



DISCUSSION OF CURRENT TOPICS

THE McNAMARA CASE—WILL THEY GET A FAIR TRIAL?—SECRETARY McNAMARA RE-ELECTED

As this issue goes to press the trial of James B. McNamara has advanced to the extent that seven talesmen have been passed tentatively. Through the exercise of peremptory challenges, however, of which the State has ten and the defense twenty, any one or all of these may be later rejected.

As in the Moyer-Haywood case, an honest jury means everything to the accused, and the able counsel for the defense are taking every precaution to see to it that unprejudiced men are selected as jurors.

Exercising its privilege in the premises the defense decided upon separate trials for the accused brothers, and the prosecution placed James B. McNamara on trial first on the indictment charging the murder of Charles J. Haggerty, one of the men who met death in the explosion of the Los Angeles Times building on October 1, 1910.

There are twenty indictments pending against Secretary John J. McNamara, nineteen of which charge complicity in the Los Angeles Times explosion and one in the dynamiting of the Llewellyn Iron Works, also located in Los Angeles. There are nineteen indictments pending against his brother, James B. McNamara, all charging complicity in the Los Angeles Times explosion. Each of these nineteen indictments against the accused men, bearing on the Los Angeles Times explosion, charge the murder of a different person, and it is on one of these indictments that James B. McNamara is now being tried.

It is now believed that the work of selecting a jury will not be nearly as long drawn out as was at first apparent from the lengthy controversy that characterized the examination and final rejection of one Z. T. Nelson, the first talesman interrogated. According to press reports

Nelson, in answer to questions bearing on his eligibility, said that from what he had heard and read it was his belief that the Los Angeles Times building was blown up by dynamite and that the explosion was not accidental. He stated that he had an opinion that there were lawless men in labor unions, but that he had nothing against unions as such. He said further that he had formed an opinion as to the guilt or innocence of the defendant, and that it would take strong evidence to remove his belief that the man on trial was guilty. This admission would disqualify Nelson almost anywhere else, and to us it seems that were the prosecution fair-minded such acknowledgments would have disqualified him in this case, but the fact, however, that the prosecution entered into a strenuous fight to have him retained on the jury is fully in keeping with the high-handed disregard of law and ethics that has thus far characterized the methods of the "interests" in the carrying out of their expectations to railroad the McNamara brothers to the gallows.

Amongst the questions asked Nelson was this by Clarence S. Darrow, chief counsel for the defense: "Would the fact that this defendant is a member of organized labor affect your verdict?" to which Attorney Horton, for the prosecution, vigorously objected, declaring that it was not a matter of the attitude of jurors towards organized labor, but a question of whether Jas. B. McNamara, on trial, was guilty of the murder of Charles J. Haggerty, as charged in the indictment. "Well," said Mr. Darrow, rising to his feet, "there is no need of blinding ourselves to the realization, and I desire to make the statement at this time that the defendant is a member of organized labor."

After further interrogation of Nelson by both sides, Judge Bordwell, seemingly desirous of retaining him as a juror, asked this question: "If you were instructed by the court that you must base your verdict in this case, if you were to sit as a juror in it, entirely upon the evidence admitted in court, would it set aside all consideration of all and any other matter whatsoever?"

The attorneys for the defense emphatically objected to this question and intimated that there was considerable emphasis in asking it.

Lecompte Davis for the defense declared that if the talesman answered that

question in the affirmative and that answer was taken as a qualification for jury service, there would be no use for the defense to question talesmen. Of course, said Attorney Davis, they would answer in the affirmative because the court asked the question. Nelson did answer in the affirmative. Counsel for the defense challenged him for cause and then the arguments between the contending attorneys proceeded in the absence of the other talesmen.

This was on Saturday, October 14th, and Judge Bordwell announced that he would decide on Monday the 16th whether or not Nelson's answer to the court's question qualified him as a juror. It was expected that Bordwell's decision would cover the question as to whether or not talesmen holding opinions, particularly strong ones, that the accused was guilty would be eligible to serve as jurors. A ruling on this point in favor of the State would mean the selection of men regardless of how familiar they might be with the case, the presumption being that the defense would be under the necessity of overwhelmingly defeating the contentions and disproving the evidence of the prosecution, which would be an adoption of the assumption that the accused was guilty until proven innocent rather than innocent until proven guilty.

