whether Illinois should adopt the American Bar Association's Standards of Education. Speakers representing the supreme judicial districts in the state were "unanimously in favor of the recommended standard," yet "considerable opposition developed, led by O.D. Mann, Henry Fitts, Clarence Darrow, Dean Lee, and others. The opposition, in the main, did not question the value to the individual of pursuing the standards referred to, but doubted the wisdom and justice of prescribing them as a requirement."¹²⁴

Darrow gave a talk at the Fifth Biennial Convention of the Amalgamated Clothing Workers of America held May 8 - 13 in Chicago. Darrow was introduced by the group's president Sidney Hillman who told the audience "It gives me great pleasure now to introduce a man who is known to all of you, no matter from what part of the country you come—the counsel of our organization in this city, Clarence Darrow."

Around 1918 Darrow expanded his law firm by bringing in another lawyer named George Popham who had previously been an assistant state's attorney in Illinois. Sometime in 1922, while working in Darrow's firm, Popham forged a will for a client. An opposing attorney called Peter Sissman to inform him but Sissman could not believe it so he did not tell Darrow. Later Darrow went to court in the matter and the forgery came to light creating a scandal that greatly upset Darrow. According to Irving Stone in his biography of Darrow, Popham called another attorney to his office, showed him a revolver he had in his desk and asked the attorney to testify on his behalf or Popham said he would "blow my brains out."¹²⁵ When informed of this, Darrow said "'You go back and tell Popham that's the best thing to do but not to do it in the office; he's made enough mess around here."¹²⁶ The startled attorney was afraid to do that but Darrow told

¹²³ *Carpenter v. State*, 106 Neb. 742 (1921).

¹²⁴ *Activities of State Bar Associations*, 8 A.B.A J. 445, 446 (1922).

¹²⁵ FOR THE DEFENSE, *supra* note 7, at 364.

¹²⁶ *Id.*

“I’ve had a hundred in here threatening to do that; when they talk about it they never do it.”¹²⁷

In January 1920 a constitutional convention was assembled to draft a new Illinois constitution. The convention worked until September 12, 1922. Among the issues raised, the new constitution would have given the city of Chicago the power to frame its own charter and the powers of municipal home rule. But Cook County which had 47 per cent of the population had only 37 per cent of the representation in the two houses. Under the proposed constitution Cook County representation was to be permanently limited to one-third in the state senate. In future constitutional conventions Cook County was to be limited to 45 out of 121 members in the Illinois House of Representatives. Opposition to the proposed constitution organized. On November 22, 1922 the People's Protective League was formed and chose Harold Ickes as president. Progressives joined including former Governor Edward Dunne and Clarence Darrow. Members of the league actively campaigned against the new constitution by creating and distributing pamphlets and making speeches against its adoption. On December 12, 1922 over a million votes were cast and the new constitution was soundly rejected by a vote of 921,398 against and 185,298 for. Outside Cook County the vote was more than two to one against the new constitution and in Cook County the vote was nearly twenty to one against it.

1923

On August 1922 a secret convention of the Communist Party of America being held in the woods in Bridgman Michigan was raided by federal and state law enforcement agents and members were charged with violating Michigan’s criminal syndicalist law. It was reported in January 1923 that Clarence Darrow and Frank Walsh would head their defense.¹²⁸

Fred Lundin

In 1923 Darrow battled prosecutor Robert Crowe in a large graft and corruption scandal involving the finances of the Chicago public schools. Fred Lundin, a close associate of Mayor Thompson, and twenty-three others were accused of graft for stealing more than a million dollars from the schools. There appeared to be overwhelming evidence of guilt but Darrow and his co-counsel convinced the jury to acquit Lundin and the others. During the Lundin investigation Mayor Thompson decided not to run for re-election. But the not guilty verdicts allowed Thompson and his administration to escape without any convictions. This allowed Thompson to be elected mayor in 1927 because of Al Capone's support. This last Thompson administration was more corrupt than his previous administration and Thompson is widely viewed as one of the most corrupt mayors in the history of the United States.

In 1923 a committee of the Chicago Bar Association issued a report on judicial candidates in which it said Edward H. Morris was not fit for the bench and also

¹²⁷ *Id.*

¹²⁸ *Aid Communists' Defense*, N.Y. TIMES, Jan. 21, 1923, at 21.

mentioned that he was colored. Darrow was a friend of Morris and he worked with Morris in 1917 to defend Oscar DePriest. In November 1923 Darrow wrote a letter to the editor of *The BROAD AX*, a black Chicago newspaper, in which he accused the Chicago Bar Association and its committee of discriminating against Morris because of his race.

1924

In February and March 1924, Darrow helped defend Michael Faherty, president of the Board of Local Improvements in the Thompson administration. Faherty was accused of paying a \$28,000 bribe during the construction of the Michigan Boulevard Bridge in Chicago. Faherty was found not guilty.

In early March Darrow and Charles Windle participated in a debate against representatives of the Anti-Saloon League. The debate was broadcast over the radio and listeners could pay to vote in a straw poll for the wet or dry side. More than 47,000 listeners voted with the wet side getting the overwhelming number of votes.¹²⁹

Leopold and Loeb

On May 21, 1924 Nathan Leopold Jr. and Richard Loeb kidnapped and murdered fourteen year old Bobby Franks in Chicago. They were soon arrested and confessed. Their families hired Darrow to try and save them from execution. Darrow and his co-counsel shocked the court and the nation when they had their clients plead guilty. Darrow realized there was overwhelming evidence against Leopold and Loeb and if they faced a trial they would be convicted and very likely executed. The defense strategy was to plead them guilty and then try to convince the judge to sentence them to life in prison instead of to death. The subsequent sentencing hearing involved a great deal of psychological, psychiatric and mental health testimony and evidence. Ultimately the defense was able to convince the judge that Leopold and Loeb should not be executed because of their age. It was Darrow's most sensational and famous case up to this point.

The Leopold and Loeb case and Darrow's defense were very controversial. When it concluded Darrow had publicly expressed hope that the case would prompt further research into the psychology of crime and maybe lead to the creation of neuropathic hospitals to treat criminals. Judge Talley, on the New York Court of General Sessions, responded "It is not the criminals, actual or potential, that need a neuropathic hospital, it is the people who slobber over them in an effort to find excuses for their crimes. . . . There are lots of sick people who concern themselves with crime, but the criminals are not numbered among them."¹³⁰ This led to a debate between Darrow and Judge Talley on the topic "Resolved: That Capital Punishment is a Wise Public Policy" at the Manhattan Opera House in New York on October 26, 1924.

¹²⁹ *Radio Straw Vote Overwhelmingly 'Wet'*, N.Y. TIMES, Mar. 11, 1924, at 4.

¹³⁰ *Attacks Darrow's View of Criminals*, N.Y. TIMES, Sept. 23, 1924, at 25.

Darrow wrote an article “The Ordeal of Prohibition” that was published in the *American Mercury* in August.¹³¹

On December 23 Darrow debated his friend Dr. John Haynes Holmes, pastor of the Community Church in New York. The debated was titled *Resolved: That the United States Continue the Policy of Prohibition as Defined in the Eighteenth Amendment*. During the debate Darrow told the audience:

Take out of this world the men who have drank, down through the past, and you would take away all the poetry and literature and practically all the works of genius that the world has produced. What kind of poem do you suppose you would get out of a glass of ice-water?

1925

Haldeman-Julius

In 1925 Darrow renewed his friendship with Emanuel Haldeman-Julius founder of the Haldeman-Julius publishing company in Girard, Kansas. Haldeman-Julius had first met Darrow in 1913 when Darrow was facing bribery charges in California. Emanuel, whose last name was originally Julius, ran the publishing company with his wife Anna Marcet Haldeman, a feminist, playwright, editor, author, and bank president. After they were married they adopted the last name Haldeman-Julius. The Haldeman-Julius publishing company was noted for its small, very inexpensive, staple-bound books known as Little Blue Books. It is estimated that the company published over 500 million copies of the Little Blue Books’ thousands of titles. They were inexpensive so that working and middle class Americans could purchase them. Some sold for five cents and they were small enough to fit in a pocket. The company became a very significant venue for publishing some of Darrow’s writings, speeches and trial arguments. Haldeman-Julius published twenty-two Little Blue Books containing writings or speeches by Clarence Darrow. Marcet Haldeman-Julius became one of the principle writers about some of Darrow’s trials for the Little Blue Book series and wrote about both the Scopes trial and Sweet Trial.¹³²

Darrow co-wrote with Horace J. Bridges an article titled "Crime and Punishment: The Responsibility of Criminals and the Purpose of Punishment" that was published in the March issue of *Century Magazine*.

In May Darrow became a founding member of the American League to Abolish Capital Punishment. Another founding member was Darrow’s good friend Lewis E. Lawes, a reform minded warden of Sing Sing prison. It was the first organization to support statewide efforts to ban the death penalty and the main source of agitation against capital punishment over the next several decades. In December 1925 the organization announced

¹³¹ Clarence Darrow, *The Ordeal of Prohibition*, AM. MERCURY, Aug. 1924, at 419.

¹³² MARCET HALDEMAN-JULIUS, CLARENCE DARROW’S TWO GREAT TRIALS: REPORTS OF THE SCOPES ANTI-EVOLUTION CASE AND THE DR. SWEET NEGRO TRIAL 3, 14 (E. Haldeman-Julius ed., 1927).

that Lawes would become chairman and Darrow and numerous others including Dudley Field Malone would serve on the executive committee. In 1927, the organization received its biggest boost in membership because of the Sacco and Vanzetti case. Arthur Garfield Hays wrote in his autobiography:

Experience in a courtroom, waiting for the verdict in a capital case, knowing that the word ‘guilty’ leads to the electric chair, while acquittal means immediate freedom, with the realization that the result may depend upon the turn of a hair, upon the predispositions, emotions, or prejudice of the jury, explains Darrow’s opposition to capital punishment.¹³³

Scopes Trial

Darrow made headlines around the world when he helped defend John Scopes in Dayton Tennessee in the summer of 1925. Scopes was charged with violating a newly enacted Tennessee statute prohibiting teaching the theory of evolution in public schools. The trial began on July 10, 1925. Assisting the prosecution was William Jennings Bryan, one of the leading religious leaders in the fight to prohibit public schools from teaching Darwin’s theory of evolution. The trial is famous for Bryan taking the stand as an expert on the bible and being sharply questioned by Darrow. During the trial Darrow becomes friends with other defense lawyers, including Dudley Field Malone and Arthur Garfield Hays of the ACLU. Hays would work with Darrow on other cases in the future.

Sweet Trials

In November 1925 Darrow and Arthur Garfield Hays traveled to Detroit to defend several black defendants, including Dr. Ossian Sweet and his wife Gladys, who were arrested for shooting and killing a white man after a mob of whites tried to drive the Sweets from their home in a white neighborhood. In the first of two trials, Darrow and Hays defended all the defendants in a single trial. The defense was fortunate to have a very sympathetic judge Frank Murphy who allowed in evidence of past discrimination and violence against blacks so the defense could show the shooting was an act of self defense based on fear. An all white jury deadlocked and a mistrial was declared.

On June 16 a passenger train derailed in a storm at Rockport, New Jersey killing 50 people. It was reported in July that several relatives of the victims had signed a joint agreement to retain Clarence Darrow to represent them in filing claims with the Delaware, Lackawanna & Western Railroad.

On July 17 the Liberal Church of Denver elected Darrow to honorary church membership because of his role in the Scopes trial.

Darrow wrote an article titled “Salesmanship” that was published in August in the *American Mercury*.

¹³³ ARTHUR GARFIELD HAYS, CITY LAWYER: THE AUTOBIOGRAPHY OF A LAW PRACTICE 212 (1942).

In August William D. Upshaw, a congressman from Georgia, suggested that the “Wets” (those opposed to prohibition) form a national party and that Dr. Nicholas Murray Butler, president of Columbia University, run as their candidate for President and Clarence Darrow run for Vice President. Upshaw was one of the most dedicated prohibitionists in the country.

On August 27 Carrington T. Marshall, the Chief Justice of the Ohio Supreme Court, during remarks at the swearing in ceremony for new lawyers, sharply criticized Darrow’s actions in the Scopes trial:

The law of that case was plain and simple. Neither the indictment nor the statute under which the indictment was framed, contained any mention of evolution. . . . That the forbidden doctrines were taught was freely admitted by the defendant. No defense was therefore open except that of the constitutional validity of the law itself. And yet Darrow sought to browbeat and to bluff the judge into admitting expert evidence upon the soundness of the theory of evolution. And upon refusal he became abusive, highly disrespectful and contemptuous in his conduct toward the court. He had no purpose or motive except publicity and notoriety. After he had been cited for contempt and when faced with the probability of paying a fine, he made the most humble and abject apology. The character of Darrow is again shown by a recent public statement made by him that “courts are cockpits in which lawyers may fight.”¹³⁴

The next day Darrow replied to Marshall’s criticism: “Judge Marshall would have done well to read at least the caption of the Tennessee law, before basing a speech on it.”¹³⁵ The Scopes case was under appeal to the Supreme Court of Tennessee so Darrow asked “What about the ethics of the Chief Justice of another State giving his opinion on the case when he obviously knows nothing about it?”¹³⁶ Darrow denied he ever said that “courts are cockpits” but clarified that many times he had said that “courts should have facilities to investigate both law and facts, instead of depending entirely on lawyers, which makes courts largely an arena for fighting over evidence and law.”¹³⁷

In October 1925 Darrow took on the issue of eugenics in an article he wrote titled *The Edwardses and the Jukeses*.¹³⁸ The Jukes was a pseudonym for a family from the lower class of society used by eugenics to illustrate a genetic disposition for anti-social behavior or low intelligence and in the case of the Jukes for inherited criminality. The example of the Jukes originally began with Richard L. Dugdale’s *The Jukes: A Study in Crime, Pauperism, Disease and Heredity* published in 1877. The Edwardses refers to Jonathan Edwards (1703 - 1758) a fire and brimstone preacher in early America. Darrow wrote that he would rather live next to a member of the Jukes clan than next to a

¹³⁴ Law: *Darrow Flayed*, TIME, Sept. 14, 1925, available at <http://www.time.com/time/magazine/article/0,9171,721080,00.html> (last visited Mar. 16, 2010).

