

JURY TRIAL BOOKLET

People v. Clarence Darrow

TRIAL BOOKLET

A. Charges:

Clarence Darrow has been charged with offering a bribe to juror George N. Lockwood.

Count One: Giving a bribe to a juror

Count Two: Giving a bribe to a man summoned as a juror.

B. Applicable Statues:

1. Penal Code- Title VII (Of Crimes Against Public Justice)-1909

Section 92: Giving Bribes to Judges, Jurors, Referees Etc.: Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the state prison not less than one nor more than ten years.

Section 93: Receiving Bribes by Judicial Officers, Jurors, Etc., : Every judicial officer, juror, referee, arbitrator, or umpire and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matters or question which is or may he brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more then ten years

Section 95: Improper Attempts to Influence Jurors, Referees, Etc., Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator , or umpire , or appointed a referee, in respect to his verdict, in, or decision of any cause, or proceeding pending, or about to be brought before him, either:

1. By means of any communication, oral, written, had with him except in the regular course of proceedings;
2. By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings;
3. By means of any threat, intimidation, persuasion, or entreaty; or,
4. By means of any promise, or assurance of any pecuniary or other advantage;

is punishable by fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years.

2. Penal Code Section 1324- Testimony and Immunity: (For the complete statute see attached photocopied documents)

Cal. **Penal Code § 1324** (1911) declares that a person who is himself an offender may be compelled to be a witness and give testimony against another person for an offense of which both are guilty, and he shall not be excused from testifying on the ground that his testimony might, even though he may demand to be excused, incriminate him, but in such case, except for perjury, his testimony shall not be used against him, nor shall he be liable thereafter to prosecution for the offense with reference to which his testimony was given. The second paragraph declares that no such witness shall be exempt from prosecution or punishment for such offense where he testifies voluntarily, or fails to ask to be excused from testifying on the ground that his testimony may incriminate himself, but his testimony so given may be used against him

The third paragraph of Cal. **Penal Code § 1324** provides, in part: A witness shall be deemed to have asked to be excused from testifying unless before any testimony is given the judge, foreman or other person presiding at such trial, hearing, proceeding or investigation, shall distinctly read this section of this code to such witness, and the form of the objection by the witness shall be immaterial, if he in substance makes objection that his testimony may incriminate himself, and he shall not be obliged to object to each question, but one objection shall be sufficient to protect such witness from prosecution for any offense concerning which he may testify

A witness cannot refuse to testify in a criminal case though his testimony may incriminate him, but if he demands that he be excused on that ground he shall not be liable thereafter to prosecution. If, however, he testifies voluntarily, or if he fails to ask to be excused from testifying on the ground above stated, his testimony may be used against him. But he is deemed to have asked to be excused from testifying under Cal. **Penal Code § 1324**, unless before any testimony is given the judge, foreman or other person presiding at such trial, hearing, proceeding or investigation, shall distinctly read § 1324 to the witness. And one objection to a question shall be sufficient to protect such witness from prosecution

Cal. **Penal Code § 1324** gives complete immunity and is not violative of the constitution

C. Jury Instructions:

1. 1-200 CALCRIM 200

200 Duties of Judge and Jury

Members of the jury, I will now instruct you on the law that applies to this case. [I will give you a copy of the instructions to use in the jury room.] [Each of you has a copy of these instructions to use in the jury room.] [The instructions that you receive may be printed, typed, or written by hand. Certain sections may have been crossed-out or added. Disregard any deleted sections and do not try to guess what they might have been. Only consider the final version of the instructions in your deliberations.]

You must decide what the facts are. It is up to all of you, and you alone, to decide what happened, based only on the evidence that has been presented to you in this trial.

Do not let bias, sympathy, prejudice, or public opinion influence your decision. Bias includes, but is not limited to, bias for or against the witnesses, attorneys, defendant[s] or alleged victim[s], based on disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, age, [or] socioeconomic status (./) [or _____ *<insert any other impermissible basis for bias as appropriate> .*]

You must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys' comments on the law conflict with my instructions, you must follow my instructions.

Pay careful attention to all of these instructions and consider them together. If I repeat any instruction or idea, do not conclude that it is more important than any other instruction or idea just because I repeated it.

Some words or phrases used during this trial have legal meanings that are different from their meanings in everyday use. These words and phrases will be specifically defined in these instructions. Please be sure to listen carefully and follow the definitions that I give you. Words and phrases not specifically defined in these instructions are to be applied using their ordinary, everyday meanings.

Some of these instructions may not apply, depending on your findings about the facts of the case. [Do not assume just because I give a particular instruction that I am suggesting anything about the facts.] After you have decided what the facts are, follow the instructions that do apply to the facts as you find them.

2. 1-200 CALCRIM 220

220 Reasonable Doubt

The fact that a criminal charge has been filed against the defendant[s] is not evidence that the charge is true. You must not be biased against the defendant[s] just because (he/she/they) (has/have) been arrested, charged with a crime, or brought to trial.

A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant[s] guilty beyond a reasonable doubt, (he/she/they) (is/are) entitled to an acquittal and you must find (him/her/them) not guilty.

3. 1-200 CALCRIM 222

222 Evidence

You must decide what the facts are in this case. You must use only the evidence that was presented in this courtroom [or during a jury view]. "Evidence" is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I told you to consider as evidence.

Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witnesses' answers are evidence. The attorneys' questions are significant only if they helped you to understand the witnesses' answers. Do not assume that something is true just because one of the attorneys asked a question that suggested it was true.

During the trial, the attorneys may have objected to questions or moved to strike answers given by the witnesses. I ruled on the objections according to the law. If I sustained an objection, you must ignore the question. If the witness was not permitted to answer, do not guess what the answer might have been or why I ruled as I did. If I ordered testimony stricken from the record you must disregard it and must not consider that testimony for any purpose.

You must disregard anything you saw or heard when the court was not in session, even if it was done or said by one of the parties or witnesses.

[During the trial, you were told that the People and the defense agreed, or stipulated, to certain facts. This means that they both accept those facts as true. Because there is no dispute about those facts you must also accept them as true.]

The court reporter has made a record of everything that was said during the trial. If you decide that it is necessary, you may ask that the court reporter's record be read to you. You must accept the court reporter's record as accurate.

4. 1-200 CALCRIM 223

223 Direct and Circumstantial Evidence: Defined

Facts may be proved by direct or circumstantial evidence or by a combination of both. *Direct evidence* can prove a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining. *Circumstantial evidence* also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

5. 1-200 CALCRIM 224

224 Circumstantial Evidence: Sufficiency of Evidence

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

6. 1-200 CALCRIM 225

225 Circumstantial Evidence: Intent or Mental State

The People must prove not only that the defendant did the act[s] charged, but also that (he/she) acted with a particular (intent/ [and/or] mental state). The instruction for (the/each) crime [and allegation] explains the (intent/ [and/or] mental state) required.

A[n] (intent/ [and/or] mental state) may be proved by circumstantial evidence.

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to conclude that the defendant had the required (intent/ [and/or] mental state), you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant had the required (intent/ [and/or] mental state). If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions supports a finding that the defendant did have the required (intent/ [and/or] mental state) and another reasonable conclusion supports a finding that the defendant did not, you must conclude that the required (intent/ [and/or] mental state) was not proved by the circumstantial evidence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

7. 1-200 CALCRIM 226

226 Witnesses

You alone must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience. You must judge the testimony of each witness by the same standards, setting aside any bias or prejudice you may have. You may believe all, part, or none of any witness's testimony. Consider the testimony of each witness and decide how much of it you believe.

In evaluating a witness's testimony, you may consider anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are:

- How well could the witness see, hear, or otherwise perceive the things about which the witness testified?
- How well was the witness able to remember and describe what happened?
- What was the witness's behavior while testifying?

- Did the witness understand the questions and answer them directly?
- Was the witness's testimony influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided?
- What was the witness's attitude about the case or about testifying?
- Did the witness make a statement in the past that is consistent or inconsistent with his or her testimony?
- How reasonable is the testimony when you consider all the other evidence in the case?
- [Did other evidence prove or disprove any fact about which the witness testified?]
- [Did the witness admit to being untruthful?]
- [What is the witness's character for truthfulness?]
- [Has the witness been convicted of a felony?]
- [Has the witness engaged in [other] conduct that reflects on his or her believability?]
- [Was the witness promised immunity or leniency in exchange for his or her testimony?]

Do not automatically reject testimony just because of inconsistencies or conflicts. Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently.

[If the evidence establishes that a witness's character for truthfulness has not been discussed among the people who know him or her, you may conclude from the lack of discussion that the witness's character for truthfulness is good.]

[If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.]

[If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.]