The matter of Nelson's eligibility, however, was settled without Judge Bordwell ruling on the vital points at issue.

The question in so far only as it affected Nelson's eligibility was determined upon a reply made by Nelson to a question put to him on Monday, October 16th, by the Judge rather than from a consideration of the argument of the attorneys. Press dispatches state that Nelson had been asked hundreds of questions to elicit his views but that he had answered all without clearing up the situation. Bordwell's crucial question was as follows: "Could you set aside your opinions sufficiently to enable you to give a fair and impartial verdict?" "It would take pretty strong evidence," Nelson replied dubiously.

District Attorney John D. Fredericks thereupon withdrew objection to the challenge for cause previously made by the defense and Judge Bordwell instructed Nelson to "stand aside."

District Attorney Fredericks afterwards remarked that "there was nothing else for him to do after that question and answer."

That Judge Bordwell is biased or prejudiced is evidently the opinion of counsel for the defense. The McNamara brothers, through their attorneys, on October 11th, presented a motion for a change of trial judge, demanding that Judge Bordwell vacate the bench and appoint another judge to try the case on the ground that Bordwell is prejudiced. In the affidavits by the McNamara brothers in support of this motion it is set forth that friends visiting them in jail gave them such information as to make them believe that they could not get fair treatment from Judge Bordwell. The affidavits also set forth that the rules of the superior court were changed and the case was assigned to Judge Bordwell instead of to the regular criminal court. Bordwell was in charge of the grand jury that indicted the McNamaras, and in their affidavits they stated he was biased in his instructions to the jurors. Their motion for a change of trial judge was promptly overruled by Judge Bordwell himself.

John R. Harrington, one of the attorneys for the defense, was arrested September 20th last in San Francisco on a charge of seeking to influence certain witnesses, and upon being brought before the Los Angeles grand jury refused to answer certain questions on the ground that as he was an attorney for the defense the grand jury was not entitled to the information. For this Judge Bordwell cited him for contempt, ordering him to answer the questions or go to jail. The matter of again interrogating him on the particular questions at issue was, however, postponed for two weeks, and before the expiration of that period the grand jury adjourned. From this we would infer that Bordwell and the prosecution awoke to a realization that in carrying their despotic tactics to such an extreme they were treading on dangerous ground.

The affidavits of the McNamara brothers supporting the motion for another trial judge cite Bordwell's action in the Harrington case and contend that such proceedings would render him biased in mind and sentiment against the defendants.

In many States a judge would, by such an action on the part of the accused, be compelled to vacate the bench, but evidently for reasons best known to himself Bordwell wants to try the McNamara brothers.

Indiana Authorities Refuse Evidence.

The refusal of the Indiana authorities to permit certain evidence to be taken from Indianapolis, Indiana, to Los Angeles for use in the trial is said to very materially weaken the prosecution's case. This evidence consists of certain books and papers upon which it is said the accusers of the McNamara brothers hoped to base certain interpretations for use in bolstering up their charges against the accused men and which were confiscated in the office of the International Association of Bridge and Structural Iron Workers at the time of Secretary McNamara's arrest, also of quantities of dynamite and clocks alleged to have been found in Indianapolis at that time and to have been discovered in premises for which Secretary McNamara was paying rent.

District Prosecuting Attorney J. D. Fredericks of Los Angeles County, California, through his Indianapolis representative, Attorney Ferdinand Winter, recently filed a petition in the criminal court of Marion County, Indiana, at Indianapolis, asking that Judge Joseph T. Markey grant permission to the State of California to transfer to Los Angeles County, California, all of this evidence.