¹³⁵ *Darrow Replies to Ohio Jurist*, N.Y. TIMES, Aug. 29, 1925, at 11.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Clarence Darrow, *The Edwardses and the Jukeses*, 6 AM. MERCURY, 147-57 (1925).

descendant of Jonathan Edwards who in his most famous sermon preached that “[t]he God that holds you over the pit of hell, much as one holds a spider over the fire, abhors you, and is dreadfully provoked; His wrath towards you burns”¹³⁹

In 1925 Clarence Darrow formed a law partnership with Bert Cronson and two other lawyers who had all been on the prosecution team during the Leopold and Loeb case. The firm was titled Darrow, Smith, Cronson & Smith and had its offices in the Chicago Temple Building. Cronson was an assistant to Robert Crowe, the State Attorney for Illinois, during the Leopold and Loeb case.

On November 8 Darrow gave a speech to a black audience at the negro branch of the Y.M.C.A in Detroit. Darrow commented on the race problem and also criticized prohibition. He told the audience “I used to drink before prohibition—moderately. I still drink. The Volstead act hasn’t seemed to have the slightest effect on my appetite.”¹⁴⁰

On December 10 Darrow debated Henry Sloane Coffin (1877 – 1954) a well-known minister and president of the Union Theological Seminary and Moderator of the Presbyterian Church. Darrow and Sloan debated the topic of whether man was a machine. The debate was part of a dinner given under the auspices of *The Nation*.

On December 11 Darrow debated Wisconsin senator Irvine Lenroot about whether the United States should join the World Court. During the debate at Princeton University Darrow “ridiculed the World Court as an institution without power, with no way of enforcing its decrees, of no value anyway and an inevitable step toward the participation of this country in the League of Nations.”¹⁴¹ Lenroot later served as a judge of the U.S. Court of Customs and Patent Appeals from 1929 to 1944.

Darrow and James Schermerhorn, founder and president of the *Detroit Times*, debated prohibition sometime in 1925. Schermerhorn wrote an article about the debate titled “Darrow Debates Like a Wet Lamb” that was published in Henry Ford’s *Dearborn Independent Magazine* in the January 2, 1926 edition.

1926

In January Darrow wrote a review of Theodore Dreiser’s novel *An American Tragedy* for the *New York Evening Post Literary Review*.

On January 31 Darrow, Kathleen Norris, a novelist, Lewis Lawes, warden of Sing Sing prison and Dudley Field Malone spoke out against capital punishment at Wallack’s Theatre in New York. The speeches coincided with the New York Legislature debating legislation to abolish capital punishment.

¹³⁹ This is from “Sinners in the Hands of an Angry God,” Edwards’ most famous sermon.

¹⁴⁰ *Darrow Ridicules the Volstead Act*, N.Y. TIMES, Nov. 9, 1925, at 6.

¹⁴¹ *Collegians Demand We Enter the Court*, N.Y. TIMES, Dec. 11, 1925, at 19.

On February 2 Darrow debated the socialist leader Morris Hillquit on whether the United States should join the League of Nations. Darrow opposed joining.

Darrow and others wrote as part of a symposium titled "Where Are the Pre-War Radicals?" that was published in the *Survey Graphic* in February.

In February Darrow testified during hearings held by the Subcommittee on the Judiciary of the House Committee for the District of Columbia to abolish capital punishment in the District of Columbia. Darrow was asked:

You have tried a great many criminal cases, have you not?

Mr. DARROW. Oh, I suppose 40 or 50.

Mr. REID. And, of course, you haven't ever had any of your clients hang?

Mr. DARROW. Not yet. And I do not think there is much danger in the future, because I will die probably first now.

Later Darrow told those present:

If a man can think of how often he has been a murderer himself, he would have some sympathy with other fellows who are legally killed; and, of course, we are all murderers at heart—that is, I never killed anybody, but I often read an obituary notice with great satisfaction [laughter], which means that I approve of it alright, and everybody else does the same. Good people get a great kick out of hanging; they always approve of that death. And there you are. It is in all of us; it is only a question of terms and conditions under which it comes out. If we realize it, we are probably a little sorry for the other fellows, whom we know perfectly well were governed by circumstances just as well as we are.

On March 27 Darrow debated Wayne B. Wheeler, general counsel for the Anti-Saloon League, in a one hour radio debate. The debate was aired by WGN, the radio station of the *Chicago Tribune*.

In April Darrow and Dudley Field Malone represented Cornelius Vanderbilt Jr. who was trying to raise money to save three newspapers he owned. Vanderbilt's father had refused to give his son any more money for the papers.

In April and May, Darrow, and a new co-counsel, defended Henry Sweet the first black defendant to be retried for killing a white man in Detroit. Darrow and his co-counsel were even more aggressive in this trial and Darrow gave one of the best closing arguments of his career. Henry Sweet was found not guilty by an all white jury and the prosecution eventually decided not to try the other defendants. Darrow considered the Sweet trials to be perhaps the most important of his career. The Sweet trials helped create the NAACP legal defense fund and the leaders of the NAACP, including James Weldon Johnson, who became good friends with Darrow, consider the Sweet trials, especially the acquittal of Henry Sweet, to be some of the most important cases in the history of black Americans.

In June Darrow wrote another criticism of eugenics titled *The Eugenics Cult*.¹⁴² In this article he forcefully argued that eugenics is based on bad science and threatens civil liberties.

Darrow and co-counsel appealed John Scopes conviction before the Supreme Court of Tennessee in June. The court rejected the defense arguments in a decision issued in January 1927.¹⁴³

In the summer of 1926, Darrow and another Chicago attorney appealed a murder conviction before the Wisconsin Supreme Court but the conviction was affirmed.¹⁴⁴

Darrow Slows Down

According to one of his biographers, Darrow's health became more of a concern after the second Sweet trial than at any time since he survived mastoiditis in 1907.¹⁴⁵ In October 1926 Darrow's doctor ordered him to rest more. Darrow's health did improve but "1926 was the last year in which he could be regarded as being in the practice of law in any regular way. Darrow placed his formal retirement in 1928, but he had been winding down for the two years before that, devoting more time to other pursuits."¹⁴⁶

However, Darrow continued to write and to speak in public forums. He wrote an article published in October by *Harper's* titled *Crime and the Alarmists*.¹⁴⁷ In the article, Darrow railed against crime reports that led to hysteria, tougher legislation and increased prosecutions. Darrow focused particularly on how the reports of the Chicago Crime Commission were interpreted and reported.

On November 1 Darrow spoke at a meeting organized by the American Civil Liberties Union. The meeting was held to make plans to test an injunction restraining striking garment workers from picketing. On December 8 he spoke to undergraduates at Princeton University with his main topic being crime but he also criticized prohibition.

In December Darrow gave an address titled *What to Do About Crime* before the Nebraska Bar Association. A stenographic copy of his address was published in the *Nebraska Law Bulletin*. Darrow stayed true to his core beliefs that people are not free-will actors, crime is caused by factors beyond the individual's control and punishment is not the answer:

I am much more interested in this subject than in any other. I am interested in it because I am interested in all the people who live. I know there isn't any man in the world wise enough to tell his fellow men just what they should do. The principal thing to remember is that we are all the products of heredity and

¹⁴² Clarence Darrow, *The Eugenics Cult* 7 AM. MERCURY, 129-37 (1926).

¹⁴³ *Scopes v. State*, 289 S.W. 363 (Tenn. 1927).

¹⁴⁴ *Eckman v. State*, 191 Wis. 63 (1926).

¹⁴⁵ TIERNEY, *supra* note 8, at 386.

¹⁴⁶ *Id.*

¹⁴⁷ Clarence Darrow, *Crime and the Alarmists*, 153 HARPER'S 535 (Oct. 1926).

environment; that we have little or no control, as individuals, over ourselves, and that criminals are like the rest of us in that regard. Life is not an unmixed good. For many, perhaps for most, it is hard-terribly and tragically hard, and there is pain enough in it without our trying to add to the total. Punishment in itself never will help us or the world in general. The way to make this world better is to make it kinder. The only way to cure its evils is to bury hatred. That is an old philosophy, which many repeat on the ends of their tongues, but which few follow. When we learn to understand each other and put some faith in each other, the relationships of men with each other will be more humane. If we are ever to solve the problem of crime and its punishment, we shall have to discard the idea of vengeance, and adopt the scientific method of following effects back to their causes. The individual criminal is only a by-product. The causes of his being a criminal are social and economic, and go to the foundations of our whole way of living. Until they are found and removed, the effort to prevent crime will remain just as useless in the future as it has been in the past.¹⁴⁸

Late in December Justice William Harman Black of the Supreme Court of New York responded to critical comments Darrow made about Justice Black's suggestion that criminal cases be decided by two-thirds vote of a jury instead of requiring unanimous juries. Darrow had described Black's suggestion as "hysterical."

1927

On January 10 Eugene Victor Sterry, an atheist and a founding member of the Rationalist Society of Canada, was arrested in Toronto by officers of the Morality Office on charges that his newspaper, the *Christian Inquirer*, was blasphemous. Within days of the arrest there were reports that Sterry's supporters wanted to hire Darrow to defend Sterry. On January 27 it was reported that Sterry's attorney had received a telegram from New York indicating a fund of \$10,000 was available to hire Darrow. On March 12 the *Toronto Daily Star* reported that Darrow was ill and would not be coming to attend Sterry's blasphemy trial.

The NAACP reported that in December 1926 Arthur Garfield Hays filed a lawsuit on behalf of Blanche S. Brookins, a black woman, against the Pullman Company and the Atlantic Coast Line Railway for damages of \$25,000.¹⁴⁹ Mrs. Brookins, who lived in Orlando and reportedly was wealthy, was traveling to New York and riding in a Pullman berth on the Atlantic Railway line. When she got to Jacksonville on July 1, 1926 she was informed that she would have to give up the Pullman car and go to a "Jim Crow" car. When she refused, the conductor called ahead to authorities in Palatka, Florida and when the train arrived there she was removed and put in jail for the night. The next day she was brought before a judge and fined \$500 and court costs. The NAACP also reported in February 1927 that Clarence Darrow would help represent Mrs. Brookins. According to one source she was awarded \$2,750 from the Atlantic Coast Line in 1928.

¹⁴⁸ Clarence Darrow, *What to Do About Crime*, 6 NEB. L. BULL. 117, 133-34 (1927-1928).

¹⁴⁹ *Inter-State "Jim Crow"*, 33 CRISIS 194 (1927).

Darrow wrote an article titled *The Foreign Debt and America* that was published in *Vanity Fair* in February. In the article Darrow called for the United States to cancel the debt incurred by European countries to fight World War I.

Francesco Caruso

On February 13, 1927, Francesco Caruso, a 35-year old Sicilian immigrant living in New York, murdered a doctor named Casper Pendola. Caruso blamed Pendola for the death of his son 6 year old Joey Caruso.¹⁵⁰ Dr. Pendola had tried to treat the boy when he fell ill. In April Caruso was tried and convicted of murder in the first degree which automatically resulted in a death sentence and he was sent to Sing Sing prison to await execution. Italian Americans launched a campaign to help Caruso appeal his conviction and death sentence. In May they succeeded in getting Clarence Darrow to help with the appeal.

In November 1927 the Court of Appeals of New York reversed the conviction and ordered a new trial. When the case was called for retrial, Caruso pled guilty to manslaughter in the first degree. He was sentenced to an indeterminate sentence, with a minimum of five years and a maximum of ten years, and an additional five to ten years under section 1944 of the Penal Law.¹⁵¹ In November 1928 the Court of Appeals of New York affirmed Caruso's conviction for first degree manslaughter.¹⁵² Caruso served 6 years in prison before being released. He would later have another son. In 1952 Francesco Caruso told his 16 year old son Dominic that Dr. Pendola was not the first man he had murdered. He then confessed that for many years he had been an enforcer for the Sicilian Mafia, specifically for Salvatore D'Aquila, an associate of Al Capone.¹⁵³

In 1927 Darrow wrote *Tyranny and the Volstead Act* for *Vanity Fair*.¹⁵⁴ Also in 1927, Darrow and Victor S. Yarros wrote a book titled *The Prohibition Mania: a Reply to Professor Irving Fisher and Others*. They wrote the book to refute *Prohibition at Its Worst*, a book written by a leading prohibitionist, Professor Irving Fisher of Yale University. Fisher was an economist, health campaigner, and eugenicist. He was one of the most prominent and celebrated economists in America during the early part of the twentieth century. He is credited with pioneering many of the principles that are the foundation of central bank policy. He was financially wiped out during the Great Depression. Fisher was also the inventor of the Rolodex.

Fairhope

Clarence Darrow stayed in Fairhope Alabama on a number of occasions where he gave lectures. Fairhope began as a utopian community founded in 1894 by followers of Henry George and his Single Tax theory. For this reason it was also called "The Single Tax Colony." According to legend, one of original community members said they came

¹⁵⁰ People v. Caruso, 159 N.E. 390 (N.Y. 1927).