8. 1-300 CALCRIM 335

335 Accomplice Testimony: No Dispute Whether Witness Is Accomplice

If the crime[s] of _____ *<insert charged crime[s]>* (was/were) committed, then _____ *<insert name[s] of witness[es]>* (was/were) [an] accomplice[s] to (that/those) crime[s].

You may not convict the defendant of _____ *<insert crime[s]>* based on the (statement/ [or] testimony) of an accomplice alone. You may use the (statement/ [or] testimony) of an accomplice to convict the defendant only if:

1. The accomplice's (statement/ [or] testimony) is supported by other evidence that you believe;
2. That supporting evidence is independent of the accomplice's (statement/ [or] testimony);

AND

3. That supporting evidence tends to connect the defendant to the commission of the crime[s].

Supporting evidence, however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crime, and it does not need to support every fact (mentioned by the accomplice in the statement/ [or] about which the witness testified). On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime.

[The evidence needed to support the (statement/ [or] testimony) of one accomplice cannot be provided by the (statement/ [or] testimony) of another accomplice.]

Any (statement/ [or] testimony) of an accomplice that tends to incriminate the defendant should be viewed with caution. You may not, however, arbitrarily disregard it. You should give that (statement/ [or] testimony) the weight you think it deserves after examining it with care and caution and in the light of all the other evidence

LOOKING BACK INTO THE PAST: THE STRUGGLE OF THE LABOR MOVEMENT¹

During the late 1800's, early 1900's there was a second civil war going on in America. The war between the Laborers and Capitalists. This war was sparked by the age of industrial capitalism, where each industry had its own extremely wealthy tycoon. Men with incredible wealth dominated the industry markets and essentially dominated the laborers that worked beneath them. The railroad, steel, coal and oil industries were run by cutthroat men who would beat out competitors creating a monopoly in that industry. Due to these monopolies these tycoons could hire whoever they want based on their own will. Workers were at the whim of their tycoon bosses. The industrial monopolies were controlled by large, impersonal companies and bosses who did not know or care about their massive amount of workers. Laborers were merely a small part in the large machine and were easily replaceable.

On average, laborers worked six-day weeks, for ten or more hours a day. Most workers however worked as much as ninety or one hundred hours a week for very meager wages. The laborers could barely sustain a living with the wages they obtained. In fact, in order to be able to work these hours many workers had to live far away from their families and in buildings close to the factories. Workers lived in horrible conditions, in houses owned or rented out by the companies they worked for with as many as six people in a single room and five hundred people who shared the same bathroom. If the living conditions were not enough, the laborers working conditions were worse. The factories the laborers worked in were dangerous and foul. The death rate for some industries was estimated at about one man per thousand and the accident rate was much higher. These numbers were even worse among the bridge and structural workers.

At least one hundred structural iron workers were killed on the job each year, or about one in every hundred. Iron workers risked their lives daily by crawling out on long scaffolds, atop bridges and buildings, with no life net to save them from a fall hundreds of feet below. Even though their jobs were so dangerous, however, the workers only received about \$2.50 a day. Because the workers were indispensable, if one group of laborers held out for higher wages or better conditions the wealthy tycoons would just hire another group of laborers and pit the

¹Information for this article obtained from: Geoffrey Cowan, *The People v. Clarence Darrow (1993)*; Michael Hannon, *Bribery Trials of Clarence Darrow (1912 & 1913)*
http://darrow.law.umn.edu/trialpdfs/Darrow_Bribery_trials.pdf

immigrants against each other. For instance, pitting the English with the Irish and the Irish with the Germans. As one person remarked when one of his railroads was threatened with a strike, "I can hire one half the working class to kill the other half." If the workers tried to form unions and the unions went on strike the barons would call in the police or the Pinkertons, a breed of private detectives who carried guns and clubs who would spill whatever blood was necessary to keep the plants open.

Even though the workers were oppressed they soon began to fight back. In the late 1800's worker strikes became more frequent. In 1881 there were 471 strikes affecting 2,928 companies and 129,521 employees, and by 1886 there were more than three times as many strikes, affecting about three times as many companies and workers. This was the era Darrow became a lawyer in. It shaped his views as an individual who dedicated himself later in his life to fighting for the poor and the oppressed. During the early 1900's the fight between Labor and Capital grew to a violent level. As Darrow stated in his plea to the jury during his 1912 bribery trial, "there was a direct cleavage in society. Those who hated unions, and those who loved them. The fight was growing fiercer and bitter day by day. It was a class struggle. These two great contending armies were meeting in almost mortal combat."

The case which gave rise to Darrow's bribery trial was the trial of the McNamara brothers. In the morning of October 1, 1910 a bomb made of sticks of dynamite exploded in an alley next to the *Los Angeles Times'* building and ignited barrels of nearby printing ink causing a fire that killed twenty *Times* employees. General Harrison Gray Otis, owner of the *Times* was against labor unions and made it known. Otis was in a constant fight with the unions, not letting the strikes affect him or his paper. Otis called organized labor "a tyranny- one of the most monstrous tyrannies that the world has ever seen." Otis felt that Industrial Freedom was a sacred right vital to private and public liberty and vital to the prosperity of the country. Otis helped organize about 85 percent of the city's business leaders into the powerful Merchants and Manufacturers Association. The leaders of the M&M also believed, like Otis, that the city's economic success had much to do with Industrial Freedom. The leaders of the M&M hated labor unions and the leaders had a creed that they would not hire union men. Due to Otis and the M&M, Los Angeles became known as "the most unfair, unscrupulous and malignant enemy of organized labor in America." In sharp contrast, San Francisco was a labor unions' paradise.

The workers in San Francisco all worked under the protection of the unions. Due to the difference of working conditions in the two cities, unrest in Los Angeles grew. The largest discrepancy between Los Angeles and San Francisco was particularly noticeable in the metal trades. Unions in San Francisco tried to organize the Los Angeles building and metal trades. The unions soon turned to violence in order to assure economic survival. This 'terror campaign' started after the steel industry set up the National Erector's Association in an effort to destroy the steel union.

For a while the use of dynamite worked in helping labor unions make progress, especially with the Bridge and Structural Iron Workers union. However, the use of dynamite as a scare tactic had yet to kill anyone. Part of this terror campaign were brothers J.J and Jim McNamara. As the struggle between capital and labor intensified so did the tactics used by the labor movement. The *Los Angeles Times* continued to print anti-labor articles. The *Times* articles only enraged members of the labor movement. The night of September 30, 1910 Jim McNamara planted a suitcase in the alleyway behind the *Times* full of dynamite.

Due to the turmoil between labor and capital both parties threw blame for the bombing on each other. After the bombing Otis and other business leaders blamed people of the labor movement for the bombing, while labor denied any allegations of the bombing and in turn blamed the explosion on Otis who caused the explosion in order to blame it on labor. The investigation after the bombing was intense. In April 1911 two members of the International Association of Bridge and Structural Iron Workers (IABSIW) were arrested in Detroit for the bombing. One of those arrested, Ortie McManigal confessed and implicated Jim McNamara for planting the bomb, and his brother John for planning the bombing. Jim McNamara was the other one arrested in Detroit. On Saturday April 22, 1911 four detectives arrived at the IABSIW's union office in Indianapolis and stated that they were looking for Mr. McNamara. They took J.J. to the police station and told the executive board of the IABSIW that they could not leave the room. J.J was arraigned and read papers that he was to be sent to California to be held responsible for the *Times* bombing. The Judge in Indianapolis honored J.J.'s extradition to California. J.J was shipped out of the state and Detective Burns searched the union's office ferociously. The two brothers were both put on a train directly to California, but the brothers were kept apart. During this time the labor movement used the time to persuade Darrow to take the case.

The American Federation of Labor (AFL) started a national campaign to raise money for a defense fund for the accused. These two brothers meant a lot to the labor movement, especially J.J who was the secretary-treasurer of a major union, a part of the American Federation of Labor. The case heightened class feelings between labor and capital. If these two brothers were convicted and sentenced to death it would have been a huge blow to the labor movement in Los Angeles. In order to save the brothers' lives Darrow worked for towards a plea bargain where the brothers would plead guilty, but their lives would be spared. This caused anger amongst the leaders of the labor movement, and the same men who hired Darrow to defend the McNamara brothers were the same ones who turned their backs on him during his very own bribery trial.

WHO'S WHO- CHARACTER LIST²

Horace Appel: A fiery Mexican-Jewish lawyer who worked with Rogers in Darrow's first bribery trial.

Ilene Andrews: Phone Operator. Testified to the phone call between Franklin and Lockwood setting up their meeting date for the morning at 9 a.m, November 28th.

J.L Barnard. Reporter for *Evening Express*. Testified that Franklin had walked over to the press section at his grand jury hearing and announced that "anyone who says Clarence Darrow gave me a cent to bribe a juror is a goddamn liar."

George Behm: Ortie McManigal's uncle who tried to persuade him to switch sides, repudiate his confession. Testified that Darrow used him to try and persuade Ortie to help out on the defense.