At the time that Detectives Burns and Hosick were indicted on charges of kidnapping Secretary McNamara indictments were returned against Secretary McNamara also, based, it is said, entirely upon the so-called confession of Ortie T. McManigal, the self-accused dynamiter who is assuming the role of having turned "State's evidence" as part of the scheme to convict the McNamara brothers.

Now there is no more law requiring one State to surrender evidence to another than there was upon which to justify the abduction of John J. McNamara and his transportation to California, but Mr. Winter based his plea on the ground that while the court was not obliged to grant the petition it would be a "courtesy" to permit the evidence to be transferred to Los Angeles, suggesting that some one be appointed to take charge of it and be held responsible for its return to Marion County, Indiana, providing the petition were granted, and assuring the court that the State of California would bear all expenses incident to transferring the material to the western city.

Prosecutor Frank Baker, of Marion County, Indiana, and Martin J. Hyland,

Superintendent of Police of Indianapolis, have been summoned to appear as witnesses in the trial of the McNamara brothers, the subpoena ordering them to bring to Los Angeles all the evidence in the dynamiting cases. Prosecutor Baker has declined to aid the Burns Detective Agency and the interests employing it in their efforts to bring the McNamara brothers to the gallows, but Mr. Hyland, who took a prominent part in what, according to the latest court decision on the question, was the illegal abduction of John J. McNamara, proposes to go as a witness for the prosecution. However, because of an order issued by Judge Markey that all the evidence in the dynamiting case at present in possession of the Marion County authorities be kept under guard, Mr. Hyland had no opportunity to apply the same tactics regarding this evidence that he did in the kidnapping of Secretary McNamara.

Judge Refuses Evidence.

On October 6th Judge Markey denied the petition of the State of California asking that the evidence be transferred to Los Angeles County in that State. In denying the petition the judge sustained the motion of Prosecutor Frank P. Baker asking that the petition be stricken from the files of the court. The judge pointed out that it was absolutely necessary that the desired evidence remain in Marion County. He said that the statutes of Indiana provide that it is the duty of the judge of the court to protect and preserve the evidence held by the court, and stated that if the evidence were sent to California there was good reason to believe that it would be difficult to get it back.

Judge Markey, in his decision, agreed with the opinion of Prosecutor Baker that the evidence sought would be made a part of the court's record at Los Angeles, and should the case be appealed the evidence might go to the higher court.

Under Judge Markey's order the evidence will continue to be carefully guarded by men appointed by the Judge himself, for under the incentive of such enormous rewards as are offered for the conviction of the McNamara brothers there are men who will commit burglary, larceny, arson, and even murder. As we see it, if the parties back of the "prosecution" at Los Angeles once got the books and records of the International Association of Bridge and Structural

Iron Workers in their possession the steel trust interests and other organized labor crushers behind the present movement to legally assassinate the McNamara brothers would have full and free access to them and would return them—if they saw fit.

Press dispatches state that Prosecutor Fredericks, of Los Angeles, declares that there is no question but that this evidence will "have" to come to that city, also that the Los Angeles authorities have appealed to Governor Johnson of California to aid in having it brought there. We don't quite understand just how Governor Johnson could influence the setting aside of Judge Markey's decision in the premises, particularly in view of the fact that the State authorities of California did not have the "courtesy" to send John J. McNamara back to Indianapolis after it had been made clear that the requisition papers in his case were based on perjured testimony and his abduction to California a piece of high-handed ruffianism and bare-faced outlawry.

A Los Angeles press dispatch of October 18th says that "Detective Burns, who will arrive late this week, is to help Fredericks in his endeavor to secure possession of evidence found at the time of John J. McNamara's arrest in Indianapolis and now held by the Indiana authorities," and states further that "after Burns' arrival Governor Johnson of California will be asked to use his influence with Governor Marshall of Indiana to have this evidence sent to Los Angeles to be used in the present trial."

