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THE BAR

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Does The American Bar Stand For It?

In a very special sense the case of Clarence Darrow has become a pivotal, illustrative case in Professional Ethics.

It is being studied by the nation. It will not down. He was managing a case that brought him under the eye of the whole country. He was representing clients, guilty of the most diabolical crime, that were ever brought to the bar of a court of justice. They had deliberately murdered twenty-one men, as a single item in a long train of similar crimes that were without parallel in their devilish and destructive intent and effect.

He either knew or he did not know from the beginning that they were guilty. As the case is being studied the popular sense has settled down to the conviction that he knew. And that conviction has put the legal profession on trial.

If he knew does Mr. Darrow's attitude and management of that case represent the conception of the legal profession as to the rights, duties, privileges and relations of a lawyer to a guilty client?

The question the country is asking is: *Does the legal profession stand for this?*

We are humiliated to have that question asked and not conclusively answered in the general conduct and character of the profession itself. But unfortunately the profession is often misrepresented both from without and within, and the question is a pertinent and a pressing one.

Prof. John H. Wigmore has very forcibly presented the situation in the Journal of the American Institute of Criminal Law, thus·

"Out of the many issues and sensations concentrated in the McNamara dynamite murder case there arises one emphatic question which dominates all others for the thoughful student of our criminal procedure. It is this: What are the limits of legitimate defense which counsel may use for an accused?

"If we can answer this we put our finger on one of the

marked excesses of our present practice. Theoretically, the accused's counsel acts to secure a fair trial for his client, and therefore to free the latter if he be innocent. Practically we know that the regular criminal practitioner fights to free his client, guilty or innocent. There is here no discrimination between the rich or the poor offender, the hitherto respectable or the hitherto under-world-man—the Hines and Walshes, or the McNamaras and Ruefs. Their counsel fights to the last ditch. Can the law and the community afford to permit this? Is there no way of putting a limit on it? For it is surely breaking down our system of criminal justice. It tends to foster the technicality so much censured. It forces the state prosecutor to fight equally without scruple. It drives almost all honorable lawyers out of a field where duty calls them and the community needs them. It is one of the most repulsive features of our present system.

Is there no relief? Must we waith for a new generation slowly to bring a radical chaneg of thought and custom? Will the institution of a state defender (to oppose the state prosecutor) furnish a speedier solution? These are troublesome questions which must be answered before long.

But the McNamara case has brought out in an emphatic way the extreme unmorality of the system. It has shown us that even the atrocity and cold inhumanity of a brutal crime may make no recoil in this class of criminal defenders. In many classes of crime it is easy to see that there is some sort of a way for the defender to persuade himself that he is defending a meritorious cause, even if not a law-abiding man. This is obvious enough in the everyday cases of weak, tempted lads or of ambitious magnates of finance: a high-minded counsel, for example, in the Standard Oil case of three years ago was heard by the writer to express in the most passionate terms his sense of the outrage of that prosecution. But here in the McNamara case we have crossed the line of honest differences of sympathy and prejudice. Whoever did dynamite the *Los Angeles Times* building, crowded with human beings, did a brutal murder, did he

not? He deliberately killed a score of defenseless beings, under circumstances which have never been regarded as anything but plain murder outside of the tenets of Machiavelli or the Hindu thugs or Stevenson's dynamiters. Now we know who did it. But *Clarence Darrow knew it from the first.* His interview published in the dispatches of December 5, says: "When I took this case last march I foresaw this plea of guilt." And yet *he spent one hundred and ninety thousand dollars* of laboring men's innocent money *to secure at any cost the escape of men whom he knew to be giulty of this coarse, brutal murder*—a murder which has been universally condemned by labor unions and all other classes from the Atlantic to the Pacific as placing its perpetrators beyond the limit of sympathy of sympathy or protection.