Guy Biddinger: Burn's detective. Testified as to being hired by Darrow to act as a spy in the Burns detective agency. However, Biddinger was a 'triple' agent. Working for Burns and Darrow but in the end really have allegiance to Burns. Darrow tried to influence Biddinger to work for him. Darrow would give Biddinger money for information, which Biddinger would give to Burns and the Prosecution behind Darrow's back.

C.L Bried: Manager of a taxicab company. Testified that the person who paid the cab driver Loughead the money for the trip to Nevada was Tvietmoe.

Fletcher Bowron: Worked for the Examiner and later became Mayor of Los Angeles. Testified that Harrington on the eve of his grand jury testimony asserted that "he knew nothing against Darrow and couldn't tell anything against him of any kind."

Samuel Browne: The chief detective for the District Attorney's office, Browne felt that he, not Burns was entitled to the \$100,000 reward for capturing the McNamaras. He was a very important witness for the prosecution. He confirmed that Darrow was present at the scene of the

² Information for this article obtained from: Geoffrey Cowan, *The People v. Clarence Darrow (1993)*; The Clarence Darrow Digital Collection, UNIVERSITY OF MINNESOTA LAW SCHOOL, <http://darrow.law.umn.edu/trials.php?tid=17>

bribe. Browne also testified that Darrow approached him minutes later after the crime at the Hall of Records where he discussed the Franklin and the bribery.

William Burns: Detective William J. Burns was the lead investigator into the *Los Angeles Times* bombing and he was a major witness during Darrow's bribery trials. He was hired by the city to investigate the *Times* bombing and was hoping to collect the \$100,000 in reward money. He was known as the most celebrated detective in American history. Burns wrote magazine features promoting himself as the American equivalent of Sherlock Holmes. He helped in securing evidence in the famous San Francisco graft trials. Rogers and Darrow argued frequently about the strategy to use against Burns. The cross-examination of Burns went on for days with numerous heated moments. At one point, Rogers had so infuriated Burns that the detective was "purple-faced" with rage and looked ready to attack Rogers, whereupon Rogers calmly asked the judge for protection from the witness who he had heard carried a gun in addition to a sword.

David Caplan: A San Francisco grocer and anarchist, he also helped plan the bombing but was able to hide out underground. His wife was Flora.

P.J Cooney: Investigator for Darrow. He also testified that on Saturday, Nov. 25th, Darrow told P.J to go work with Franklin on the jury. P.J said he was told by Franklin to call jurors on the prospective juror list and inform that they were going to be jurors in the case and if they wanted to avoid service to run and hide, or not to be home the day they were summoned.

LeCompte Davis: A noted Los Angeles criminal lawyer, Davis was one of Clarence Darrow's co-counsel in the McNamara case. When Darrow was charged with jury bribery, some of the strongest evidence against him was a \$10,000 check from the McNamara defense fund that Darrow allegedly gave to San Francisco labor leader Olaf Tveitmoe on September 1, 1911. This was a very unusual transaction because the American Federation of Labor, which was funding the defense, had insisted on strict accounting and all other checks were cashed at Los Angeles banks and put into the defense accounts. LeCompte Davis testified during Darrow's bribery trial that he knew nothing of the \$10,000 check, although he knew of all the other checks cashed in the defense accounts.

Clarence Darrow: Known as one of the greatest lawyers in America. In 1999, the California Attorneys for Criminal Justice held a ballot for "Lawyer of the Century." Clarence Darrow came in at #1. Darrow represented a wide range of clients, including labor leaders such as Eugene Debs and corporate leaders such as William Randolph Hearst. Darrow also presented a powerful plea on behalf of poor coal workers in the anthracite coal arbitration of 1903. Darrow authored many novels, essays and speeches on the subject of industrial injustice. He was known as labor's staunchest legal advocate. While he fought for the poor and oppressed he did, during a time in his practice, defend corporations and corporate leaders. In 1907 Darrow won an acquittal for Big Bill Haywood and other labor leaders accused of murdering former Idaho governor Frank Steunenberg. He also saved the lives of the McNamara brothers and teenage murderers Leopold and Loeb. Later in his life after the McNamara trial Darrow became a critic of the death penalty, organized religion and racial discrimination as Darrow defended William Jennings Bryan in the Scope 'monkey trial', and the Sweet family, an African-American family that was the target of violent attacks when they moved into an all-white neighborhood in Detroit.

Ruby Darrow: A young society reporter who married Darrow in 1903. She was 34 and Darrow was 46. Ruby and Darrow developed a comfortable life in Chicago and she was not happy with his decision to take the McNamara case in Los Angeles. During Darrow's bribery trial she stood by him and would often use tactics such as bringing a rose to court to cheer him up.

Eugene Debs: Debs was Darrow's first great client as a fighter against industrial injustice. Debs organized the railroad workers' union and then the Socialist Party becoming its presidential candidate in five elections. In the *Appeal to Reason*, the Socialist Party's weekly organ, Debs told people the *Times* was to blame for the bombing and the deaths of its employees. Debs called the McNamara case "the last Big Fight" for labor.

Kurt Diekelman: A Los Angeles hotel employee who talked with Jim McNamara on the evening of the *Times* bombing. He could testify as to Jim's whereabouts. He testified that he talked to Mr. Hammerstrom who tried to convince him not to testify against J.B McNamara in the case. Hammerstrom convinced him to go to Chicago with him for a bit so he could not be called as a witness in the case and gave him money as an incentive to go with him.

R.E. Dolley: Summoned as a juror and was delivered the phone message from Cooney from Mr. Freeman.

F.R. Dyas: Reporter. Testified that Harrington said Darrow had nothing to do with jury bribing and that [Harrington] had no information against Darrow.

E.E. Elliot: Banker and a summoned juror in the McNamara case. Testified to a phone call from a 'friend' telling him that he was about to be summoned as a juror and if he wished to avoid it he should not be home.

Keene Fitzpatrick: Investigator for Darrow: Testified that he was with Franklin when he went to the Lockwood House. Was also with Cooney in interviewing prospective jurors.

Henry Flather: Cashier at Riggs National Bank of Washington- testified to knowing about the McNamara defense fund set up by Frank Morrison, secretary of the AFL.

Joseph Ford: Ford was Chief Assistant District Attorney of Los Angeles County from 1907-1914. He was a young, recently widowed Irish intellectual who had a combative trial style that was considered both a liability and an asset. Ford also represented Detective Burns in his effort to collect the reward money for capturing the McNamaras.

Bert Franklin: Franklin was a former detective on the staff of the county sheriff and then the U.S Marshal. Franklin actively sought employment with Darrow and had been hired by Darrow as the chief investigator for the McNamara brothers' defense. Franklin was arrested for attempting to bribe a prospective juror, George Lockwood. Franklin's testimony before a grand jury implicated Clarence Darrow in the bribery attempts. Franklin testified against Darrow in both bribery trials. During his closing argument to jury in his first bribery trial Darrow lashed out at Franklin denouncing his testimony. Franklin received immunity from prison for his testimony against Darrow and walked away with a mere \$4,000 fine.

Captain John Frederick's: Fredericks was the District Attorney of Los Angeles County from 1903-1915. He was a hero to the antiliquor forces. As a D.A., he prosecuted the McNamara brothers until the defendants offered a plea deal that Fredericks accepted. He prosecuted Clarence Darrow in his first bribery trial but not in the second trial. Some sources state that

Fredericks eventually decided not to prosecute Darrow in a third trial if Darrow agreed to leave Los Angeles and never again practice law in California. In 1915 Fredericks was the Republican nominee for governor and ran against the incumbent Hiram Johnson of the Progressive Party. Fredericks lost to Johnson. Fredericks served as president of the Los Angeles Chamber of Commerce in 1922. He was elected to the United States Congress in 1923 and served until 1927 when he returned to Los Angeles to practice law.

John F. Freeman: Messenger for a prospective juror. Testified to a conversation by someone over the phone that gave him a message for prospective juror Mr. Dolley that if Dolley did not want to be a juror that he should go to the beach for a day or two.

Samuel Gompers: Gompers was a former cigar maker who did a lot of work building the American Federation of Labor into a nationally credible and generally conservative union. His reputation was threatened by the charges against the McNamaras. Gompers pushed Darrow to take the McNamara case and became a point man for the national defense.

Bert Hammerstrom: Darrow's brother in law. He spent the summer of 1911 doing undercover work for the defense.

Job Harriman: A onetime Socialist Party vice-president candidate he moved to Los Angeles where he became a major force in both labor and socialist circles. He was the McNamaras' chief lawyer before Darrow arrived and continued to help with the case. Harriman was also a character witness for Darrow saying he never saw Darrow or Franklin on November 28th.