¹⁵¹ People v. Caruso, 164 N.E. 106 (N.Y. 1928).

¹⁵² *Id.*

¹⁵³ DOMINIC CARUSO, NO MORE TOMORROWS (2008).

¹⁵⁴ Clarence Darrow, *Tyranny and the Volstead Act*, 28 VANITY FAIR 45 (1927).

together with a "fair hope of success." The city of Fairhope was established in 1908 when it had about 500 residents. It is located on the Eastern Shore of Mobile Bay in southern Alabama. A legacy entity, the Fairhope Single Tax Corporation, is still in existence.¹⁵⁵

Darrow went to Fairhope in 1927 because of his health. While staying in Fairhope he traveled to Mobile Alabama and gave two talks on race relations. Darrow spoke to a black audience at the Industrial School for Negroes at Daphne, Alabama on February 10th. According to some news accounts Darrow was sharply critical of how whites treated blacks. It was reported that private detectives were guarding Darrow in Mobile and circulars were distributed after his talk at the schools charging Darrow with "inciting ill feeling between negroes and whites."¹⁵⁶ It was also reported that Darrow left to return to Chicago on March 7th. Another account says that on March 14 Darrow stopped in Chattanooga and publicly denied that he was forced to leave Mobile under police protection.¹⁵⁷

On March 16 Darrow debated Dr. Clifton Gray, president of Bates College, in Boston's Symphony Hall on the topic "What and Why is Man?" The moderator was Professor Kirtland Mather of Harvard. Darrow argued that man was like a machine. On March 23 Darrow gave a lecture on "Criminal Law and the Criminal" at the New School for Social Research in New York. According to an account of his talk Darrow said that "juries were more often than not composed of twelve unintelligent men who were called upon to decide whether or not a thirteenth man was worse or better than he."¹⁵⁸ On March 26 Darrow spoke again at the New School for Social Research on the same topic but this time condemned the public school system, poverty and subnormal mentality as the causes of crime. Darrow argued that instead of every student being taught reading, writing and arithmetic a trade school system should be setup so students can learn a trade they can use.

On March 28 Darrow declared his support for Al Smith for president. He also stated that Smith's being a Catholic should not be an issue when the Democratic National Convention nominated a candidate.

On April 13 Darrow announced that he would retire from the practice of law on April 18th his 70th birthday. Darrow stated that he would devote his time to writing and speaking but expected to participate in cases when his sympathies demanded it. Darrow also said that he defended the oppressed as a way of attaining happiness "To some, the grief of others gives discomfort. Some of us feel better if we try to do something about oppression. I've tried."¹⁵⁹

¹⁵⁵ See Fairhope Single Tax Corporation, <http://www.fairhopesingletax.com/> (last visited Mar. 16, 2010).

¹⁵⁶ *Darrow Guarded in Mobile; Circulars Charge He Incited Ill Feeling Between Races*, N.Y. TIMES, Mar. 9, 1927, at 8.

¹⁵⁷ *Darrow Denies That He Was Threatened*, N.Y. AMSTERDAM NEWS, Mar. 16, 1927, at 3.

¹⁵⁸ *Darrow Belittles Juries' Intelligence*, N.Y. TIMES, Mar. 24, 1927, at 5.

¹⁵⁹ *Darrow Plans to Retire*, N.Y. TIMES, Apr. 14, 1927, at 6.

On April 17 the American Forum, which was planning a debate about prohibition between Darrow and Wayne B. Wheeler, then General Counsel and Legislative Superintendent of the Anti-Saloon League, announced that the debate would not be broadcast by radio because it was too controversial.

On April 18, 1927 a dinner was held in Darrow's honor at the Palmer House in Chicago to celebrate his 70th birthday.

On April 19 Wayne B. Wheeler announced that his debate with Darrow, to be held in Carnegie Hall, would be a fight "without gloves." On April 21, Mayor Walker, who was chairman of the debate, asked the newspapers to inform the public that City Hall was not selling tickets. On April 23 Wheeler and Darrow debated before an audience of 2,500 on the topic "Resolved: That the Prohibition of the Beverage Liquor Traffic is Detrimental to the Public Welfare." Ticket prices for the debate ranged from \$1.65 to \$3.30. Darrow argued in the affirmative. No one was declared the winner but the audience was clearly more enthusiastic about Darrow's remarks.

In April 1927 Theodore Dreiser's *An American Tragedy*, which was published in 1925, was banned in Boston on the grounds that it was obscene. This led to an obscenity trial during which Darrow testified as witness for the defense and also assisted the defense team. An assistant editor for the publisher was convicted of obscenity for "selling an obscene, indecent, and impure book." The Supreme Judicial Court of Massachusetts upheld the conviction.¹⁶⁰

On April 29 Darrow gave a lecture to undergraduates at Harvard University on the topic of crime and punishment. Darrow told the students that "Ninety per cent. of criminals are poor, eighty per cent. are uneducated and half are morons."¹⁶¹

On May 9 Darrow was elected as a director of the NAACP. For many years Darrow had been elected to leadership positions in the NAACP.

In May 1927 Darrow debated Will Durant on the question "Is Man a Machine?" Darrow argued in the affirmative.

In June it was reported in the news that Darrow would not be participating in the defense of Earle Nelson, a serial killer, captured in Canada. Nelson was eventually suspected of killing more than 20 people in the United States and Canada.

On June 25 the Supreme Court of Pennsylvania ruled that playing baseball on Sunday violated a statute enacted in 1794 that prohibited any person from performing "any worldly employment or business whatsoever on the Lord's day."¹⁶² On July 5 it was announced that the National Association Opposed to Blue Laws, with Clarence Darrow

¹⁶⁰ Commonwealth v. Friede, 171 N.E. 472 (Mass. 1930).

¹⁶¹ *Urges New Methods to Prevent Crime*, N.Y. TIMES, May 1, 1927, at 21.

¹⁶² Commonwealth ex rel. Woodruff v. Am. Baseball Club of Phila., 138 A. 497 (Pa. 1927).

as its chief legal counsel, had offered its services to help the American Baseball Club of Philadelphia fight the ban on Sunday baseball in Pennsylvania.

Walter White was the assistant secretary of the NAACP during the Sweet trials and later served as executive secretary of the NAACP from 1931 to 1955. White and Clarence Darrow were good friends. Before White and his wife Gladys had a son in 1927, Clarence and Ruby Darrow told the Whites that they wanted the baby to be their namesake. The Whites agreed and when the baby was born in June he was given the name Walter Carl Darrow White - a combination of names from his father, Clarence Darrow and Carl Van Vechten, a white literary critic, novelist and patron of the Harlem Renaissance. Years later, after a falling out with his father, the son changed his name to just Carl Darrow. Carl Darrow was commonly called "Pidge."

Darrow wrote an article titled *The Divorce Problem* that was published in *Vanity Fair* in August. In the article Darrow argued for laws making it easier to obtain a divorce: "The people who have always protested against individual freedom have done much to make divorce laws crude, tyrannical and barbarous. Marriage is the only contract that the courts will not annul on the request of both parties to the agreement."

In early August Clarence and Ruby traveled to Europe and returned in mid-October.

On September 28 Edward Everett Darrow, Clarence's oldest sibling, died at the home of his son Karl Kelchner Darrow, a renowned physicist.

During the 1927 mayoral election in Chicago former mayor Thompson was making a comeback and launched an "America First" movement as part of his run for mayor. Thompson engaged in anti-British propaganda and attacked what he perceived to be pro-British books used in schools and libraries. Thompson went so far as saying that if King George ever dared to come to Chicago, he would "punch him in the snout." On October 24, Darrow, who had just returned from a trip to Europe, said "Why, it is the craziest thing I ever heard of. How far does Mayor Thompson propose to go? When he gets through with throwing out . . . books written with a bias in favor of England, he can start with an endless chain favoring France, Germany, even the Turk In the end he will have nothing left but fairy tales."¹⁶³

A few days later the *New York Times* reported that Darrow's comments seriously damaged Thompson's standing as a national political figure and Thompson had "suffered a fearful wallop in the solar plexus."¹⁶⁴

On October 24 Darrow debated Rabbi Stephen S. Wise over the issue "Is Zionism a Progressive Policy for Israel and America?" Rabbi Wise argued in the affirmative and Darrow argued in the negative during the debate held at the Sinai Temple in Chicago. Darrow had many Jewish friends and denounced anti-Semitism but he never supported a separate homeland for Jewish people.

¹⁶³ *Sue to Bar Burning of Chicago Books*, N.Y. TIMES, Oct. 25, 1927, at 1.

¹⁶⁴ *Nation's Ridicule Hits Thompson's Ambition*, N.Y. TIMES, Oct. 28, 1927, at 3.

Rabbi Wise (1874 - 1949) was born in Budapest in the Austro-Hungarian Empire. He would become one of the most important Jewish leaders of the 20th Century. Among his many activities, Wise served as the vice president of the Zionist Organization of America from 1918 to 1920 and president from 1936 to 1938. In addition, Wise was one of the signatories on a letter written in 1909 calling for the establishment of the National Association for the Advancement of Colored People (NAACP).

Darrow discussed the failings of human beings in an article titled “Is Man Fundamentally Dishonest?” published in *The Forum* in December. Darrow wrote that “It is probably safe to say that man is fundamentally both honest and dishonest.”

George Remus

In December Darrow testified as a character witness for George Remus (1876 – 1952) formerly a well-known Chicago lawyer. Remus was born in Germany and his family emigrated to Chicago when he was 5. He started working in a pharmacy when he was age 14 and became a lawyer at age 24. He became a very successful criminal defense attorney in Chicago. After national prohibition was enacted in 1920 Remus noticed that some of his clients were making a lot of money through illegal alcohol. Remus decided to get in on the action and soon became one of the most successful bootleggers in the United States.

Known as the “The King of the Bootleggers” Remus was eventually convicted and sentenced to two years in the federal penitentiary in Atlanta. His wife then took up with a prohibition agent and the two looted Remus’s fortune, selling his assets and hiding the money. His wife filed for divorce. On October 6, 1927 in Cincinnati, while she and her daughter were riding in a cab to court to finalize the divorce, Remus instructed his driver to chase the cab and force it off the road. Remus then accosted his wife and shot and killed her. Remus turned himself into the police an hour later.

Remus was charged with first degree murder. He went on trial in November and the prosecutor in the case was Charles Taft, the 30 year-old son of Chief Justice and former President William Howard Taft. The trial drew nationwide and even international public interest. Remus hired several high priced defense attorneys but he also participated in his own defense. Remus claimed temporary insanity caused by his wife’s persecution. On December 27, after 19 minutes of deliberation, the jury found Remus not guilty on the sole ground of insanity. Remus was committed to a mental hospital because of the insanity finding but in March 1928 he was found not insane and discharged.¹⁶⁵ Some sources speculate that Remus was the inspiration for Jay Gatsby, the title character in F. Scott Fitzgerald’s *The Great Gatsby*.

Carillo and Greco

¹⁶⁵ Ex parte Remus, 162 N.E. 740 (Ohio 1928).

In November it was announced that Darrow and Arthur Garfield Hays would help defend Donato Carillo and Cologero Greco, well-known anti-fascists, who were accused of murdering two Italian Fascists in the Bronx on May 30, 1927. Pressure was put on the police and prosecution to solve the murders when the Italian ambassador attended the funeral for the victims and Mussolini and others in the Italian government made the two victims into martyrs. Support for the defendants was headed by Carlo Tresca a well-known Italian-American editor and anarchist. Arthur Garfield Hays was hired to defend the two men and he asked that Darrow be hired as lead counsel. The trial was delayed a few times and began around December 9. The jury acquitted both defendants on December 23.

On December 28 a dinner was given in Darrow's honor in New York to recognize his work in defending Greco and Carillo. The dinner was arranged by the staff of *Il Martello*, a liberal newspaper edited by Carlo Tresca.

On December 29 Darrow spoke at a lunch hosted by the New York Rotary Club at the Waldorf. Darrow spoke about crime and punishment and denounced the current penal system.

On December 30 it was announced that a tax appraisal of the estate of Albert Loeb, father Richard Loeb, showed he left an estate of \$1,612,817. The records also showed that Clarence Darrow had been paid \$27,000 to defend Richard Loeb in 1924. Darrow's co-counsel Benjamin Bachrach received \$15,000 and Walter Bachrach received \$10,000.

1928

On February 19 Darrow attended another luncheon to celebrate the acquittal of Greco and Carrillo in New York. Darrow spoke at the lunch and told the audience that he defended the two men because he detested Mussolini and because of the rush to judgment that led to the Sacco and Vanzetti case. Darrow also said he did not believe Greco and Carrillo were victims of a frame-up.

Also on February 19 Darrow, along with Frank P. Walsh and Warden Lewis Lawes, spoke at a meeting held in New York by the League to Abolish Capital Punishment. The meeting adopted resolutions favoring the abolition of capital punishment and called on the New York Legislature to amend its Penal code to abolish capital punishment.

On February 22 Darrow debated Reverend Alfred Wesley Wishart on the topic "Concerning a General Purpose in the Universe." The debate was held at the Fountain Street Baptist Church, Grand Rapids, Michigan.

Darrow wrote an article critical of prohibition for *Vanity Fair*, called *Our Growing Tyranny*.¹⁶⁶

¹⁶⁶ Clarence Darrow, *Our Growing Tyranny*, 29 VANITY FAIR 39, 104 (1928).