It is hardly necessary to predict that Governor Marshall of Indiana will have no disposition whatever to interfere with the legitimate proceedings of the courts of this State, and we can add that the officials of the Bridge and Structural Iron Workers have no fear of the closest investigation of their books in the premises, but that they do not propose that their books, records and files shall be taken away from them to be used in the furtherance of the plans of the Burns Detective Agency laid to secure an immense reward or of the Manufacturers' Association in seeking the destruction of organized labor. The books, once in Los Angeles, would be as far beyond their reach in the matter of being returned as Secretary McNamara himself after he had been illegally placed behind the bars of the jail of that city.

If Mr. Burns undertakes to take this evidence as he took Secretary McNamara he will find some one waiting for him. He will also find that the right to consult an attorney, guaranteed to every person arrested on a criminal charge, has been very much revived in Indianapolis.

Want to Photograph Books and Records.

Failing in its attempt to have the evidence taken to Los Angeles, the prosecution has requested permission to inspect and photograph the books, papers and records of the International Association of Bridge and Structural Iron Workers, at present in the hands of the Marion County, Indiana, criminal court. This is being opposed by the Indianapolis attorneys for the defense. The officers of the Association feel that the steel monopoly, through its representatives, had much more privilege in examining the books of their organization at the time that Secretary McNamara was arrested than either the rules of the organization or the law of the land allowed, and as they do not feel disposed to have these gentlemen or their representatives inspect and photograph the records of the Association, they will resist this latest move and their attorneys are opposing it.

Mrs. McManigal Sues for Divorce.

A Chicago press dispatch, under date of October 14th, has the following to say relative to a suit for divorce entered by Mrs. Ortie E. McManigal against her husband:

In a bill for divorce, filed today in the Cook County court against Ortie E. McManigal, alleged dynamiter, whose confession led to the arrest of the McNamara brothers, now on trial in Los Angeles, Cal., charged with having blown up the Times building, Mrs. Emma McManigal, his wife, makes sensational charges against the William J. Burns Detective Agency and the officers prosecuting the McNamaras.

The bill was filed by Clarence S. Darrow, now the chief counsel for the defense in the Los Angeles case, and John F. Tyrrell.

Besides asking a divorce, the bill requests that an injunction be issued restraining operatives from the detective agency from following her. It describes how she was "harassed and coerced by detectives" in an effort to force her to corroborate her husband's confession. The bill declares that in her belief McManigal was a secret employe of the Burns agency when he made his confession.

It is believed that the attorneys for the defense in the McNamara case desire, for some reason, to introduce the

bill as evidence in the dynamiting case. Attorney Tyrrell presented the motion for an injunction before Judge Scanlan, but it was continued for a week.

Mrs. McManigal alleges that her husband wrote to her that "W. J. Burns owned the United States government and the prosecuting attorneys in Chicago and in Los Angeles, and that he was the greatest man in the United States today." She says he told her she would be protected in anything she said or did.

She also avers in her bill that April 12, 1911, a fictitious arrest was made of her husband in Detroit, Mich., with J. B. McNamara, on a charge of safe blowing in Chicago.

She says that her husband and McNamara were brought back to Chicago. McManigal was not taken to a police station, the bill states, but to the home of Detective Reed, where, it is alleged, he was confined for ten days.

Mrs. McManigal avers that she visited her husband at the home of Detective Reed, and that he confessed to her that he blew up the Llewellyn iron works in Los Angeles, and told her that Detective Burns had promised immunity and a share in the reward upon the conviction of the persons who blew up the Times building.

Mrs. McManigal says also that after her husband had been taken to Los Angeles W. J. Burns, Raymond Burns, Detectives Reed and Smiley called at her home at all hours of the day and night, asking for leave to search the house, trying by "persuasion, insinuations, innuendo and other means" to secure from her a statement that she knew something concerning the blowing up of the Times building at Los Angeles, so she could be used as a witness in said case, threatening her with arrest and deportation if she refused to make such statement as they desired."

Mrs. McManigal relates at length her experiences in Los Angeles, and refers to the grand jury as "an infamous body."