John Harrington: One of the first employees in the McNamara defense, he was known by Darrow as "one of the best evidence gatherer[s]." Darrow and Harrington worked together in Chicago where Harrington was an investigative lawyer for various companies. He became a witness for the prosecution during Darrow's trial. He also helped in trying to set up Darrow by having his conversations with Darrow transcribed by the use of a Dictograph. He testified to having two conversations with Darrow about the bribing of jurors. He testified that Darrow showed him ten thousand dollars in cash and said that he got that money from Tvietmoe's bank in San Francisco. Harrington also testified that Darrow showed him a roll of bills and discussed

with Harrington the idea of using it to bribe jurors. Harrington was considered a close, personal friend of Darrow's and his testimony hurt Darrow greatly.

Charles O. Hawley: An insurance broker and former Los Angeles Fire Commissioner. Hawley testified that after reading a disturbing article in the Los Angeles Tribune regarding the mayoral campaign he ran into Harriman on the street at about 8:30 a.m. to tell him about the editorial. Harriman suggested that Hawley call Darrow to ask him about the truth in the editorial. Hawley testified that he called Darrow and told him "Harriman wanted to see him at the Socialist Party Headquarters."

Eula Hitchcock: Police Detective. Talked about finding Flora Caplan, wife of suspected bomber David Caplan in the Santa Cruz Mountains and serving her with a subpoena to be called as a witness. She described going out to a remote location in the mountains near Redwood City to deliver her subpoena. Detective Hitchcock said she had told Mrs. Caplan to remain available as a possible witness in the McNamara trial.

George Home: Testified to being on the scene during bribe and seeing Franklin in the saloon and Lockwood on the street corner.

George Hood: Dairyman. Testified that Franklin had hold him that the bribe money came from someone he had never seen before.

Charles Hunt: Banker. Testified about the check Tvietmoe cashed at his bank, the check for \$10,000.

Judge George H. Hutton: Judge Hutton presided over Clarence Darrow's first bribery trial. He was an inexperienced criminal court judge but impressed the Bar and the public during his time on the bench. In 1909 his record contained 11 appeals from his decisions, 10 of which were affirmed. Hutton was favorably disposed to Darrow and showed it during the trial. His jury instructions were very pro-defense. Significantly, Judge Hutton instructed the jury that the fact that Darrow was at the scene of the attempted Lockwood bribery was circumstantial evidence, and the jury could only rely on it if it was "absolutely incompatible" with any other "reasonable hypothesis." One of the first to congratulate Darrow after he was acquitted was Judge Hutton

who said, "Hundreds of thousands of hallelujahs will go up from as many throats when they hear this." Darrow then told the judge he would like to visit him at his home, to which the judge gladly assented.

Anton Johannsen: He was known as a very warm person with a boisterous laugh. He helped Darrow in his bribery case and worked as state organizer for the California Building Trades Union. Testified to the Flora Caplan incident, saying Darrow was not involved.

Harry Jones: Reporter for the *Los Angeles Tribune*: Testified that Franklin had walked over to the press section at his grand jury hearing and announced that "anyone who says Clarence Darrow gave me a cent to bribe a juror is a goddamn liar."

Fern Kerneghon: A Stenographer at Mr. Harriman's office. Testified to seeing Harrington and Franklin together on many occasions.

A.J. Krueger: A Farmer. Testified that he was approached by Franklin as prospective jurors. Krueger stated he was told by Franklin that he could make money by being on the jury if he voted for the defense. Krueger, however, stated that he did not want to be on the jury, and knew he would never be chosen because he was a criminal.

Alfred C. Ledeme: Paying teller at the bank of Anglo and London-Paris National Bank. Testified to giving Tvietmoe the cash for the \$10,000 check. He said he did not have large bills so he had to go to the vault to get the bills. he gave the cash in 50's, 100's and maybe even 500's.

George Lockwood: Lockwood was another Civil War veteran and a former county employee who retired to an alfalfa ranch in Covina. When Franklin approached him about the bribe Lockwood was outraged and insulted by the suggestion that he would take a bribe. Even though Lockwood worked with Franklin in the Los Angeles County sheriff's office he reported him to D.A. Fredericks. Together Lockwood and Fredericks tried to create a trap to catch Franklin and Darrow in the bribe. Franklin was arrested on the street-corner on November 28, 1911 after he handed bribe money to Lockwood.

San Francisco taxi driver, Malcomb Loughhead: He testified about his role in driving Flora Caplan out of the state a day or two later- in the company of Anton Johannsen and his assistance Olaf Tvietmoe. The taxi driver told the whole story of how he picked up Johannsen at Tvietmoe's office at the Asiatic Exclusion League in San Francisco and drove Johannsen to a remote hideaway near Redwood City where they picked up Flora Caplan and her two children and drove to Reno, Nevada. Then the Caplans' registered at the Golden Hotel and prepared to take the train for Chicago. Loughhead said he returned to San Francisco with a letter from Johannsen to Tvietmoe who paid him 25 dollars for his services.

Edgar Lee Masters: Known later in life as a great poet. In 1911 he was Darrow's law partner in Chicago. He spent hundreds of hours helping Darrow prepare his own defense by gathering over 50 character witness depositions to attest to Darrow's good character.

Ortie McManigal: The star witness for the prosecution during the McNamara case. Ortie claimed to be Jim McNamara's cohort in a national dynamite conspiracy organized by the International Association of Bridge and Structural Iron Workers. Darrow tried to get Ortie to repudiate his confession by having his relatives try to convince him to change sides.

John (J.J.) McNamara: The treasurer of the Bridge and Structural Iron Workers' Union. He was a very respected labor leader. He was a lawyer, a devout Catholic, and very handsome. He was convicted of helping plan and support the *Times* building bombing. Darrow had him plead guilty and he ended up being sentenced to 15 years in prison and ended up serving 10 years in San Quentin.

James (Jim) McNamara: He was the complete opposite of his brother. He was an anemic, foul-mouthed apprentice printer who always found himself in trouble. He was not religious like his brother, and he loved liquor, gambling and women. He also plead guilty to planting the bomb and was sentenced to life in San Quentin prison.

George O. Monroe: Clerk for the court. Read the Order of the Court and the prospective jurors name for the McNamara case. The Prosecution tried using this evidence to show the names of

other jurors that Franklin approached. Also to show that the case was still on-going up until Thanksgiving.

Joseph Musgrove: Friend of Bert Franklin. Testified that Franklin had promised to put someone else in jail to save his own skin. Said that before he would go to penitentiary that he would put [the crime] on someone else.

D.V Nicholson: Reporter for the *Examiner*. Testified that Franklin told him that Darrow did not give him any money for bribery and that Darrow never knew about the bribery.

Fremont Older: A San Francisco editor who helped uncover graft and corruption. Testified that after he posted bail for Harrington in his contempt charge that Lockwood told him that he was instructed by Darrow that "there should be no violation of the law and that he knew of no bribery."

Dana D. Ong: Testified to being on the scene during the bribe and seeing Franklin in the saloon and Lockwood on the street corner.

Harrison Gray Otis: Otis was the owner of the *Los Angeles Times* and hated the unions. Otis used his paper as a means to discuss his hatred for the unions and fight for industrial freedom. After the *Times* bombing he attacked the leaders of the labor movement blaming them for the bombing.

Peter Pirotte: Detective. Franklin talked to him about opening a detective agency with him in Venice. Pirotte asked Franklin about his legal troubles and Franklin responded "that even though he was in trouble the D.A didn't want him they wanted Darrow."

W.H. Pohlman: Business agent of the Bridge and Structural Iron Workers. Testified to a meeting he had with Harrington who told him that he had been acquainted with every aspect of the case and Darrow had no part in the jury bribing.

William J. Porter: Newspaper man. Testified to seeing Darrow and Biddinger together on occasion

Earl Rogers: Rogers was general counsel of the Merchants and Manufacturers Association and the author of the city's notorious anti-picketing ordinance. Rogers was known by others as "the most notorious capitalist retainer," in Los Angeles. Rogers was also one of the most famous criminal defense attorneys in the West and even the entire country defending corporate defendants in the San Francisco graft trials. He was approaching legendary status in California by 1910 because of his courtroom dramatics and his ability to save criminal defendants from seemingly open and shut prosecution cases. He came to court very prepared and had a unique cross-examination style. He played a crucial role in the initial investigation of the *Los Angeles Times* bombing. Rogers was hired by Darrow to defend him in two bribery trials. Rogers was an alcoholic and he became very sick during Darrow's second bribery trial forcing his withdrawal from the case. Darrow conducted most of his own defense during the second trial with some assistance from other attorneys. Rogers and Darrow did not get along well during the trials. Rogers hated Darrow's attempts to justify or explain the *Los Angeles Times* bombing as a political act by labor fighting against a foe with superior resources. Rogers had been at the scene of the bombing just after it happened and he helped try to save some of the victims. Rogers lost a good friend in the fire caused by the bombing. Another major cause of discontent between Rogers and Darrow was Darrow's reluctance to pay Rogers what Rogers thought he was worth.