Darrow wrote an article titled “The Lord's Day Alliance” that was published in *Plain Talk* in March. The Lord's Day Alliance of the United States (LDA) was founded in 1888 when representatives from six major Protestant denominations met in Washington, D.C. to organize the American Sabbath Union. The name was later changed to The Lord's Day Alliance of the United States. Still active, the LDA describes itself as “the one national organization whose sole purpose is to maintain and cultivate the first day of the week as a time for rest, worship, Christian education and spiritual renewal.”¹⁶⁷ Darrow was sharply critical of the LDA:

Among the various societies that are engaged in the business of killing pleasure, the Lord's Day Alliance of New York deserves a place of honor. If any poor mortal is caught enjoying life on Sunday its agents gleefully hie themselves to the nearest legislature and urge a law to stop the fun. Their literature and periodicals tell very plainly the kind of business they are in. This association of crape-hangers seems to be especially interested in the State of New York, which contains about one-tenth of the population of the Union, and among them an unusually large number of foreigners and other heathen who have not been taught the proper regard for the sanctity of the Sabbath.¹⁶⁸

Reportedly, H. L. Mencken reluctantly declined to publish the article in his *American Mercury* because he thought it was too harsh although he agreed with Darrow's points.

In April it was publicly revealed that the Daughters of the American Revolution (D.A.R.) circulated a list of what it termed “Doubtful Speakers” that it wanted to bar from speaking at D.A.R. events. Darrow made the list because he was considered a “Socialist.” There were many others on the list including, Arthur Garfield Hays, Benjamin Gitlow, Dudley Field Malone, William Allen White, Roscoe Pound and Felix Frankfurter at Harvard law School, Rabbi Stephen S. Wise, W.E.B. Du Bois, Jane Addams, and Harry Emerson Fosdick. There were also many organizations on the list. The D.A.R. did not actually draw up the list, this was done by other individuals and organizations, but several of those on the list attacked the D.A.R.

Darrow wrote an article titled *Frank Lowden, the Farmer's Friend* that was published in *Scribner's Magazine* in April. Frank Orren Lowden (1861 - 1943) was Governor of Illinois from 1917 to 1921.

Winters Case

In May 1927 Darrow went to Dartmouth College in Hanover, New Hampshire to deliver a lecture against capital punishment. At some point during his time at the school, an elderly cleaning lady at the school showed him a note that had been given to her twenty-three years earlier by Darrow's son Paul when he was a student at Dartmouth. One day in June 1904 Paul was riding in a horse drawn carriage near Hanover when the horse

¹⁶⁷ Lord's Day Alliance of the United States, http://www.ldausa.org/LDA_about.html (last visited Mar. 16, 2010).

¹⁶⁸ Clarence Darrow, *The Lord's Day Alliance*, 2 PLAIN TALK 257 (1928).

became frightened by the sound of a train and bolted and killed a four-year old child.¹⁶⁹ Paul Darrow gave the note to the child's mother telling her that if any member of the Darrow family could help in the future she should show the note. The mother who had lost her son in 1904 now told Clarence Darrow that her nephew, John Winters, had been convicted of first degree murder and sentenced to the electric chair in Vermont. Darrow, who was unaware of the accident or his son Paul's promise, agreed to help on Winters' appeal. Winters had been convicted of murdering 40-year old Cecelia S. Gullivan, a resident of Windsor Vermont. Gullivan was found bludgeoned to death on November 8, 1926.

In January 1928 Darrow and co-counsel appealed to the Vermont Supreme Court. Before the court could render a decision one of the judges was appointed to a federal court so Darrow went back to Vermont in March 1929 to re-argue before the court. About a week later the court issued its decision. The court upheld the trial judge's rulings except the exclusion from the trial of the defense's explanation of how blood stains could have gotten on the defendant's clothing prior to the homicide. Because the blood evidence was erroneously excluded, the Vermont Supreme Court set the verdict aside and granted a new trial.¹⁷⁰

Darrow did not participate in Winters' second murder trial. Some sources say that Winters was again convicted and sentenced to life in prison instead of death. Another source states that he pled guilty to second degree murder and received a life sentence. Winters was paroled in 1949 because he had tuberculosis.¹⁷¹

In 1928 Darrow and his son Paul sold their stock in Greeley Gas & Fuel Company and made a large profit. Darrow believed that he and his wife were now financially secure and could enjoy a good retirement. Both son and father invested their profits in the stock market. Thinking he was financially secure for life, Darrow arranged for a portion of his lecture fees to go to the NAACP and a smaller percent to go towards a monument to the abolitionist John Brown. Darrow's gift to the NAACP was substantial since he was popular enough as a speaker to command \$500 to \$1,000 per program.¹⁷² But Darrow's retirement plans would suffer financial catastrophe in 1929.

On February 9 Darrow debated Rabbi Barnet R. Brickner on the question "Is Man a Machine?" Darrow debated the same question with two other rabbis—Rabbi Tarshish in late April and Rabbi I. E. Philo on May 3.

James Munsene Trials

¹⁶⁹ There are several different accounts of the accident. One account says that Paul was riding a horse that became uncontrollable and killed a five-year-old child.

¹⁷⁰ *State v. Winters*, 145 A. 413 (1929).

¹⁷¹ JOHN STARK BELLAMY II, *VINTAGE VERMONT VILLAINIES: TRUE TALES OF MURDER & MYSTERY FROM THE 19TH AND 20TH CENTURIES* 129 (2007).

¹⁷² TIERNEY, *supra* note 8, at 398.

In 1928 Darrow returned to Ohio to practice law in his home county of Ashtabula one more time before he retired. Darrow went to Ohio to defend James Munsene¹⁷³ who was facing a third trial for attempting to bribe a county sheriff. Facts for the following description of the Munsene trials are from a 2007 thesis by Jonathan A. Kinser.¹⁷⁴ Munsene wanted to open a gambling establishment in Warren Ohio and the bribe would keep the sheriff away. The initial bribe was for \$500 and came with a promise to pay that much or more each month. Munsene was tried and convicted twice but he successfully appealed both convictions. He hired Darrow to defend him in the third trial. Several other high profile local attorneys assisted Darrow. The trial began on May 6.

While he was in Ashtabula for the Munsene trial, Darrow spoke at the Kiwanis club on May 8. He told the estimated 500 club members in attendance and their wives how getting turned down when he tried to buy a house in Ashtabula many years ago led him to move to Chicago.

The Munsene trial ended in a hung jury on May 12 and was set for retrial the following month. Darrow again helped defend Munsene in his fourth trial which began on May 20, 1929. The jury deliberated for ten hours before announcing that they were deadlocked. The prosecution decided to try Munsene in a fifth trial which was to take place on October 28, 1929. But the defense filed a continuance because Darrow was in Europe. After the stock market crash which began on October 29 the government reviewed how much the previous trials had cost and eventually both the prosecution and defense agreed to a plea bargain. Munsene agreed to plead guilty and be sentenced to a year of probation and pay a fine.

The 2007 thesis about the case argues that “Darrow’s defense of James Munsene unintentionally launched the young businessman-racketeer’s career to unparalleled heights and firmly established him as the ‘Bootleg King of Warren,’ and allowed for the expansion of his criminal operations.”¹⁷⁵ This eventually led to organized crime dominating Warren, Ohio for decades. James Munsene and his nephew, who was also a business partner, were murdered in their own restaurant on the evening of March 24, 1941. It appeared to be a planned hit by the Cleveland mob. Two men were eventually arrested but only one was tried and convicted of the murders.¹⁷⁶

On April 20, 1928 Darrow gave an address at the Sixth Annual Meeting of the American Society of Newspaper Editors in Washington D.C. Darrow had to talk extemporaneously because he was not given the topic until just before his address. When Darrow asked what they wanted him to talk about he was told “They want you to abuse the newspapers.” So Darrow gave a talk about “This is what I don’t like about the newspapers.”

¹⁷³ There is some discrepancy concerning Munsene’s name. Court documents refer to him as James Mancini.

¹⁷⁴ Jonathan A. Kinser, *The Racketeer and the Reformer: How James Munsene Used Clarence Darrow to Become the Bootleg King of Warren, Ohio* (Aug. 2007) (unpublished M.A. thesis, Youngstown State University), available at http://etd.ohiolink.edu/view.cgi?acc_num=ysu1198268853.

¹⁷⁵ *Id.*

¹⁷⁶ *State v. Viola*, 82 N.E.2d 306 (Ohio Ct. App. 1947).

Darrow wrote an article titled "Women and Justice: Are Women Fit to Judge Guilt?" that was published in *McCall's* in June.

On July 13 Darrow called on Governor Al Smith at his suite in the Biltmore Hotel. Darrow pledged his support and said he would play an active role in Smith's candidacy for president. Significantly for Darrow, Smith was against prohibition.

Darrow wrote an article titled "The Futility of the Death Penalty" which was published in *The Forum* in September. He explained that the purpose of the article was to prove "first, that capital punishment is no deterrent to crime; and second, that the state continues to kill its victims, not so much to defend society against them—for it could do that equally well by imprisonment—but to appease the mob's emotions of hatred and revenge."

On September 1 it was announced that experts in crime and punishment would meet in Kansas City for the 58th annual congress of the American Prison Association from October 5 – 11. Clarence Darrow was invited to give the closing address.

On September 1 a federal judge issued an injunction prohibiting a musicians union from calling a strike in Chicago. The union released a statement setting forth an opinion issued by Clarence Darrow, Donald Richberg and David E. Lilienthal that the individual members whose contracts expired could cease working without violating the injunction. This led to a walkout and left about 300 Chicago theaters operating without music. A settlement was reached on September 7 after both sides made concessions.

Darrow wrote an article for *Vanity Fair* titled *Prohibition Cowardice* that was published in September.¹⁷⁷

On September 22 Senator William Cabell Bruce, Democrat from Maryland, publicly announced at a Democratic rally that the Republican Presidential nominee, Herbert Hoover and his Vice Presidential nominee Senator Curtis, were hypocrites for supporting prohibition. Bruce related that Clarence Darrow had told him that he was surprised that Hoover supported prohibition because Darrow had had several drinks with Hoover himself. Darrow publicly denied telling this to Bruce. Bruce later clarified that he was referring to a news article that reported Darrow had drinks with Hoover. For a few weeks the controversy was heavily reported.

Darrow wrote an article titled *Why Was God So Hard on Women and Snakes?* that was published in September by Haldeman-Julius.

On October 22 Darrow participated in a symposium with several religious leaders at the Sinai temple. The other speakers were Bishop Francis J. McConnell of New York and Rabbi Dr. Louis L. Mann. Darrow told the audience that he was an agnostic but he preferred the term skeptic.

¹⁷⁷ Clarence Darrow, *Prohibition Cowardice*, 31VANITY FAIR 53, 100 (1928).

On October 24 Darrow spoke at a meeting held by the Progressive League for Alfred E. Smith in the Mecca Temple. Darrow sharply criticized Hoover who he said believed in socialism for the rich but not the poor.

Darrow wrote an article titled *The Myth of the Soul* that was published in *The Forum* in October.

Darrow gave a lecture titled *Personal Liberty* at The New School for Social Research that was later published along with other lectures in *Freedom in the Modern World*.¹⁷⁸

Darrow wrote an article titled “Absurdities of the Bible” that was published by Haldeman-Julius.

1929

In February Darrow was nominated for chairman of the League to Abolish Capital Punishment.

Darrow and Wallace Rice compiled and edited *Infidels and Heretics: An Agnostic's Anthology*. The compilation includes works by both Rice and Darrow and also an excerpt from Darrow's plea on behalf of Leopold and Loeb. Wallace Rice (1859 - 1939) was an author, lecturer, and poet. He became a lawyer in 1884 but showed little interest in the law and instead turned to writing and theater. Rice also designed the Chicago Municipal flag, adopted in 1917, and the Illinois Centennial flag.

On March 12 Darrow participated in a symposium with a rabbi, a Protestant bishop and a Catholic judge in Columbus Ohio. Darrow's address titled “Why I am an Agnostic” was later published.

In 1929 Darrow debated Dr. Lothrop Stoddard on the issue “Is the U.S. Immigration Law Beneficial?” Stoddard argued in the affirmative and Darrow argued in the negative on the resolution: “That the Immigration Law discriminating in favor of the races of Northern Europe as opposed to those of Southern Europe is an advantage to the United States.” Stoddard was a political scientist, historian, writer, and anthropologist. His anti-immigration beliefs and his advocacy of eugenics were a form of scientific racism. One of his most well-known works is a 1920 book *The Rising Tide of Color Against White World-Supremacy*. Despite its title, Stoddard also criticized white nations for invading nations of other races. During the debate Darrow ended his remarks with “Who am I to say that my kind alone shall come to America and all the rest must stay away? I believe this earth is big enough for the human race. When it gets so crowded that they can't all live, if I am here I will be willing to cast lots to decide who shall die and who shall stay, and give everybody an even break.”

¹⁷⁸ HORACE MEYER KALLEN, *FREEDOM IN THE MODERN WORLD* (1928).

Darrow gave a lecture about Omar Khayyam and A.E. Housman titled “Facing Life Fearlessly” that was later published as a pamphlet. In Khayyam and Housman Darrow found kindred spirits who, like him, did not believe in free will. In the lecture he said:

Neither one of these eminent men, Omar or Housman, believed in free will. There is eight hundred years between Omar and Housman, and yet their philosophy is wondrously alike. It is not a strange and unusual philosophy, except in churches and Rotary Clubs and places like that. It is not strange in places where people think, or try to, and where they do not undertake to fool themselves.