She alleges that the sole purpose of the grand jury is to "harass, intimidate, threaten and indict any person interested in the defense of the McNamara brothers, and who does not act favorably to the wishes of the judges or State's attorney, in and for the county of Los Angeles; that she was summoned before that group of men so-called, and thereupon was interrogated at length by each and every one of them, and at least three deputy district attorneys, for two and one-half days, seeking to determine as to whether or not one J. J. McNamara and one J. B. McNamara, or either of them, had been or was guilty or chargeable by indictment with the offense or offenses committed in the city of Los Angeles."

The arrest and deportation of Secretary McNamara is being reproduced in moving picture theaters in different cities with much success, the attendance being very large.

Secretary McNamara Re-Elected.

The convention of the International Association of Bridge and Structural Iron Workers which convened at Milwaukee, Wis., on September 18th and lasted until the following Monday, September 25th, re-elected Secretary McNamara by acclamation and unanimously voted him a gold badge expressive of the high regard in which the membership of the organization holds him and of their undying confidence in him.

Assurances of Sympathy and Support.

In New Orleans on the night of October 4th 6,000 working men marched through the business section of the city to Elk Place, where a mass meeting was held to protest against the outrages which have been perpetrated by the prosecution and its tools thus far in the McNamara case.

The California State Federation of Labor, while in session at Bakersfield, Cal., on October 4th, decided to raise \$100,000 to be used in the defense of the McNamara brothers. Vigorous resolutions were also adopted by the recent conventions of the Federations of Labor of the States of Ohio and Indiana condemning the high-handed and illegal methods characterizing the arrest and subsequent treatment of the McNamara brothers and pledging aid and sympathy to the defense. At many other recent conventions and meetings of organized wage-earners throughout the continent similar action was taken, and in about every case the resolutions were adopted, not only unanimously, but with cheers.

A demonstration took place in Philadelphia, Pa., on October 10th, which is reported in the Weekly News Letter of the American Federation of Labor as follows:

A Mighty Demonstration

With a shout, the echo of which will ring over distant Los Angeles, the people of Philadelphia have voiced their protest against the un-American act of kidnapping the McNamara brothers. Ten thousand men and women, of that class that represents the bone and muscle and intellect of the republic, paced with steady tread the streets of the "City of Brotherly Love," and 15,000 citizens acclaimed every utterance of the champions of organized labor who declaimed for liberty and the preservation of the traditions of

our land. It happened on the evening of Tuesday, October 10, and the following excerpt from the Public Ledger of Philadelphia tells the story:

"Fifteen thousand workers—members of all the various unions in the city—filled and surrounded the Labor Lyceum, in Sixth street, last night and gave to Samuel Gompers, President of the American Federation of Labor; Frank Morrison, Secretary of that organization, and Frank Ryan, President of the International Iron Workers' Union, a wild ovation.

"The occasion was one that stirred every good union man's heart to speech and song. The demonstration was one of protest—protest against any adverse decision that the Los Angeles courts might make against the McNamara brothers, John J. and James B.—who are to be placed on trial today, charged with complicity in the dynamiting of the plant of the Los Angeles Times. Gompers, Morrison and Ryan, the latter an intimate associate of the defendants, who belonged to the union which he heads, stirred the 3,000 persons crushed inside the big brick edifice to a very rage of enthusiasm.

"When the venerable head of the federation rose to speak the cheering lasted for five minutes and could be heard distinctly two squares away. Morrison's address was punctuated with roars of approval and snatches of the French battle hymn—the Marseillaise—taken up by the throng in the hall and roared by the responsive crowd in the street.

"It was by all means the greatest demonstration that labor has ever made here. A great parade, in which at least 10,000 men and women, young and old, marched, preceded the meeting. That parade was one at which to wonder. And certainly the spirit that prevailed within its ranks was one with which to reckon."

Efforts are being made everywhere to swell the Defense Fund of the McNamara brothers to such proportions as will meet all requirements. Some unions have levied assessments—in some cases of 50 cents per member and in others of 25 cents.

It is earnestly hoped that a defense fund will be raised sufficient to meet all requirements in defending the accused men, and all members of organized labor are earnestly appealed to to contribute each one his share to the support of that worthy cause.