I.H. Russell: Former secretary of defense team: Testified that Harrington and Franklin had met almost daily contrary to their testimony that they only met occasionally. Russell also testified that she did not see Darrow or Franklin the morning of November 28th.

W.A Sackett: Prospective juror. Testified that he received the same phone call from someone who called himself his 'friend' about being a juror in the McNamara case and if he wanted to avoid it to leave.

Leonard Schoeber: A watchman at the Higgins Building. Testified to seeing Harrington and Franklin together often.

Frank Smith: Orange Grower. Testified to being approached by Franklin because he was a prospective juror.

Lincoln Steffens: A famous muckraking journalist who uncovered stories of bribery and corruption, many of which were collected in his book *Shame of the Cities*. Steffens also covered the San Francisco graft trials of 1907-1908. In 1911 he came to Los Angeles to report on why the McNamara's bombed the *Times* and during this he set out to try and settle the case working between Darrow and D.A. Fredericks. Steffens was a character witness for Darrow during his bribery trial and testified as to Darrow having no motive to bribe the jurors because he was working on a settlement deal.

Olaf A. Tveitmoe: Olaf Tveitmoe was a powerful labor leader in San Francisco. The prosecution believed that Tveitmoe was involved in the *Los Angeles Times* bombing and that he later conspired with Darrow to raise the money for bribing jurors in the McNamara trial. He is often called "the Viking" because of his Norwegian birth and icy temperament. He was secretary-treasurer of the California Building Trades Union, editor of its publication *Organized Labor*, and head of the racist Asiatic Exclusion League.

Jordan G. Watt: Had lunch with Franklin and F.L Stiman and testified that Franklin said the D.A wanted Gompers and that they were going after Darrow because he represented the unions. They also testified that Franklin told them that someone else gave him the bribe money for Lockwood, not Darrow.

Adam Dixon Warner: A lawyer. Testified to having a conversation with Franklin in early September where he had a list of juror names and said "I have an angle to this, and I will win this thing on my own and Darrow does not even know about this angle."

Charles Weir: Foreman of the grand jury. Used Weir's testimony to show that Behm was called as a witness in front of the grand jury and that Darrow tried to get him to commit perjury. Tried to show that Darrow had other means to try to obstruct justice. George Behm was called as a witness in the grand jury and Darrow advised him beforehand what to say and also Darrow tried to used Behm to convince Ortie M. to change sides.

C.E White: Captain White. There on the street the day of the bribe with Franklin and Lockwood. Testified to knowing Lockwood and Franklin and was approached by Franklin to help him in the bribe of Lockwood, to be the money holder.

Carl White: Reporter for *Evening Express*. Testified that Franklin had walked over to the press section at his grand jury hearing and announced that "anyone who says Clarence Darrow gave me a cent to bribe a juror is a goddamn liar."

D.M. Willard of the *Associated Press*: Testified that Franklin had walked over to the press section at his grand jury hearing and announced that "anyone who says Clarence Darrow gave me a cent to bribe a juror is a goddamn liar."

Frank Wolfe, Journalist: He testified that with Darrow from 8 a.m. to 9 a.m. on November 28, 1911. Wolfe testified that on that morning he saw neither Harriman or Franklin. Wolfe said that Darrow received a phone call around 9 a.m. from someone telling him to come over to the Socialist Party offices.

SUMMARY OF EVIDENCE PRESENTED DURING DARROW'S 1912 BRIBERY TRIAL³:

Prosecutions Presentation of Evidence:

Henry Flather: Cashier at the Riggs National Bank in Washington:

Testified that Frank Morrison, secretary of the AFL, set up a bank account for the McNamara defense. He testified to the checks drawn on the account by Frank Morrison, such as a check written to Darrow in the amount of \$15,000.

Kurt A. Diekelman: Hotel clerk in at Baltimore hotel in Los Angeles:

Testified to seeing J.B McNamara the night of the *Times* bombing. Diekelman stated that he talked to Mr. Hammerstrom (Darrow's Brother-in-law) who tried to convince him not to testify against J.B McNamara in the case. Hammerstrom convinced him to go to Chicago with him for a bit so he could not be called as a witness in the case and gave him money as an incentive to go with him.

On cross Rogers pointed out that Diekelman was never subpoenaed in the McNamara case. Also that the Burns' detectives knew where Diekelman was the whole time. Diekelman admitted on cross that in response to whether or not he had identified J.B Brice as McNamara he told Hammerstrom, "not positively."

P.J Cooney: Investigator for the Defense team:

P.J. testified to Darrow's investigatory preparation in anticipation of the McNamara trial; which included wiring Hammerstrom (Darrow's brother-in-law) to stay out of state until the Diekelman matter blew over and to go back East with P.J. P.J. also testified that on Saturday, Nov. 25th, Darrow told P.J to go work with Franklin on the jury. P.J said he was told by Franklin to call jurors on the prospective juror list and inform them that they were going to be jurors in the McNamara case and if they wanted to avoid service to not to be home the day they were summoned.

Keene Fitzpatrick: Investigator for the Defense team:

Testified that he was with Franklin when he went to the home of juror Lockwood. He was also with Cooney in calling prospective jurors.

³ Information for this article obtained from: Geoffrey Cowan, *The People v. Clarence Darrow (1993)*; Michael Hannon, *Bribery Trials of Clarence Darrow (1912 &1913)* http://darrow.law.umn.edu/trialpdfs/Darrow_Bribery_trials.pdf; and Transcript of Record, *The People v. Clarence Darrow (1912)* http://darrow.law.umn.edu/documents/1st_Bribery_Trial_vol_1_90_package.pdf

E.E. Elliot: Banker and a summoned juror in the McNamara case.

Testified to a phone call from someone identifying himself as a 'friend' telling him that he was about to be summoned as a juror and if he wished to avoid it he should not be home.

John F. Freeman:

Testified to a conversation by someone over the phone that gave him a message for prospective juror Mr. Dolley, that if Dolley did not want to be a juror that he should go to the beach for a day or two.

R.E. Dolley: Summoned as a juror:

Testified that Mr. Freeman delivered the message to him.

W.A Sackett: Prospective juror:

Testified that he received a phone call from someone who called himself his 'friend'. He said that his conversation with this person was about being a juror in the McNamara case and he was told by his 'friend' that if he wanted to avoid jury service he should leave.

A.J. Krueger and Frank Smith: Farmer and Orange Grower:

Testified that they were approached by Franklin as prospective jurors. Krueger stated he was told by Franklin that he could make money by being on the jury if he voted for the defense. Krueger, however, stated that he did not want to be on the jury, and knew he could never be on the jury because he was a criminal. Krueger stated that both Franklin and a man by the name of Frank Fowler approached him about being a prospective juror. Krueger stated that Fowler told him "you [Krueger] are probably going to be drawn on a jury, and if you could stick, you better stick," and then Krueger stated that Fowler moved four matches that were lying on the floor and he kind of placed them around and said that there was that much in it for [Krueger].

C.E White: Captain White

Testified to knowing juror Lockwood and Bert Franklin. White said he was approached and recruited by Franklin to help him in the bribe of Lockwood, to be the money holder. White met Lockwood on the street-corner in Los Angeles on Nov. 28th and handed the money to Lockwood. Yet, White was never prosecuted for his role in the bribery.

During cross examination White testified that he never met with Darrow or had any connection to him.

Dana D. Ong and George Home:

Separate witnesses who testified to being on the scene during the passing of the bribe, seeing Franklin in a saloon before the meeting and seeing Lockwood on the street corner.

Ilene Andrews: Phone Operator:

Testified to hearing a phone call between Franklin and Lockwood setting up their meeting date for the morning of November 28th at 9 a.m. This phone call was arranged by D.A. Fredericks who was there when the phone call was made. The operator testified that she listened to the phone call at the request of the D.A and created a memorandum of the conversation.

Eula Hitchcock: Police Detective:

Testified to finding Flora Caplan, wife of suspected bomber David Caplan, in the Santa Cruz Mountains and serving her with a subpoena to be called as a witness in the McNamara case. She described going out to a remote location in the mountains near Redwood City to deliver the subpoena. Detective Hitchcock said she told Mrs. Caplan to remain available as a possible witness in the McNamara trial.

Malcomb Loughhead: San Francisco taxicab driver:

Testified describing his role in driving Flora Caplan out of the state a day or two later in the company of Anton Johannsen and with the assistance Olaf Tvietmoe. The taxi driver said he picked up Johannsen at Tvietmoe's office at the Asiatic Exclusion League in San Francisco and drove Johannsen to a remote hideaway near Redwood City where they picked up Flora Caplan and her two children and drove to Reno, Nevada. Then the Caplans' registered at the Golden Hotel and prepared to take the train for Chicago. Loughhead said he returned to San Francisco with a letter from Johannsen to Tvietmoe who paid him twenty-five dollars for his services.