Darrow played an unusual and unintended role in a murder case in Iowa. A defendant named Frank Bittner and another defendant were charged with murder for hiring a “professional gunman” to kill someone. The defendants and the victim were described as “professional gamblers and bootleggers.” While Bittner was in the county jail, Darrow traveled to Ft. Dodge Iowa on business. Bittner's mother learned that Darrow was coming to Iowa and asked him to talk to her son. Darrow did go to the jail to speak with Bittner. Their conversation was overheard by a deputy. Later Bittner was convicted of murder in the first degree and sentenced to life in prison. He appealed and one of his points on appeal was that the conversation he had with Darrow while in jail was confidential. The Supreme Court of Iowa ruled the conversation was not a “confidential communication. There is no basis in the record for such a claim. Darrow was not Bittner's attorney, and it is obvious that he visited the defendant in a friendly way and on account of the request made by the mother.”¹⁷⁹

On June 5 in Washington Darrow debated Dr. Clarence True Wilson on the subject of prohibition. In 1910, Clarence True Wilson was appointed General Secretary of the Methodist Board of Temperance, Prohibition, and Public Morals (MBTP). He served in this position for twenty-five years. During Prohibition, the MBTP was an official agency of the northern Methodist Episcopal Church. According to one source, from 1925 to 1935 Darrow and Wilson held forty-six debates.¹⁸⁰ During the course of their debates and time together Darrow and Wilson became very good friends.

In July Darrow and his wife Ruby traveled to Europe and visited France, Switzerland, England, Scotland and Wales. They stayed in Europe until March 1930. While in France Darrow gave a talk during a luncheon held at the American Club of Paris. While visiting Charles Edward Russell and his wife at Montreux, a resort on Lake Geneva, Switzerland, Darrow began to write his autobiography.

Darrow wrote an article published in *The Saturday Evening Post* in July titled “What Life Means to Me at Seventy-two.” It was later reprinted by Haldeman-Julius. In the article Darrow wrote:

¹⁷⁹ State v. Bittner, 227 N.W. 601 (Iowa 1929).

¹⁸⁰ ROBERT DEAN MCNEIL, CLARENCE DARROW'S UNLIKELY FRIEND: CLARENCE TRUE WILSON: DEBATORS BUT ALWAYS FRIENDS 199 (2007).

“As a propagandist, I see no chance to grow weary of life. I am interested in too many questions that concern the existence and activity of the human race. Not only am I interested in these questions but, for some reason or other, I almost always find myself disagreeing with the crowd.”

Great Depression

Darrow and his family suffered great financial losses in the 1929 stock market crash and subsequent economic depression. Clarence and his wife Ruby were in Europe when the initial stock market crash occurred on Thursday, October 24, 1929. On October 28, called "Black Monday" the market closed down 12.8 percent. October 29 is known as "Black Tuesday" because on that day the United States market completely collapsed. The Dow opened that day at 299.6 but then lost 23 percent of its value as it crashed 68.9 points to close at 230.7. This ended the era of prosperity known as the “Roaring '20s” and ushered in the Great Depression.

Darrow and his son Paul, like many who had money invested in the U.S. stock market, suffered tremendous losses. In letters to his son Paul before the crash, Darrow expressed concern that the market had become too overvalued but he was shocked when it occurred. At one point, Paul and his father had stock worth an estimated \$300,000 that was reduced to about \$10,000.

In November Darrow’s article *Combating Crime* was published in *The Forum: The Magazine of Controversy*.

Darrow wrote an introduction for *The Best of All Possible Worlds: Romances and Tales by Voltaire* that was published in 1929.

Also in 1929 Darrow debated Clarence True Wilson on the topic “Should the 18th Amendment Be Repealed? Yes, Clarence Darrow; No, Clarence True Wilson.”

1930

On February 3 the American League to Abolish Capital Punishment, with Darrow as president, announced the start of a nationwide campaign. The league asked the New York Legislature to grant a public hearing on a bill that was introduced to end capital punishment in New York. The league was also going to call on New York Governor Franklin D. Roosevelt.

Darrows Return from Europe

Clarence and Ruby Darrow returned from Europe in March after a nine month trip abroad. Darrow viewed the stock market collapse as he did other tragedies that befall human beings. He wrote in his autobiography that as he returned from Europe:

I approached New York as I have done before with mixed feelings of depression and exaltation. I had been away for a long time, and much might have happened while I was gone. In this instance an unheard-of panic had stricken America. Many of my friends had lost all they had. I myself had suffered severely. This might interfere with my plans to give up the practice of law. At any rate, I was apprehensive of the news I should receive on landing, even though it might be both good and bad. As Bret Harte said: "The only thing sure about luck is that it will change." I never believed that man had any control over his destiny. To me life has been a series of optimistic and pessimistic emotions and outlets. On the whole I have deemed it wise to prepare for the worst.¹⁸¹

The Darrows stopped on the East Coast and Darrow participated in several debates. On March 19 Darrow debated Senator Smith Wildman Brookhart (1869 - 1944) of Iowa on the topic of prohibition. The debate took place in the Mecca Temple in New York. The audience was overwhelmingly wet and Brookhart was subjected to many boos and lots of heckling from the crowd. Earlier in the afternoon Darrow and Brookhart held an informal debate at the Hotel Belmont during a photography session.

Darrow wrote an article titled "The Most Cruel Nation on Earth" that was published in the March 1930 edition of the *Island Lantern* a prison publication at the U.S. Penitentiary, McNeil Island, Washington. In the article Darrow sharply criticized the criminal sentencing policies in the United States.

Darrow was nearly drawn into another sensational murder case in 1930. On March 7, 1930 the wife of Henri Marchand, a talented French sculptor, was murdered. Henri did projects for the Buffalo Natural History Museum, and as part of this work, he traveled to Indian reservations to make sculpture of Indian life. After the police interviewed Henri, suspicion fell on a 36 year old Cayuga Indian woman named Lila Jimerson. Jimerson was arrested a few hours later and she quickly implicated Nancy Bowen an elderly Cayuga traditional healer who was also arrested. Both women confessed within a few hours. Jimerson was indicted for first degree murder on March 10, 1930. Marchand had known Jimerson for several years through his work sculpting Indian life for the museum. Jimerson had posed partially nude for his Iroquois village scenes. It would soon be revealed that Marchand had been having an affair with Jimerson.

The case was widely followed and the press dubbed Jimerson the "Red Lilac of the Cayugas." On April 1, 1930, during her trial, Jimerson, who had a history of pulmonary tuberculosis, either became ill or feigned illness.¹⁸² The court declared a mistrial due to her ill health. While she was in the hospital she withdrew her not guilty plea and pled guilty to second degree murder. She faced a sentence of twenty years to life. She later withdrew her guilty plea; but this meant she would be tried again for first degree murder.

Because Jimerson lived on the reservation of the Seneca Indian Nation, representatives from that nation asked Clarence Darrow to aid in her defense. Darrow conferred with

¹⁸¹ THE STORY OF MY LIFE, *supra* note 2, at 329-30.

¹⁸² People ex rel. Jimerson v. Freiberg, 243 N.Y.S. 590 (N.Y. Sup. Ct. 1930).

Jimerson's attorneys on April 29 in Buffalo. After the meeting Darrow issued a formal statement that he would not be participating in the defense. Darrow explained that it was a serious responsibility for a lawyer to imperil a client's life in the hopes of getting a better verdict.

During the second Jimerson murder trial, Nancy Bowen, who admitted to murdering Mrs. Marchand, testified for the prosecution. She related a tale that involved pagan beliefs in witchcraft and she claimed that Jimerson urged her to kill the "white witch" Mrs. Marchand. On February 28, 1931 Jimerson was found not guilty. Bowen, who had been sentenced to one to ten years, was freed on March 13, 1931 because she had already served the minimum.

On April 2 Darrow publicly predicted that prohibition would end within four years with the Volstead Act repealed and the 18th Amendment dead.

On May 2 the Freethinkers of America filed a court petition to enjoin the New York Board of Education from permitting the reading of the Bible and singing hymns in public schools. Joseph Lewis, president of the group, filed the petition as a taxpayer. He was represented by Darrow, Arthur Garfield Hays, Joseph Wheless and Stephen Vreeland.

In June 1930 a woman wrote a letter to Darrow asking him to take her husband's case to the United States Supreme Court in a final appeal to save his life.¹⁸³ Her husband, Ralph Fleagle and several others in the "Fleagle Gang," were tried, convicted and sentenced to hang for the murder of the president of the First National Bank of Lamar, Colorado during a bank robbery on May 23, 1928.¹⁸⁴ During the robbery the bank president's son was also shot and killed before the gang got away with \$219,564 mostly in cash and some in bonds. The robbery and murders prompted an extensive manhunt that lasted 15 months before all of the suspects were captured and one was killed. The crime and manhunt was precedent setting for several reasons. It was the first robbery solved by the Department of Justice's Central Bureau of Identification (which later became the FBI) on the basis of a single fingerprint, the first time a criminal defendant was transported across country by airplane and the first bank robbery in that part of the country that involved the use of airplanes to try and apprehend the suspects.¹⁸⁵ Darrow did not take the case because according to his secretary he was practically retired. Ralph Fleagle and the other defendants were hanged in July 1930.

In July Darrow and Dr. Clarence True Wilson traveled to Toronto to conduct a joint study of Ontario's government liquor control. They had been sent by *Collier's Weekly* magazine. Darrow and Wilson were to interview George Howard Ferguson the Premier of Ontario and the chairman of the Liquor Control Board. On September 19 Darrow and Wilson issued a joint statement to *Collier's Weekly* about their trip to Ontario. They acknowledged that wets and dries, including themselves, are hopelessly at odds about prohibition.

¹⁸³ N. T. BETZ, THE FLEAGLE GANG 245 (2005) [hereinafter FLEAGLE GANG].

¹⁸⁴ *Fleagle v. People*, 289 P. 1078 (Colo. 1930).

¹⁸⁵ FLEAGLE GANG, *supra* note 183, at 5.

Darrow and Wilson wrote an article titled "Lawful Liquor" published in *Collier's Weekly* on September 27.

In early October a judge in Chicago issued vagrancy warrants for the arrest of 26 notorious gangsters. The warrants were based on a "public enemies" list created by Colonel Robert Isham Randolph, president of the Chicago Association of Commerce. In September a grand jury used an old vagrancy law to indict the men. The list included Alphonse "Scarface Al" Capone, George "Bugs" Moran, and Joseph "Joe" Aiello. Darrow announced he was coming out of retirement to help defend the men because they were being unfairly given high bonds under the vagrancy law. Darrow appeared as counsel for two of the men George "Red" Barker and William "Three-fingered Jack" White.

On October 16 it was revealed that Abbe Ernest Dimnet, a noted French priest, author and lecturer, had been forbidden by the chancery of the Roman Catholic Diocese of New York from debating Clarence Darrow on the subject "Is Religion Necessary?" The debate had been scheduled for November 15 at the Mecca Temple. It was also announced that the debate would take place with a non-Catholic in place of Dimnet.

Darrow wrote an article titled *Let No Man Therefore Judge You in Meat or in Drink* that was published in *Collier's Weekly* on October 11.

On November 10 Judge Harold B. Wells of the New Jersey Court of Errors and Appeals gave an address in which he sharply criticized Darrow for telling school and college students that those who do not believe in the law should disregard it. Wells called Darrow's views "anarchy."

On November 15 Darrow debated Dr. Nathan Krass, rabbi of Temple Emanu-El, on the question "Is Religion Necessary?" All 3,800 seats in the Mecca Temple were filled and about 500 people sat in the basement where amplifiers were setup so they could hear the debate. Police patrolled outside the building because it was expected that overflow crowds would block the sidewalks which happened during prior debates. Darrow argued in the negative and at one point asked, "Where did the universe come from? God made it. Who made God? He made himself. Plain nonsense!"

On November 27 numerous Chicago residents who had been branded as dangerous radicals by the American Vigilance and Intelligence Federation attended a "blacklist" dinner at Chicago's City Club. Darrow, who was on the list, attended the dinner along with others on the list such as Jane Addams, William H. Holly and Arthur Fisher, chairman of the Chicago branch of the ACLU.

1931

On January 15 Darrow debated Reverend Dr. Robert MacGowan, minister of Bellefield Presbyterian Church, in Pittsburgh. The debate, which took place in the Carnegie Music Hall in Pittsburgh, was titled "Is Religion Necessary?" Darrow argued in the negative.

Gilbert Keith Chesterton

On January 18 Gilbert Keith Chesterton and Darrow debated religion and evolution at the Mecca Temple in New York City. The debate titled "Will the World Return to Religion?" was highly anticipated and drew about 4,000 people. At one point the power failed or the microphones went out and Darrow sat back waiting until they could be fixed. But Chesterton jumped up and told the audience "Science, you see, is not infallible!" Several commentators believed that Chesterton won the debate. At least one source says there are no transcripts of the debate. A vote was taken afterwards with 2,359 voting that Chesterton had won and 1,022 for Darrow.¹⁸⁶ Chesterton later said he felt "as if Darrow had been arguing all afternoon with his fundamentalist aunt, and simply kept sparring with a dummy of his mental making."¹⁸⁷

Largely unknown today, Gilbert Keith Chesterton (1874 - 1936) is considered one of the most influential English writers of the 20th century. He was incredibly prolific having written 100 books, 200 short stories, and over 4,000 newspaper essays. His friend George Bernard Shaw referred to the 300 pound Chesterton as a "colossal genius." Chesterton is credited with converting several famous people to Catholicism including C.S. Lewis and Evelyn Waugh. His writing is also said to have helped inspire Mohandas Gandhi to lead a movement to end British colonial rule in India.