Is this what the right of defense by counsel means? If so, then there is something rotten in the principle. It is useless to befog the issue by asking: May not a counsel act for a client whom he believes to be guilty? Of course he may; the best professional traditions agree to that, and no argument for or against it matters here. Nor do we assume here that Clarence Darrow was privy to the $1,000 bribe to a juryman; that part would look dark for him if he had the spending of the money in detail. which perhaps he did not. We do not assume that the one hundred and ninety thousand dollars was used to bribe anybody. But we do ask whether the counsel's duty and right of securing a fair trial justifies him in setting himself as systematically and persistently as the expenditure of two hundred thousand dollars signifies to secure the acquittal of clients whom he knew from the beginning to be guilty of the worst crime recognized in law and moality alike. That is our question.

We might ask a similar question of the defenders of some of the trust-law accused—the Standard Oil company or the Packers, for example, because they too, are spending hundreds of thousands of dollars on their defense. But, in the first place, we do not know that their clients are guilty and that counsel knew it And, in the second place, there is at least a section of

public opinion which sees no moral or legal wrong in the class of acts charged against them. And that is why the McNamara case brings out the issue beyond cavil. *"Murder is murder,"* in Theodore Roosevelt's words. And, as the American people are neither Machiavellis, and therefore all agree with Thoedore Roosevelt on that point (if no other), we come back to our proposition: That Clarence Darrow, acting as counsel under the law, systematiccaly spent one hundred and ninety thousand dollars to extricate from justice men whom he knew to be guilty of the most atrocious crime in the calendar.

Does our system allow this? How can he defend it? How can he defend *himself?* As we figure it, he *must* defend himself —or be recognized no longer in the ranks of an honorable profession.

We think the issue had better be threshed out. Heis already on record voluntarily, in his pamphlet, "Resist Not Evil," with principles which need defending. And in his published interview of December 6 we find its echoes. "The boys," he said, *"are not murderers at heart;* they thought they were just fighting a battle between capital and labor." There you have it, the doctrine of the Hindu thugs revived; that murder is not murder at heart, if you do it in behalf of some cause you believe in. What the public now needs to know plainly is, whether there is any lawyer, or class of lawyers, now allowed in our courts, who sympathize sincerely with this thug doctrine and will do anything to save its followers. Let us air this whole issue before public opinion. Let Clarence Darrow, or any one else who believes it, avow it and defend it. If our criminal system is being administered today by an appreciable number of able and intelligent lawyers who hold that view, let us all know it. Public opinion will then take a hand and settle the issue. If it can stand that doctrne, so be it. If the public verdict repudiates it, then let some measure be taken for eliminating its adherents from the ranks o fthe bar, and for making the defense of accused

persons an occupation consistent with self-respect and the service of justice."

We agree with Professor Wigmore that this is the time and occasion to thresh these matters out. It is a question of professional ethics that involves the integrity of the American Bar.

We are sure that so far as the American Bar can be said to have defined its attitude towards this issue—so far as the codes of ethics promulgated by teh American Bar Association and the associations of the several states can be accepted as the express sentiment and attitude of the American Bar on the issue involved, it is most pronounced in its disapproval and condemnation of the manner and method of Mr. Darrow in his management of the McNamara cases, based on the current reports of the newspapers. The American Bar does not stand for this. The American Bar does not accept Mr. Darrow's example as representative of the ideals and privileges of the profession. And while it is not the disposition or the practice of the legal profesion to condemn a man unheard, if Mr. Darrow remains quiet under the indictment that the public has made and is making against him, it is incumbent on the American Bar to repudiate both him and his methods and we hope it will do so in no uncertain terms.

The congressional investigation develops that the annual assets of the express companies of this country amount to the enormous sum of $105,000,000. That is a tax which the people pay on what is really one of the public utilities of the country. It is in the nature of an extortion, adding to the burden of the high cost of living. We will never get down to just and efficient government until all public utilities are under the control, even if they are not owned by the government.