C.L Bried: Manager of the taxicab company:

Testified that the person who paid the cab driver Loughhead for the trip to Nevada was Tvietmoe.

George O. Monroe: Clerk for the court:

Read into the record the Order of the Court with the names of prospective jurors for the McNamara case. This evidence was used to show that jurors were still called up until Thanksgiving.

Charles Weir: Foreman of the McNamara grand jury:

Testified that George Behm was called as a witness in front of the grand jury and that Behm was charged with contempt of the court for refusing to make answers. George Behm was called as a witness in the grand jury and Darrow advised Behm what to say beforehand. Weir read the affidavit of the court order charging Behm with contempt where Behm consistently refused to answer questions or stated that the questions, "did not concern the case."

George Behm: The uncle of Ortie McManigal, who confessed to participation in the plan to blow up the L.A. Times with the McNamaras:

Testified that Darrow had persuaded him to come to Los Angeles in June and try to talk his nephew, Ortie, into changing sides. Darrow told Behm that if Ortie changed sides, Darrow would make sure that Ortie would get a good job in Chicago and that Behm would get one hundred dollars to go to California. The Prosecution offered into evidence a letter from Darrow to Behm where he stated that Behm would get more money upon his arrival to California. Behm stated that Darrow sent him several times to go see Ortie in jail, but Ortie said he would not change his confession. Behm said that Darrow threatened to have Ortie prosecuted for murder in Chicago if he testified against the McNamara's.

On cross-examination, Behm's age and loss of memory was used to challenge his credibility. On cross Behm confused times and dates and said that he could not remember exact directions given by Darrow. Darrow spoke fast and Behm had to ask him to slow down because "he could not think that fast."

Two Bank Tellers:

Two bank tellers testified that Darrow gave Tvietmoe a ten-thousand dollar check from the McNamara defense fund that Tvietmoe immediately converted into cash.

The prosecution offered the \$ 10,000 check into evidence, and on the check were the names, Darrow, Frank Morrison and Olaf Tvietmoe. Morrison who had control over the McNamara defense fund wrote the check on Aug. 21 to Darrow, and Tvietmoe had endorsed and cashed it at a bank in San Francisco on Sept. 2. Darrow deposited all other large checks into a regular Los Angeles bank account. Tvietmoe said that the funds were to repay him for expenses he incurred while working on the McNamara case.

Charles Hunt: Banker:

Testified that Tvietmoe cashed the check for \$10,000 at his bank.

Alfred C. Ledeme: Paying teller at the bank of Anglo and London-Paris National Bank:

Testified to giving Tvietmoe the cash for the \$10,000 check. He said he did not have large bills so he had to go to the vault to get the bills. He gave the cash in 50's, 100's and maybe even 500's. The D.A. tried to get Ledeme to say he gave Tvietmoe 1,000's but Ledeme said he was not sure.

Sam Browne: Los Angeles Police Detective:

Testified that Darrow was present at the scene of the bribe and left the scene without comment immediately after Franklin's arrest. Browne also reported that Darrow approached him minutes later at the Hall of Records. Browne read a memorandum describing the conversation between him and Darrow. Browne testified that Darrow said "My G-d Browne, what is all this? Browne

answered, "bribery." Darrow then said "Isn't there anything that can be done? This is terrible." Browne stated I don't know of anything that can be done, you will have to see Captain Fredericks." Darrow said "Isn't there anything you can do?" Browne said "I cannot do anything." Darrow responded, "if I had known this was going to happen, I never would have allowed it to have been done." Browne told Darrow that "you ought to have better sense than to hire a man like this to do this work. "Darrow stated "this is terrible." Browne replied, "you ought to know Franklin." Darrow stated that Franklin came very highly recommended by Mr. McCormick and others. Browne told Darrow he did not know what he could do. Darrow responded by saying "this is terrible, do the best you can for us and I will take care of you." The memorandum was then put into evidence.

On cross examination, Rogers showed that Browne was the one who handled the investigation after the *Times* bombing. Browne was the one who found the perpetrators and for that reason, since he was the main person in the investigation, that Darrow would not say anything corrupt to him. Rogers suggested that Darrow was not dumb enough to make such a foolish statement to Browne. Rogers stated that Darrow knew all along whom he was talking to and he would not make an incriminating statement to him. Rogers also showed the direction Darrow was walking in when Browne saw him meet Franklin on the street. To show that he was coming from a diagonal direction which was the way from his office to the Socialist campaign headquarters.

Guy Biddinger: Burns' detective:

Testified as to being hired by Darrow to act as a spy in the Burns detective agency. However, Biddinger was a 'triple' agent. Working for Burns and Darrow but in the end really have allegiance to Burns. Darrow tried to influence Biddinger to work for him. Biddinger testified that Darrow would give him money for information, which Biddinger would give to Burns and the Prosecution behind Darrow's back. Biddinger testified that he would supply Darrow information to create distrust amongst the defense team. Biddinger admitted that he was trying to 'trap' Darrow and from the beginning he had set-up a trap against Darrow. Biddinger falsely accused defense employees of being Burns' spies to Darrow to cause confusion in the defense team. Biddinger admitted that Burns was getting inside information in the Structural Iron Workers because he had spies in that organization as well.

William J. Burns: Detective

Testified that he received money from Biddinger on several occasions, which he promptly gave to the District Attorney. He also denied that he had any business or dealings with Franklin and Harrington and never even knew who Lockwood was.

On cross Rogers asked Burns about Franklin and Harrington being on his pay roll. Burns responded that he did not know about them being on his pay-roll to which Rogers asked him " do you mean to tell me that you do not know every worker on your pay-roll?". Burns also testified to knowing that Biddinger, one of his agents, was working for the defense as a spy on behalf of

him. Burns also admitted that along with Biddinger one of the defense team's chief stenographers was a spy for him.

William J. Porter: Newspaper man:

Testified to seeing Darrow and Biddinger together on occasion.

John Harrington: Former worker on McNamara defense team:

Harrington confirmed Behm's account of how he was brought to Los Angeles and asked to persuade Ortie to recant his testimony. Harrington also reaffirmed the claim that Darrow and Johannsen had devised a secret code that had been used in Johannsen's telegram about the escape of Flora Caplan. Harrington also provided support for Diekelman's account of the way in which he was induced to move from Albuquerque to Chicago in order to avoid testifying in the McNamara case. Harrington presented two new pieces of information. First, Harrington described a conversation with Darrow in September in which Darrow allegedly showed him \$10,000 in cash and suggested that it could be used to bribe jurors. Harrington stated that Darrow told him he got the money from Tvietmoe's bank in San Francisco, and that he had cashed the check in San Francisco so that the money could not be traced back to Los Angeles bank. Harrington stated that he had a conversation with Darrow on November 28th, the day Franklin was arrested. In that conversation Darrow told Harrington that Franklin was arrested for jury bribing. Harrington asked Darrow if Franklin could implicate him in the matter to which Darrow then stated that if Franklin talks "[he] would be ruined."

On cross examination, Rogers pointed out the Prosecution's grant of immunity to Harrington, and asked whether or not he was testifying in order to save his own skin. He entered a letter into evidence from Harrington to Darrow where Harrington talked about people being "after them who knew a great deal." Rogers also asked Harrington about a series of statements that he allegedly had made denying that he had any information connecting Darrow with the bribery. Rogers asked Harrington about alleged comments to Sara Ehrgott and Billy Cavanaugh and a reporter from the *Herald*. Harrington denied such comments and even went so far to say that Cavanaugh thought Darrow was guilty. Rogers also brought up the fact that Harrington was part of the D.A.'s efforts to record conversations between Harrington and Darrow. The D.A used Harrington to record his conversations with Darrow in a hotel room. The D.A. and Burns' detectives set up a system using dictographs to try and record Harrington and Darrow. Darrow never said anything incriminating and the D.A. never turned over the transcripts of the dictographs even though the defense requested copies of them several times throughout the trial.

Defense's Presentation of Evidence:

Reading of Depositions: First, Rogers presented the depositions gathered by Edgar Lee Masters. Masters gathered over 50 depositions from prominent members of society in Chicago who all testified that Darrow's reputation for truth, honesty and integrity was either good or very

good. Everyone deposed was a lawyer except for two religious leaders and the president of a coal company. Some of the individuals were senators or judges. Rogers spent two days reading depositions. **Please see attached list of the people that were deposed**

Anton Johannsen:

Johannsen testified that Flora Caplan said she was threatened and humiliated by the Burns' detectives and that they followed her every place she went. He testified that he witnessed the Burns' detectives harassing behavior himself and that Flora was hounded and bulldozed by the detectives. He testified that he advised her to leave the state and never talked to Darrow about his suggestion to Flora. He testified that Darrow never knew about his advice or help to Flora. Johannsen also stated that when he went to go see Flora at the camp he did know she was subpoenaed. His decision to get her out of the state was to protect her from the Burns agency. When he found out she was subpoenaed he advised her to send a telegram to Fredericks informing him where she was and to ascertain as to when she might be wanted back, Fredericks never sent her a telegram back.