On January 30 Darrow and Arthur Garfield Hays debated Norman Thomas and Heywood Broun on the benefits of joining the Socialist party. Darrow and Hays argued against joining during the debate at the Mecca Temple.

In March Darrow participated as defense counsel in a mock trial of Benedict Arnold. The prosecutor was played by James M. Beck (1861 - 1936) a highly regarded lawyer and politician from Philadelphia. Beck was a member of the Republican Party and served as U.S. Solicitor General and U.S. Representative from Pennsylvania. A group of eminent men and women were enlisted as a "radio jury" and listened to the trial over the radio and rendered a guilty verdict by telegraph. The trial was produced by the National Dairy Products Corporation and was broadcast over numerous radio stations on March 22nd and 29th.

On March 1 the Victor L. Berger National Foundation was founded in Washington D.C. Clarence Darrow accepted the position as the foundation's first president.

On April 14 Darrow debated John Haynes Holmes on the topic "Shall Zionism Succeed or Fail?" The debate at the Mecca Temple was arranged by the Avukah American Student Zionist Federation. Darrow argued in the negative. The debate was chaired by

¹⁸⁶ JOSEPH PEARCE, LITERARY GIANTS, LITERARY CATHOLICS 212 (2005).

¹⁸⁷ MAISIE WARD, GILBERT KEITH CHESTERTON 497 (2006).

Rabbi Stephen S. Wise. Darrow, who had previously spent two days in Palestine, reiterated his view that the area was desolate and not suitable for a homeland. Darrow told the audience that Palestine was a country where “nobody eats anything, nobody wears anything and the sole transportation is a jackass.” Darrow also said England had done what it could in the area, but “[t]ake the hand of England off Palestine, and every Jew there will have his throat cut by the Arabs.”

On May 6 many prominent people from the literary, scientific and educational fields gathered at the Ritz in New York to honor Sigmund Freud on his 75th birthday. Freud was in Vienna and those gathered sent a cablegram congratulating him. Darrow was one of the speakers at the event. The event was presided over by Dr. William A. White who worked for the defense in the Leopold and Loeb case in 1924.

In the June issue of *The Crisis*, the official magazine of the NAACP, Darrow participated in a written debate with Bishop Robert E. Jones. The debate was titled: “A Discussion: Is Religion Reasonable?: Mr. Clarence Darrow says NO and to the Black Man it is Self-stultification: Bishop Jones says YES it is the Universal Ground of Hope: A Challenge by Dr. DuBois, editor of *The Crisis*: The Challenge Met by George Frazier Miller.”

On June 11 a book was published by Simon and Schuster under the name “MacSimon and MacSchuster” called *Scotch; or, It's Smart to be Thrifty, A volume of the best Scotch Jokes*. Sinclair Lewis and Clarence Darrow were two of the many contributors.

On June 18 Darrow and another attorney appeared in a federal court in Chicago defending Joe Grein, a shop keeper, whose malt and hop shop was raided on May 8, 1930 by prohibition agents. The raid resulted in the seizure of \$25,000 worth of merchandise from Grein’s shop and was seen as a test case by the government in its campaign against sellers of ingredients and paraphernalia for making home brew. Darrow and his co-counsel convinced the judge to quash the search warrant because it was issued without probable cause.

On June 21 Bishop W.J. Walls of Chicago, a prominent Zion prelate, spoke in New York at the A.M.E. Zion conference in which he sharply criticized Clarence Darrow’s attacks on the religious beliefs of negroes. Bishop Walls said “We must stop making Darrow our ideal” and “it is time that the Negro stop listening to these antagonists against the religion of the Negro.”

On June 30 Darrow and four other well-known speakers discussed the topic “Race Prejudice—What Can I do About it?” at the first meeting of the new South Parkway Fellowship of Faiths in Chicago.

Darrow attended and spoke at the 22nd annual conference of the NAACP in Pittsburgh which was held June 30 – July 5. Darrow spoke on July 5 along with Joel Springarn, president of the NAACP, and Walter White. Darrow was characteristically blunt. He told the audience, “White people of the North have practically deserted the Negro. From this time on anything done for the Negro must be done by himself.” The Pittsburg branch paid

\$300 to broadcast one hour of the speeches over the radio station of KDKA. Darrow and Springarn's addresses were broadcast.

Darrow in Evolution Film

In 1931 Darrow narrated and appeared in a film about evolution titled the *Mystery of Life*. The film also featured Howard Madison Parshley, a professor at Smith College from 1917 until 1952, and who was for many years chairman of its Zoology Department. Smith wrote the screenplay and during the movie explained scientific and biological concepts and Darrow would then add his own remarks. The movie was popular and favorably reviewed although some found it controversial.

According to *Time* in a July 1931 article, the idea for the movie came about a year previously when Samuel Cummins, president of Classic Productions, had taken parts of a movie based on *The Lost World*, a novel released in 1912 by Sir Arthur Conan Doyle, and parts of other sources and approached Darrow about doing a movie based on evolution. The *Mystery of Life* was completed in mid-July 1931 but then had to be reviewed by Dr. James Wingate's New York State Board of Censors before it could be shown in Manhattan. According to *Time*, Wingate's "predominantly feminine" board issued explicit instructions to Cummins:

Eliminate all views of snails on actual cross fertilization. . . . Eliminate . . . 'Here are two single celled animals in conjugation. Notice that the protoplasm, the living substance, is flowing from one to another.' . . . Eliminate all views of embryo . . . actual copulation of female mantis . . . views of spiders actually mating . . . views of child at mother's breast and view of bare breast . . . view of children where sex is exposed. . . . Reason: INDECENT.¹⁸⁸

Cummins and Darrow were greatly angered by the censorship and Darrow protested in writing:

Absurd and the censors know it. . . . Pictures of the Holy Mother nursing her infant abound all over the world. . . . The story of the praying mantis is published everywhere. . . . The human embryo is in any number of textbooks. . . . Can't you argue with them? If not, my personal inclinations would be for a fight.¹⁸⁹

After an appeal the censored parts were reinstated except for some parts of the film dealing with snails and spiders that were considered obscene. The film was distributed by Universal Pictures Corporation.

D. C. Stephenson

¹⁸⁸ *Education: Mr. Darrow Presents*, TIME, July 20, 1931, available at <http://www.time.com/time/magazine/article/0,9171,742088,00.html>.

¹⁸⁹ *Id.*

In all of the historical or contemporary accounts of Darrow's legal career there is hardly any mention of one of Darrow's most notorious clients: David Curtiss ("D. C.") Stephenson (1891 – 1966), former Grand Dragon of the Indiana Ku Klux Klan and 22 other northern states.¹⁹⁰ As leader of the Klan, Stephenson had become very politically and financially powerful. On the evening of March 15, 1925 Stephenson had some of his henchmen kidnap Madge Oberholtzer, a 28 year-old schoolteacher, whom Stephenson had occasionally dated during the preceding two months.¹⁹¹ Oberholtzer was made to drink whiskey and forced onto a train to Chicago where, in a private train car, she was brutally raped and bitten all over her body by a drunk and demented Stephenson. She was held captive in a hotel for nearly two days during which she attempted suicide twice, once with a gun and once by ingesting Bichloride of mercury. When Oberholtzer became very ill her kidnappers decided to drive her back to Indianapolis. At one point Oberholtzer threatened Stephenson with arrest at which he allegedly laughed and told her "I am the law." Oberholtzer was eventually taken to her home and sought medical attention. But her condition worsened and on March 28 she described the crime she suffered at the hands of Stephenson. She died on April 14 from infection and kidney failure due to mercury poisoning.

Stephenson was arrested, tried and on November 16, 1925 he was convicted of murder in the second degree and sentenced to life imprisonment. In January 1932 the Supreme Court of Indiana affirmed Stephenson's murder conviction.¹⁹² The kidnapping and murder of Oberholtzer was so shocking it helped end the rise of the KKK in Indiana.

Stephenson and Darrow corresponded by letter between 1928 and 1931 while Stephenson was incarcerated at the Indiana State Prison in Michigan City, Indiana. Newspapers reported that on July 7, 1931 Darrow had joined Stephenson's defense.¹⁹³ The story noted that Darrow's appearance before the Indiana Supreme Court was prevented when the attorneys agreed to file written briefs instead of oral arguments.

Stephenson was paroled on March 23, 1950, but violated parole by disappearing around September 1950. Stephenson moved to Robbinsdale, Minnesota where he was arrested on November 11, 1950. Stephenson fought extradition to Indiana but the Supreme Court of Minnesota ruled against him in November 1951.¹⁹⁴ In 1951 he was sentenced to serve another 10 years in prison. On December 21, 1956, Stephenson was given a Christmas clemency with dozens of other prisoners but this was conditioned on his leaving Indiana and never returning. In 1961 he was arrested on charges of sexually assaulting a sixteen-year-old girl in Missouri. Sources differ with some saying the charges were dropped, some saying he was fined and others saying he was sent to prison but was paroled in November 1961.

¹⁹⁰ *Darrow Joins Staff of Lawyers to Fight to Free Stephenson*, CHI. DAILY TRIB., July 8, 1931, at 13.

¹⁹¹ Prior to the crime she was employed by the state as the manager of the Young People's Reading Circle.

¹⁹² *Stephenson v. State*, 179 N.E. 633 (Ind. 1932).

¹⁹³ *Darrow Joins Staff of Lawyers to Fight to Free Stephenson*, *supra* note 190.

¹⁹⁴ *State ex rel. Stephenson v. Ryan*, 50 N.W.2d 259 (Minn. 1951).

On September 6 Darrow predicted that if the country had an extreme winter it would suffer the most wide-spread crime wave in its history. He believed the crime wave would be the result of the great lack of opportunity. Darrow's comments were a prelude to a possible movie he was contemplating making about the causes of crime. Darrow did appear in a short film about crime that was likely produced in 1931. In the film Darrow explains to an interviewer his beliefs that crime is caused by poverty, ignorance and bad luck.

On October 12 Darrow and several religious figures spoke about religion in New York. The other speakers were John A. Lapp of Marquette University, Charles W. Gilkey, dean of the University of Chicago chapel, and Solomon Goldman, a rabbi.

Darrow wrote an article for *Vanity Fair* titled "Why the 19th Amendment Cannot Be Repealed" that was published in November.

On December 21 *Time* reported that "Lawyer Clarence Darrow, professional agnostic, has appeared in some 30 forums on religion throughout the U. S. this year, all of them under the management of his old friend George G. Whitehead" ¹⁹⁵

1932

On February 5 Darrow's autobiography *The Story of My Life* went on sale. The book, published by Charles Scribner's Sons, was advertised at \$3.50 and became a best seller. Numerous reviews of the book mentioned Darrow's 1904 book *Farmington* which led to another edition of that book being published.

Darrow's autobiography was published a year before ratification of the 21st Amendment on December 5, 1933 which ended prohibition, so he was very pessimistic about this restriction on liberty:

Personally, I never cared much for intoxicating liquor. I never drank to excess. I have occasionally taken wine or whiskey, but never regularly or in any way that could possibly be called a habit. So far as I personally was concerned, the use of liquor in any form would never have influenced or affected me, but in prohibition I saw a grievous and far-reaching menace to the right of the individual. I knew it was supported by all the forces that were hostile to human freedom. I foresaw that it meant a fanaticism and intolerance that would hesitate at nothing to force its wishes and ways of life upon the world. The line between what should be the rights of the individual and the power of the state has never been clearly drawn; in fact, no one can set down a hard and fast rule for settling the limitations with any certainty. Still, broadly speaking, humans are divided into two classes; one of these is always urging more laws and stricter rules for each and all; the other faction is ever doubtful and distrustful of authority, and does not believe in the wisdom of the mob. These thoughtful, inquiring ones fear the majority. They know how tyrannical and unscrupulous the majority has always been; they know

¹⁹⁵ *Religion: Darrow Forums*, TIME, Dec. 21, 1931.

the conceit of the ignorant, the intolerance of the bigot, and they instinctively fight for the rights of the individual against the crowd. In this contest I am, and always have been, with the individual battling for the right to express himself in his own life regardless of the mob. . . .

Long before the adoption of the Eighteenth Amendment and the Volstead Act, I did everything in my power with addresses in public and articles in periodicals to protest against the rising danger.¹⁹⁶

Darrow wrote an article titled "Who Knows Justice?" that is published in *Scribner's Magazine* in February.

Russell McWilliams

Darrow came out of retirement to defend a seventeen year old named Russell McWilliams who was charged with first-degree murder for killing a street car conductor. McWilliams was seventeen years and eleven days old on August 29, 1931, the date of the homicide. He pled guilty on October 26, 1931 and two days later was sentenced to death. The defense twice got the conviction reversed and remanded. Darrow, William H. Holly, and other attorneys represented McWilliams during his second appeal. Darrow argued before the Illinois Supreme Court on February 16, 1932. The defense successfully argued that the trial court erred when it denied a change of venue and the court reversed and remanded the case.¹⁹⁷ Darrow then helped defend McWilliams during his third murder trial. McWilliams was again convicted and despite Darrow's pleas for mercy he was again sentenced to death. Darrow later traveled to Springfield to plead before the Illinois State Board of Pardons and Parole to recommend clemency before the Governor. In April 1933, Illinois Governor Henry Horner commuted McWilliams' sentence to 99 years in prison. The governor announced his decision on April 18, Darrow's birthday. McWilliams was released on parole in 1951.