On cross examination, the D.A. got Johannsen to state several times that he spoke to no one in the defense about Caplan going out of the state, but then brought out that he telegraphed Tvietmoe about the plan. The D.A. also got Johannsen to be unsure of himself by answering questions like "I am not sure, I do not remember telegraphing anyone." It was at this point that Fredericks presented a document which was a telegram in Johannsen's writing directed to John Harrington and written in the defense team's secret code. Fredericks used the dictionary to translate the telegram to Harrington. In the end it stated "all right. Flora Caplan is fine, all on train."

Job Harriman: A lawyer and member of the Socialist Party:

Harriman contradicted Bert Franklin's testimony that on the morning of November 28th, minutes before the bribe, he had come down to the Higgins building to give Darrow the money. Harriman admitted to being in the Higgins building but that was only for a few minutes and he never set foot in Darrow's office. He had his office in the building across from Darrow's and went there only to collect his mail. Harriman testified that he entered the building through the side door to avoid anyone who might see him.

Frank Wolfe: Journalist:

Testified that he was a member of the McNamara defense team and that he had been with Darrow from 8 a.m. to 9 a.m. on November 28, 1911. Wolfe testified that on that morning he saw neither Harriman or Franklin. Wolfe said that Darrow received a phone call around 9 a.m. from someone telling him to come over to the Socialist Party offices. Wolfe also saw Harrington and Franklin in conversation together frequently.

Charles O. Hawley: An insurance broker and former Los Angeles Fire Commissioner:

Hawley testified that after reading a disturbing article in the Los Angeles Tribune regarding the mayoral campaign in which Harriman was a candidate, he ran into Harriman on the street at about 8:30 a.m. to tell him about the editorial. Harriman suggested that Hawley call Darrow to ask him about the truth in the editorial. Hawley testified that he called Darrow and told him "Harriman wanted to see him at the Socialist Party Headquarters."

The prosecutor attacked Hawley's character, revealing that Hawley was thrown off the fire commission by Mayor Alexander and that Hawley had been in a huge dispute with the *Los Angeles Times* and had helped Harriman organize a lawsuit against the paper by victims of the fire who claimed that the explosion was caused by gas, lack of maintenance and faulty construction instead of dynamite.

Joseph Musgrove: Friend of Bert Franklin:

Testified that Franklin had promised to put someone else in jail to save his own skin. Stated that Franklin said that before he would go to penitentiary that he would put [the crime] on someone else.

Adam Dixon Warner: A lawyer:

Testified to having a conversation with Franklin in early September where Franklin had a list of juror names and said "I have an angle to this, and I will win this thing on my own and Darrow does not even know about this angle."

Peter Pirotte:

Testified that Franklin talked to him about opening a detective agency with him in Venice. Pirotte asked Franklin about his legal troubles and Franklin responded, "that even though he was in trouble, the D.A didn't want him they wanted Darrow." Pirotte also testified that Bert Franklin said, "Fredericks was one of the best friends he had on earth."

F.L Stineman and Jordan G. Watt:

Testified that they had lunch with Franklin and Franklin said the D.A wanted Gompers and that they were going after Darrow because he represented the unions. They also testified that Franklin told them that someone else gave him the bribe money for Lockwood, not Darrow. Watt also testified that Bert Franklin had said the county had paid his fine. And that Fredericks was his "best friend."

Fremont Older:

Testified that after he posted bail for Harrington in his contempt charge, Harrington told him that he was instructed by Darrow that "there should be no violation of the law and that he knew of no

bribery." Older also said he had conversations with Darrow and Steffens that corroborated Steffens account of the timing of the agreement to plead guilty. Older testified that he "was employed to save [the McNamara's] lives."

George Hood: Dairyman

Testified that Franklin had told him that the bribe money came from someone he had never seen before.

Former employees of the McNamara defense team:

I.H. Russell, Secretary:

Testified that Harrington and Franklin had met almost daily, contrary to their testimony that they only met occasionally. Russell also testified that she did not see Darrow or Franklin the morning of November 28th.

On cross examination, the Prosecutor offered an inconsistent prior statement six months earlier when she testified that she did not even know who Franklin was.

Anne Hartenstein: Stenographer in the Higgins Building

Testified to seeing Harrington and Franklin together on many occasions.

Leonard Schoeber: A watchman at the Higgins Building:

Testified to seeing Harrington and Franklin together often.

Fern Kerneghon: A Stenographer at Mr. Harriman's office:

Testified to seeing Harrington and Franklin together on many occasions.

H.W. Pohlman: Business agent of the Bridge and Structural Iron Workers:

Testified to a meeting he had with Harrington where Harrington told him that he had been acquainted with every aspect of the case and Darrow had no part in the jury bribing.

F.R. Dyas: Reporter:

Testified that Harrington said Darrow had nothing to do with jury bribing and that he [Harrington] had no information against Darrow.

John Drain: Witness called by the defense who ran into health issue bit his statement was stipulated to and read into the record:

Stated that while in a saloon he had a conversation with Franklin where Franklin stated that "Darrow never gave him a dishonest dollar and [Darrow] never knew anything connected with

this matter; he is too good a man to do anything of that kind, [jury bribing]. [Darrow] is the best man that I have known and would not stand for any corruption or dirty work."

Frank Edward Dominguez: A Lawyer:

Present at the Nichol/Drain conversation with Bert Franklin. Dominguez testified that Bert Franklin said that "Fredericks is my friend."

J.L Barnard and Carl White , Reporters for *Evening Express*; D.M. Willard of the *Associated Press* and Harry Jones of the *Los Angeles Tribune*: All testified that Franklin had walked over to the press section at his grand jury hearing and announced that "anyone who says Clarence Darrow gave me a cent to bribe a juror is a goddamn liar." Willard also testified to seeing Franklin and Harrington together on many occasions. Jones knew Bert Franklin for years, but still testified that Franklin told the press box that Darrow was innocent.

Frank Fowler :

Testified that his alleged conversation with Krueger did not occur, and he "never in his life," discussed the McNamara case with Krueger or talked about the jury.

Col. Tom Johnson: Lawyer:

Johnson was ordered to testify concerning conversations with Bert Franklin, thus overcoming any claim of privilege. Since Bert Franklin testified it opened the door for Johnson being able to testify. Johnson went to the D.A on Bert Franklin's behalf, to try to work out a delay in proceedings. A.D.A Ford said that Bert Franklin had to testify against Darrow in order to gain immunity. Bert Franklin said to Johnson that saying Clarence Darrow was guilty would "be a G-d damn lie."

Fletcher Bowron: Worked for the Examiner [later became Mayor of Los Angeles]:

Testified that Harrington on the eve of his grand jury testimony asserted that "he knew nothing against Darrow and couldn't tell anything against him of any kind."

D.V Nicholson: Reporter for the *Examiner*:

Testified that Franklin told him that Darrow did not give him any money for bribery and that Darrow never knew about the bribery.

Lincoln Steffens: Investigative reporter who had a hand in exposing several instances of public corruption.

Steffens testified about his secret negotiations with business leaders and political leaders regarding a settlement for the McNamara brothers. Steffens also said that Darrow told him and no one else, sometime before Sunday November 26th, that he "only wanted one man punished,

and that for Steffens to pretend that the defense was not willing to plead J.J. guilty." Steffens also testified that after Darrow and Steffens met with the brothers on Sunday Darrow said that it might be necessary to have both brothers go to jail in order to reach a settlement. Steffens said that the willingness for Darrow to have J.J. plead guilty was kept between Darrow and Steffens and even Darrow's co-counsel LeCompte Davis was kept in the dark as he negotiated with D.A. Fredericks. Steffens suggested that Darrow had no motive to bribe juror Lockwood because he had agreed before the bribe to plead both brothers if it was necessary for the settlement. Steffens testified that in his meetings with the business leaders and Fredericks, he tried to induce them not to insist on a plea from J.J. McNamara. Steffens says he warned Darrow that a plea would anger the labor leaders but Darrow said his duty was to his clients, and he did not want to see McNamara put to death.

On cross-examination D.A. Fredericks attacked Steffens' character by calling him an 'avowed anarchist'. Fredericks opened the door for Steffens to explain his views about the crime, how the dynamiting was not justifiable but understandable and how Steffens would never condone bribery. Steffens continued to stay by his story that he was putting on a 'bluff' trying to get a better deal with his comments after November 28th, with his articles and such that stated Thanksgiving Day was the crucial day, even though he testified that J.J. agreed to plead guilty four to five days earlier.

LeCompte Davis:A lawyer

Offered testimony that supported Steffens' testimony. Davis also testified that Darrow had decided to plead both brothers guilty by November 28. Davis testified during Darrow's bribery trial that he knew nothing of the \$10,000 check, although he knew of all the other checks cashed in the defense accounts. He also testified at great length about negotiations with the D.A. He also said that he did not tell Behm to put pressure on McManigal. Neither LeCompte nor Darrow told Behm to testify falsely. Davis testified that John Harrington had said Darrow was innocent. Davis told Hammerstrom to go see Diekelman, who was thought to have exculpatory evidence, and to make sure he was protected and available as a witness in the McNamara trial. He told Hammerstrom to make sure Diekelman was in L.A. for the trial. Davis also contradicted Franklin's conversations to Clarence Darrow following Franklin's arrest.

Darrow: Defendant:

In Darrow's testimony, he took the stand and denied every inculpatory conversation and allegedly wrongful act attributed to him by the prosecution witnesses. Darrow was on the stand for days for both direct and cross.

Prosecution Rebuttal Witnesses:

Prosecution offered rebuttal witnesses to attack the characters of defense witnesses Job Harriman and Charles O. Hawley. For example, Charles Smith testified that Hawley's reputation for truth, honesty and integrity in his neighborhood was bad.

Judicially Noticed Facts:

- 1. The 1911 Ford automobile catalogue lists a new fully-equipped Model-T Touring car for \$725, which in today's dollars is the equivalent of \$16,000.**
- 2. The average yearly income of an American worker in 1911 was \$983.**
- 3. The median price of a new home in 1911 was \$2,625.**

Lee Master 55 Character Witness Depositions⁴:

Synopsis: Edgar Lee Masters and Clarence Darrow were law partners from about 1903 to 1911 in Chicago. During Darrow's bribery trial Masters collected over 50 depositions from prominent politicians and professionals in Chicago such as former mayors, judges and senators, that could attest to Darrow's moral character. With the exception of two religious leaders and the president of a coal company all of the people disposed were lawyers. During the depositions the D.A. Arthur Keetch rarely objected and on cross-examination tended to ask few questions most of which simply offered a new chance for the witness to say something good about Darrow. All of the character witnesses asserted that Darrow had a good, or excellent reputation for truth, honesty and integrity.

These were the Depositions that were Offered during the bribery trial:

1. **William E. Mason-** A lawyer and former Senator. Member of both branches of the Illinois legislature- a member of Congress and a member of the United States Senate. Mason was a Republican and Darrow was a Democrat. Showing that even though they had different political viewpoints Mason still thought Darrow was a respectable man.
2. **Albert J. Hopkins-** A lawyer and a former Senator. Member of Congress from the district he lived in and a United States Senator from the State of Illinois. The Senator stated that he knew Darrow's reputation for truth and integrity was good because for a man who was so well known and talked about as Darrow was "no one ever questioned his character for truth or integrity."
3. **Carter H. Harrison-** Mayor of Chicago and a lawyer by profession.
4. **Fred A. Busse-** Former State Senator, and a member of the legislature. State Treasurer, Postmaster and former Mayor of the City of Chicago in 1907.
5. **Hempstead Washburne-** Master of Chancery five years, City Attorney for four years, a city Mayor of Chicago in 1891. He was also a lawyer.
6. **Simeon P. Shope-** Lawyer as a profession and a Judge of the Circuit Court and later of the Supreme Court of the State. Also a member of the Legislature for one term.
7. **James Hamilton Lewis-** Member of the Legislature, member of the Senate of the State of Washington and member of Congress at Large for the State of Washington. He was also commissioned to the a Boundary Commission settling the differences between this country and Great Britain over the Alaskan frontier and mining troubles.

⁴ Information for this article obtained from: Geoffrey Cowan, The People v. Clarence Darrow (1993); Transcript of Record, The People v. Clarence Darrow (1912)
http://darrow.law.umn.edu/documents/1st_Bribery_Trial_vol_1_90_package.pdf

8. **Orrin N. Carter**-Former County Judge and a member of the Supreme Court of the State. Also General Attorney for the Drainage District, the Sanitary District of Chicago. In Morris, Grundy County, Illinois he was also County Superintendent of Schools of Grundy County and States Attorney, Prosecuting Attorney of the County. He was a lawyer by profession.

9. **John J. Healy**- A lawyer by profession and a former Master of Chancery of the Superior Court of Cook County for 12 years and a State's attorney for four years.

10. **John E. W. Wayman**- A lawyer and State's attorney of Cook County. He was also a Republican.

11. **William S. Forrest**- A lawyer in Chicago.

12. **John S. Miller**-A lawyer and corporation counsel of the city of Chicago for two years from 1891-93. Also a former member of the board of education of the City of Chicago.

13. **Charles McGavin**- Came in as a witness to explain the deposition of John S. Miller. He was assistant State Attorney in Chicago for two-three years and a member of Congress for four years. Testified that John S. Miller was one of the most prominent members of the Bar of Chicago engaged in nearly all of the great cases involving corporations.

14. **John C. Gillen**-A Catholic Priest.

15. **Richard E. Burke**-A lawyer and a Judge of the Superior Court and was also a former prosecuting attorney for the city and a member of the legislature.

16. **Francis S. Peabody**- President of the Peabody Coal Company. President of the Public Library Board and served as a Board member for many years. Also a Chairman of the Cook County Democratic Central Committee. Studied law but was never admitted to the Bar.

17. **Burton Hanson**-A lawyer.

18. **John P. McGoorty**-Judge for Circuit Court of Cook County. He was also president of the County Civil Service Commission and a member of the Illinois General Assembly for 8 years.

19. **John E. Owens**- County Judge of Cook County. Former City Attorney of the City of Chicago, Cook County from 1901-03 and Master in Chancery of the Circuit Court for 6 years.

20. **Marcus A. Kavanagh**- A lawyer and a Superior Court Judge for his county. Was also a former Judge on the bench in Iowa, Judge of the District Court in the Ninth Judicial district. He is also a Republican.

21. **Kickham Scanlan**- A lawyer and Judge of the Circuit Court of Cook County

22. **William H. Barnum**- A lawyer and Judge for the Circuit Court for 6 years.

23. **Axel Chytraus**- A lawyer and a Judge of the Superior Court and Judge of the Appellate Court, ex-officio.
24. **Edgar B. Tolman**- A lawyer and first Attorney for the Board of Local Improvements of the City of Chicago for two years. Also was Corporation Counsel of the City of Chicago for two years. Also a Major of the First Infantry Illinois National Guard for 5 years and served in the National Guard for 16 years.
25. **Rev. Jenkin Lloyd Jones**- Pastor of All Soul's Church.
26. **Paul Brown**- A lawyer and Master in Chancery of the Circuit Court of Cook County for several years.
27. **James C. McShane**-A lawyer and member of the Board of Managers of the Chicago Bar Association.
28. **John J. Herrick**- A lawyer in Chicago.
29. **Arthur H. Chetlain**- A lawyer in Chicago. Served in two official positions, 1. as the first assistant Corporation Counsel during the Washburne administration and 2. as a Judge in the Superior Court of Cook County.
30. **Jesse A. Baldwin**-A lawyer in Chicago and a Judge on the Circuit Bench of Cook County as a member of the Appellate Court of the First District.
31. **Charles. S. Cutting**- A lawyer in Chicago and a Judge of the Probate Court of Cook County
32. **William. E. Dever**-A lawyer and a Judge of the Superior Court of Cook County and a former member of the Board of Aldermen.
33. **George A. Dupuy**-A lawyer and a member of the Superior Court for six years and a former assistant Corporation Counsel of the city of Chicago.
34. **William. McSurely**- A lawyer and a former General Assembly of the state representing the Fifth Senatorial District. Elected to the bench in the Superior Court. Elected by the Supreme Court to sit in the Appellate Court of the First District of the State of Illinois.
35. **Charles. A. McDonald**-Judge of the Superior Court of Cook County
36. **George Kersten**-A lawyer and a Justice of the Peace and Police Magistrate. Also a former Clerk of the Police Court on the North Division of Chicago. A Judge of the Circuit Court of Cook County.
37. **Arba Nelson Waterman**-A lawyer and a former Alderman from the 11th Ward. Also a former Judge of the Circuit Court during which he served in the Appellate Court in his district or in the Appellate Court sitting in Ottawa.

38. **Theodore Brentano**-Judge of the Superior Court of Cook County. Was a former Assistant corporation counsel of the City of Chicago.

39. **Albert C. Barnes**-Judge of the Superior Court of Cook County also a former assistant State's Attorney.