The Scottsboro Case

One of the most notorious cases involving racial prejudice in the history of the United States was the legal travesty inflicted on the "Scottsboro boys," the name given to nine young blacks accused of raping two white women on a freight train in Alabama on March 25, 1931. While in jail, the defendants were nearly lynched by an angry crowd. They were indicted for rape and went on trial just twelve days after being arrested. All but one defendant was convicted, and sentenced to death. The trial of one defendant, who was only age twelve or thirteen when arrested, ended in a mistrial because some jurors held out for the death sentence despite the prosecution's request for life imprisonment due to the defendant's age.

It soon became apparent to many observers, largely in the North, that the victims were lying and the prosecution was based on the defendants' race. The convictions were

¹⁹⁶ THE STORY OF MY LIFE, *supra* note 2, at 284-85.

¹⁹⁷ *People v. McWilliams*, 183 N.E. 582 (Ill. 1932).

appealed and the legal odyssey would drag on for years. The NAACP was reluctant to get involved at first because the charge of raping white women was so explosive that if the charges were true, it would damage the NAACP's standing among whites. Eventually, the NAACP decided to help the defendants but this created a battle between the NAACP and the International Labor Defense (ILD) for the right to represent the Scottsboro defendants. The ILD was the legal arm of the Communist Party of the United States of America.

Clarence Darrow and the Scottsboro Boys

The NAACP hired Clarence Darrow, Arthur Garfield Hays and Roderick Beddow, a Birmingham lawyer, to appeal the defendants' convictions before the Alabama Supreme Court. Darrow and Hays traveled to Birmingham in early 1932. But the Communist party, acting through the ILD, desperately wanted to represent the Scottsboro defendants because the case fit with their ideological struggle against capitalism and the United States. The ILD wanted to use the case to embarrass the United States. Darrow and Hays were informed by telegram that the defendants wanted the ILD to defend them but if Darrow and Hays would work under the ILD they could help in the defense.

Darrow and Hays met with several lawyers representing the ILD about the case. The ILD informed them that they would be glad to have them work on the case but only if Darrow and Hays repudiated the NAACP and left the trial tactics up to the ILD. Darrow and Hays could not remain in the case with the ILD's conditions so they withdrew.

According to one of his biographers, the Scottsboro defense was the only case Darrow withdrew from in his career. The Scottsboro case would result in numerous reversals, convictions, and retrials and the case would eventually be argued before the United States Supreme Court several times. Although none of the defendants were executed, they spent many years in prison and it was not until 1950 that the last defendant was paroled.

Massie Case

After his autobiography was published Darrow was hired for the last sensational trial of his career. The Massie affair, set in Hawaii, would turn out to be one of the most controversial criminal cases in Darrow's long legal career. In contrast to his other famous cases, in this case, for a substantial fee, Darrow was on the side of the powerful, defending four whites, including a member of an elite family, who had basically lynched a nineteen-year-old Hawaiian youth named Joseph Kahahawai. The victim and four other minority youths were falsely accused of assaulting and raping the wife of a junior Navy officer in September 1931. The alleged attack on the white wife of a military officer by brown skinned Hawaiians and Asian defendants produced immediate and sustained hysteria within the white community in Hawaii and on the mainland. Careless rumors and false information about the safety of white women in Hawaii made it seem like Hawaii, especially Honolulu, was a dangerous locale with native sexual predators roaming and attacking white women at will. The truth was actually the opposite, with white women much safer in Hawaii than in many cities on the mainland. The case soon became a

political firestorm as members of Congress and whites on the mainland clamored for political and legal changes in Hawaii.

After some negotiations Darrow decided to take the case and he and his wife and another attorney boarded a ship for Hawaii on March 24. Darrow was 74 years old and would turn 75 during the trial. There was overwhelming evidence of guilt, one of the defendants basically admitted firing the gun that killed the youth, but Darrow and the defense argued it was justified under the “unwritten law”—a defense usually used by a husband who kills a man immediately after catching him having relations with his wife or raping her. The defense was shocked when the jury returned a guilty verdict for manslaughter for each defendant. They were sentenced to ten years hard labor, but the jury had recommended leniency and, due to overwhelming pressure from the mainland, from Congress, and powerful whites in Hawaii, the defendants never served their sentence. In a legal travesty, the governor of Hawaii commuted their sentence to just one hour and they were released.

Darrow would later write a chapter about the Massie trial which was published in reprints of his autobiography. The Massie case was one of the most sensational stories in the United States in 1932. It was only eclipsed by the kidnapping and murder of 20-month-old Charles Lindbergh, Jr., the son of the famous aviator Charles Lindbergh. The boy was kidnapped on March 1, 1932 and he was found murdered on May 12, 1932.

On June 29 Darrow said a few remarks at the Democratic National Convention in Chicago. Darrow spoke after Amos and Andy and former heavyweight boxing champ Gene Tunney.

On September 18 it was announced that Darrow had joined the First Unitarian Society of Minneapolis. The organization is still in existence.¹⁹⁸ Shortly after this announcement Darrow wrote a letter to the Associated Press stating that he had not joined any church and had no intention of doing so.

In September Darrow gave an address at the Mahoning County Bar Association in Ohio.

On October 14 a manifesto letter condemning British rule in India and supporting the non-violence movement for independence was sent by the American League for India's Freedom to civic organizations around the United States. The letter was signed by several prominent people including Clarence Darrow.

On December 12 Darrow debated Michael A. Musmanno in Pennsylvania on the issue of the immortality of the human soul in “Does Man Live Again?” Michael Angelo Musmanno (1897 - 1968) was a United States Naval officer and a Justice of the Pennsylvania Supreme Court and politician in the Pennsylvania legislature. Musmanno rose to the rank of Rear Admiral in the U.S. Navy and at the end of World War II served on the International Military Tribunal at the Nuremberg Trials. He also led the investigation to determine if Adolf Hitler died at the end of the war. He later served as an

¹⁹⁸ See First Unitarian Society of Minneapolis, <http://www.firstunitariansociety.org/> (last visited Mar. 16, 2010).

appellate attorney for Sacco and Vanzetti. Musmanno was also a staunch anti-communist. In 1961 he was a witness for the prosecution in the trial of Adolf Eichmann. Musmanno's gravestone at Arlington National Cemetery contains his final words from the debate with Clarence Darrow:

There is an eternal justice and an eternal order, there is a wise, merciful and omnipotent God. My friends, have no fear of the night or death. It is the forerunner of dawn, a glowing resplendent dawn, whose iridescent rays will write across the pink sky in unmistakable language - Man Does Live Again.

1933

On March 14 Albert Einstein spoke in Chicago. Illinois Governor Horner read a message of greeting to Einstein which was signed by several prominent individuals including Clarence Darrow.

On March 25 Darrow gave a testimonial address during a dinner in honor of George A. Shilling held by the Biology Group. Shilling was a prominent labor advocate and at one time Secretary of the Illinois State Board of Labor Commissioners. Darrow met Shilling in 1888 at a single tax club meeting and they became lifelong friends. In his autobiography Darrow wrote "Mr. Shilling was about the first man I met when I came to Chicago, and he has been a close friend ever since."¹⁹⁹

On May 28 Clarence's brother Herman C. Darrow died in Chicago at age 68. For the previous nine years Herman was a proofreader for the *Chicago Tribune*. He was married and had two sons, Max and Elmer, and one daughter, Marguerite.

Darrow wrote an article titled "Capital Punishment? No" that was published in the *Rotarian Magazine* in November. Henry Barrett Chamberlin, chairman of the Chicago Crime Commission, countered with an article in favor of capital punishment in the same issue.

Darrow's good friend and former law partner William Holly was appointed as a federal judge for the Northern District of Illinois in 1933. He was one of Franklin Roosevelt's first judicial appointments. Darrow and Holly were very close. Darrow wrote in his autobiography:

Each day is lived for itself, and even now I have my joys. To-night my friend, William Holly, is coming to dine and spend the evening in my home. He is wise, and kindly, and dear to me. I am sure that we shall have a most companionable evening together, discussing the ignorance and inhumanity of the world, the men that we admire and approve, and those whom we disagree with and dislike.²⁰⁰

1934

¹⁹⁹ THE STORY OF MY LIFE, *supra* note 2, at 103.

²⁰⁰ *Id.* at 451.

On January 19 Darrow debated John Hayne Holmes on the topic “Can Civilization be Saved?” at the Mecca Temple in New York. Darrow told the audience of about 2,000 that “civilization has been destroyed by those who own it, by the people who have the vast wealth, the masters of the world who will not permit a fair distribution of its products.” Proceeds from ticket sales went to the Rand School of Social Science.

Luke Lea was a United States Senator from Tennessee and the founder of the *Nashville Tennessean* and its first editor and publisher. During the 1920s, he became a major stockholder in numerous banks, all of which failed during the Great Depression. Lea and several others, including his son, were charged in North Carolina with conspiracy to commit bank fraud. They were convicted on several counts in August 1931 and Luke Lea was sentenced to 6 to 10 years in prison. Lea was allowed out on bond but when his appeal was unsuccessful he did not return to North Carolina. Instead he traveled around Tennessee in an unsuccessful search for a judge who would grant a writ of habeas corpus. The Supreme Court of Tennessee ruled that North Carolina could extradite him as a fugitive from justice.²⁰¹

Clarence Darrow, Arthur Garfield Hays and several co-counsel petitioned for a Writ of Certiorari to the United States Supreme Court on Lea’s behalf which was denied on April 30, 1934.²⁰² Ten days later Luke Lea and his son reported for imprisonment at Raleigh, North Carolina. Luke Lea was paroled in April 1936 and pardoned on June 15, 1937.

Darrow Hopes Hitler is Murdered

Darrow participated as chairman of the American Inquiry Commission, an unofficial body, on the present conditions in Germany. The group held hearings at the New York County Lawyers Association on July 2 and 3. Other members included Senator William Costigan, Arthur Garfield Hays and Dudley Field Malone. The commission was constituted as the American branch of the Lord Marley Committee and tasked with gathering evidence and hearing testimony about the Nazi regime in Germany. The commission heard testimony from numerous witnesses who described murder and imprisonment in concentration camps and other violations of civil rights. During a luncheon recess on July 2 the commission visited New York Mayor LaGuardia at City Hall. During the visit Darrow made the news when he publically stated: “If there are any more murders tomorrow I hope it will end in the killing of Hitler. I think Hitler is a very dangerous man and should be destroyed.”²⁰³ On July 3 the commission issued a plea for Ernst Thaelmann, a German Communist leader, facing trial for high treason in Germany. Thaelmann was never tried but was held in solitary confinement for eleven years before being shot in Buchenwald on Hitler's orders in 1944.

Also in July Darrow publicly called for New York Governor Herbert H. Lehman to grant clemency to a twenty eight year old woman named Anna Antonio who was facing

²⁰¹ State ex rel. Lea v. Brown, 64 S.W.2d 841 (Tenn. 1933).

²⁰² Tennessee ex rel Lea v. Brown, 292 U.S. 638 (1934).

²⁰³ *Exile Asks World to End Nazi Terror*, N.Y. TIMES, July 3, 1934, at 5.

execution for having her husband murdered on Easter Sunday 1932. She was accused of having her husband killed for life insurance money but some accounts describe Antonio as a battered wife who simply wanted him killed to avoid more abuse. Her execution had been delayed numerous times and Darrow's involvement garnered more support for Antonio. Despite the numerous pleas on her behalf, Antonio was executed by electric chair at Sing Sing prison on August 9, 1934.

National Recovery Review Board

The last major activity of Darrow's professional life would bring him into conflict with the administration of President Franklin D. Roosevelt. On June 16, 1933 President Roosevelt signed the National Industrial Recovery Act (NIRA) into law.²⁰⁴ The act was supposed to facilitate cooperation between the federal government and the business sector and this hopefully would stimulate the economy and pull the country out of the Great Depression. Under NIRA business competitors met to develop and propose business "codes of fair competition" that would govern prices charged for goods and services, wages paid to labor, and business practices. NIRA created the National Recovery Administration (NRA) and Roosevelt appointed Hugh S. Johnson as Director of the NRA to administer the code-writing process and enforce what would become a huge bureaucracy of codes.

The fair competition code process and the resulting bureaucracy it created were heavily criticized and by 1934 the NRA and its code program was clearly in trouble. It was frequently criticized for promoting monopolies that harmed small businesses. On March 7, 1934 President Roosevelt created the National Recovery Review Board by executive order and gave the board the responsibility to review the codes and report its findings to the president. Roosevelt picked Clarence Darrow to chair the board. Over the course of nearly four months the review board held 57 public hearings, reviewed 3,375 complaints, and investigated thirty-four codes. Darrow's board issued very critical reports about the codes and Darrow publicly clashed with Hugh S. Johnson. Darrow and the board also antagonized President Roosevelt. On June 30, 1934 President Roosevelt issued another executive order abolishing the National Recovery Review Board.

Darrow wrote an article sharply critical of the NRA codes published in *The Rotarian* in November 1934 titled "NRA and 'Fair Competition.'"

On October 20 Darrow confirmed reports that he was actively engaged in trying to secure parole for John Haefner, age 65. Haefner was convicted in 1925 for manslaughter in the death of his wife and sentenced to the Columbus Ohio Penitentiary. Fifty years previously Darrow had known Haefner's father who was a shoemaker in Kinsman Ohio.

On November 12, while in Atlantic City, Darrow gave an interview in which he expressed doubts about the evidence against Bruno Hauptmann who was awaiting trial for the murder of Charles Lindbergh's son. Some of the strongest evidence against

²⁰⁴ National Industrial Recovery Act, ch. 90, 48 Stat. 195 (1933).

Hauptmann was that ransom money was found in his possession. Darrow said this did not prove he was the murderer because the money could have come from extortion.

In 1934 Darrow was included in the book *The Red Network: A Who's Who and Handbook of Radicalism for Patriots* by Elizabeth Dilling Stokes, a dedicated anti-communist. The book purports to be an exposé of communist front activity in the United States. Many of Darrow's friends and acquaintances were also included.

1935

Darrow wrote an article titled "Many Faults in NRA" that was published in the *Commercial Bulletin and Apparel Merchant* in February.

The controversy created by the NRA and the National Recovery Review Board prompted the Senate Committee on Finance to undertake an investigation. The committee began holding hearings on March 7. Darrow testified on March 20 and the hearings concluded on April 18, 1935.

On May 27, 1935 the United States Supreme Court held the National Recovery Act invalid because it unconstitutionally regulated intrastate commerce and it was an impermissible delegation of legislative authority to the president.²⁰⁵

Darrow publicly commented on the death of Huey Long who died on September 10. Long, nicknamed "The Kingfish," served as the Governor of Louisiana from 1928 to 1932 and as a U.S. senator from 1932 to 1935. On September 8 Long was either shot by an assassin, medical doctor Carl Austin Weiss, or accidentally shot by one of his bodyguards after Weiss punched Long. Long died two days later. Weiss was shot an estimated 60 times by Long's bodyguards and died. It was reported that Darrow referred to Long as a "valuable liberal" and commented: "I admired Huey Long in many ways, . . . I knew him and liked him. He stood for what was right in political life."²⁰⁶

1936

On January 11 Darrow was re-elected as president of the American League to Abolish Capital Punishment at the group's annual meeting.

On January 28 Richard Loeb was slashed to death with a razor by another prisoner in Stateville prison in Illinois. Darrow said that he was "very sorry to hear of" Loeb's death but: "I had always hoped that both would live long enough to get out of prison. I'm glad he's dead just the same. Death is the easier sentence compared with a life behind the walls of a prison. He is better off than Leopold—better off dead."²⁰⁷

²⁰⁵ *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *See also Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) (declaring as an unconstitutional delegation of legislative power the National Industrial Recovery Act, ch. 90, § 9(c), 48 Stat. 195, 200 (1933)).

²⁰⁶ *Darrow Mourns "Valuable Liberal."*, N.Y. TIMES, Sept. 11, 1935, at 15.

²⁰⁷ *Convict Kills Loeb, Franks Boy Slayer*, N.Y. TIMES, Jan. 29, 1936, at 2.

On March 30 Darrow, accompanied by the Reverend Joseph Eckert, a Catholic priest, and two nuns, appeared before the Illinois State Parole Board to plead for the release of 71 year-old Jesse Binga. Eckert presented a petition signed by 10,000 blacks in support of Binga. Binga was a prominent black banker in Chicago who lost everything due to the Great Depression and a conviction for embezzlement. In 1933 Binga was convicted of embezzling \$22,000 and sentenced to 10 years in prison. Darrow knew Binga for about thirty years. It was not until 1938 that the work of Darrow and other Binga supporters gained Binga's release. Binga lived twelve more years, eking out an existence as a janitor.

On April 1 Darrow sent a telegram to New Jersey Governor Hoffman and the New Jersey Court of Pardons urging that Bruno Hauptmann, convicted and sentenced to death for the kidnapping and murder of Charles Lindbergh's son, be given a new trial. Hauptmann was executed two days later.

On his 79th birthday on April 18 Darrow was interviewed. Among his remarks he said the law was a "horrible business" and "There was no such thing as justice—in or out of court."²⁰⁸

At age 79 Darrow was still speaking his mind through writing. In 1936 he wrote an article title "Attorney for the Defense" that was published in the May edition of *Esquire*. Darrow was very progressive but he was also a product of his times. In the article he wrote things that are now politically incorrect. He described how to pick a jury and the reasons for seating or rejecting prospective jurors based on ethnicity, class and religious beliefs.

Darrow's 1936 article in *Esquire* was the focus of an FBI memo which is part of a small FBI file on Darrow.²⁰⁹ The memo states that:

This article appears to be a rather frank discussion of the interworkings of the minds of criminal lawyers as exemplified by Clarence Darrow. It is thought that possibly portions of this article might be helpful to the Director in making future addresses, at which time he might desire to point out how unscrupulous criminal lawyers stimulate disrespect for law and influence crime conditions.

Darrow's *Esquire* article was later cited in the appeal of a 1978 criminal trial that has been described as the first fully anonymous jury empanelled in the United States. This was the federal trial of a drug kingpin named Leroy "Nicky" Barnes and other defendants in New York City. The court believed that Barnes and the other ten defendants presented an unusually dangerous risk to the jurors and it took the extraordinary measure of hiding their identities. The defendants were convicted and on appeal they argued they were denied due process because:

²⁰⁸ LAW IS 'HORRIBLE,' SAYS DARROW, 79, N.Y. Times, Apr. 19, 1936. p. 24.

²⁰⁹ Federal Bureau of Information, Clarence Seward Darrow, File No. 62-45014, available at <http://foia.fbi.gov/darrow/darrow1.pdf> (last visited Mar. 16, 2010).

The district court's refusal to disclose petit jurors' identities, residence locales or ethnic backgrounds and the court's restrictive voir dire denied defendants due process. They also assert as reversible error the court's failure to inquire into the religion of each prospective juror. Using as their authority Clarence Darrow, who believed that a juror's "nationality, his business, religion, politics, social standing, family ties, friends, habits of life and thought; the books and newspapers he likes and reads . . . (even to his) method of speech, the kind of clothes he wears, the style of haircut . . .", were important subjects for questioning, they contended that the court's inquiry was unduly (to the point of reversal) restrictive. (Quoting Darrow, Attorney for the Defense, *Esquire Magazine*, May 1936).²¹⁰

Barnes was sentenced to life in prison but after he cooperated with the government this was reduced to 35 years and he was released from prison in 1998. Before his conviction Barnes was referred to as "Mr. Untouchable" and in 2007 he co-wrote his autobiography with that title.

On September 6 it was announced by Mrs. Elinore M. Herrick that a petition had been sent to California governor Merriam requesting he pardon James B. McNamara and Matthew A. Schimdt who were both serving life sentences for the bombing of the Los Angeles Times that killed twenty people.²¹¹ Mrs. Herrick stated that Clarence Darrow and Lincoln Steffens assisted her in circulating the petition. Mrs. Herrick served for a time as a regional director of the National Labor Relations Board.

On September 27 the ACLU released a letter signed by 41 attorneys, writers and educators including Darrow asking the presidential and vice presidential nominees from all of the parties running for election to make at least one public comment about various civil liberties issues.

On September 28 it was announced that Senator Neye of North Dakota, Senator Benson of Minnesota, Clarence Darrow and several other prominent people had agreed to serve on the Non-Partisan Committee for the re-election of Representative Vito Marcantonio, an Italian-American, who represented East Harlem. Marcantonio, a lawyer and politician, was one of the more radical members of Congress.

Darrow worked with several other attorneys on the appeal of 30 year old Joseph Rappaport, the son of a rabbi, who was convicted of murder and sentenced to death for killing a government informant in a narcotics case. The Supreme Court of Illinois affirmed the conviction and sentence.²¹² His execution was delayed numerous times by Governor Horner. The day before the latest execution date, Governor Horner announced that he would consider a further reprieve if Rappaport submitted to a polygraph test which Horner placed great faith in. On March 2, 1937, just hours before Rappaport was to be executed, a polygraph machine was taken to his death cell. It was administered by

²¹⁰ *United States v. Barnes*, 604 F.2d 121, 134 (2nd Cir. 1979).

²¹¹ *Pardon of M'Namara Sought in Petition*, N.Y. TIMES, Sept. 6, 1936, at N8.

²¹² *People v. Rappaport*, 4 N.E.2d 106 (Ill. 1936).

Leonarde Keeler, co-inventor of the polygraph and the first full-time professional polygraph examiner. Keeler was also a friend of Governor Horner. Keeler announced that Rappaport had failed the test and he was executed in the electric chair two hours later.

Darrow wrote a piece just before Christmas for the *Chicago Daily Times* in which he stated:

I don't know what Christmas is all about anyhow. I think it is a humbug. . . . As a holiday the Fourth of July had it beat a mile. On the Fourth I used to get up right after midnight to shoot off anvils. It made a loud sound. It was a lot of fun. Nobody knows why we celebrate Christmas—to keep up the old bunk I suppose. Some religious people think it is the day Christ was born. They don't know any more about it than a woodchuck.²¹³

1937

Darrow was interviewed on his 80th birthday on April 18. When asked if he felt differently towards a future life he responded “no” and said “‘Nobody has ever been able to give me proof that there is another life, and I don't know’—his voice sank to a growl—‘that I would want it if there were.’”²¹⁴

On May 9 a written plea was sent to numerous religious, educational, political, civic, and professional leaders protesting the April 26 bombing of the city of Guernica in Spain by Nazi Germany's Luftwaffe. At the time it was estimated that 800 people were killed. The plea, sent in the name of the North American Committee to Aid Spanish Democracy, claimed that “10,000 men, women and children were bombed and machine-gunned.” Many prominent people signed the appeal including Albert Einstein and Clarence Darrow. Pablo Picasso painted his famous “Guernica” work to commemorate the bombing.

1938

In January 1938 the NAACP Committee on Nominations nominated Clarence Darrow as a National Officer in the position of one of its Vice Presidents.²¹⁵

Clarence Darrow Dies

As his health deteriorated in early 1938 Darrow was confined to bed. He remained bed-ridden for two months until he died on Sunday, March 13, 1938 at his home in Chicago. With him was his wife Ruby, son Paul and his sister Jennie Moore. His good friend, Judge William Holly arrived at the Darrow home and later publicly announced that Darrow had died.

²¹³ Clarence Darrow, “*It's a Humbug!*,” CHI. DAILY TIMES, Dec. 22, 1936, Christmas Battle Page.

²¹⁴ *DARROW--A PESIMIST WITH HOPE--IS EIGHTY*, N.Y. Times, Apr 18, 1937. p. 129.

²¹⁵ *Notice of Nominations*, 45 CRISIS 11 (1938).

Later Darrow's body lay in state at a Chicago funeral parlor. Thousands came to mourn him. On Tuesday March 15 his body was taken to Bond Chapel at the University of Chicago for a memorial service. Judge Holly gave the eulogy. Darrow and Holly had made an agreement that whoever outlived the other would speak at the funeral. Darrow said of his friend "Let Judge Holly speak at my funeral. He knows everything there is to know about me, and he has sense enough not to tell it."²¹⁶ Instead of writing a eulogy, Judge Holly read from the eulogy that Darrow had written for the funeral of his friend John Peter Altgeld in 1902.

Darrow had requested that he be cremated and on March 19, George Whitehead, his friend and lecture manager, and three male nurses that had attended him, went to Oakwoods Cemetery to witness the cremation.²¹⁷ Later that day the four, joined by Paul Darrow, went to the bridge over the Jackson Park lagoon and spread Clarence Darrow's ashes into the wind. Darrow used to look at this area from his apartment window and declared it "the prettiest spot on earth."²¹⁸ In 1957 the bridge was dedicated as the Clarence Darrow Memorial Bridge.

Word of Darrow's death prompted comments from many who knew him. Senator William Borah, whom Darrow faced during the Haywood trial in Idaho, said the world had lost a "humanitarian."

Dr. Clarence True Wilson, his unlikely religious and temperance leader friend, said "I feel lonely to think he is gone" because "He was a kind, considerate friend, and I had a great love for him." Wilson conceded "Before I knew him well, I used to think he was the worst type of man we had in our nation, a defender of crime, but I learned to know differently."²¹⁹

Dudley Field Malone said of his friend:

In universality of information, quality of mind, great heart, honesty, courage and character, Clarence Darrow was the most distinguished human being I've ever known. My service with him in many cases and causes will always be my most precious professional memory.²²⁰

Unity magazine devoted a memorial to Darrow in its May 16, 1938 edition. Comments included in the memorial issue came from: William H. Holly, Francis McConnell, James Weldon Johnson, John Haynes Holmes, Arthur Garfield Hays, Victor S. Yarros, Harry Elmer Barnes, Clarence True Wilson and Eliot White.

²¹⁶ RICHARD CAHAN, *A COURT THAT SHAPED AMERICA: CHICAGO'S FEDERAL DISTRICT COURT FROM ABE LINCOLN TO ABBIE HOFFMAN* 101 (2002).

²¹⁷ *SENTIMENTAL REBEL*, *supra* note 11, at 382.

²¹⁸ *Darrow's Ashes Strewn*, N.Y. TIMES, Mar. 20, 1938, at 9.

²¹⁹ *Clarence Darrow is Dead in Chicago*, N.Y. TIMES, Mar. 14, 1938, at 15.

²²⁰ *Id.*

James Weldon Johnson, former general secretary of the NAACP, said of Darrow:

“I admired Clarence Darrow as a great American and a great advocate. I revered him as a wise philosopher and a broad humanist. I, and the members of my race, feel grateful for his courage and willingness to stand always as the champion of fair play and justice for the Negro. And I loved him for all his high and true qualities as a friend.”²²¹

Ruby Darrow died on July 6, 1957.

²²¹ James Weldon Johnson, *Clarence Darrow—As I Knew Him*, UNITY, May 16, 1938, at 88.