

## Clarence Darrow

### Illinois Cases

Michael Hannon (2010)

1894

#### *Billy "The Clock" Skakel*

In 1894 Clarence Darrow became involved in a dirty political fight in Chicago. "Bathhouse" John Coughlin (1860 - 1938) was an alderman in Chicago's First Ward from 1892 or 1893 until he died in 1938. Coughlin and alderman Michael "Hinky Dink" Kenna ran Chicago's First Ward, which included the notorious "Levee" district, for about 45 years. During this time period Chicago had a well earned reputation for corruption and Coughlin and Kenna were legendary for using their political position to sell protection to gambling and prostitution houses and for election fraud. Coughlin was born in Chicago to Irish immigrants. He earned the nickname "Bathhouse" because at age 19 he got a job as a towel boy and errand runner in a Turkish bathhouse in Chicago.

In 1894, near the beginning of Coughlin's reign, Billy "The Clock" Skakel decided to run against Coughlin in the upcoming election for alderman. Coughlin was the candidate for the Democratic Party so Skakel formed the Independent Democratic Party so he could get on the ballot. Coughlin became worried when it looked like Skakel might win so he went to Mayor Hopkins for help. Hopkins called Skakel in and asked him to withdraw but Skakel refused. Coughlin then had some of his lawyers and Moses Salomon, the state senator for the First District, look for a way to keep Skakel out of the race. A week before the election they found a city law that prohibited anyone convicted of a crime from holding a municipal office. Skakel had been arrested and fined some years previously for gambling so they took this information to the election board. The board was controlled by Mayor Hopkins' people and they removed Skakel's name from the ballot without granting him a hearing. The next day Skakel, with several attorneys including Clarence Darrow, went before a judge to argue that removing Skakel from the ballot was illegal. The judge agreed and Skakel was put back on the ballot. The election was held on April 3, 1894. Because of the contest between Skakel and Coughlin there was a great deal of violence with three people being shot but none died. Coughlin ended up winning the election. Skakel was the paternal great-uncle of Ethel Kennedy.

**1899**

***Crosby Case***

On December 22, 1898, Thomas G. Crosby, a 13-year-old boy, shot and killed a deputy sheriff who was trying to evict him and his 66-year-old mother by adoption Marjorie Crosby from their home. At one point Mrs. Crosby's attorneys were investigated by a grand jury for being accessories to the crime, as they allegedly told Mrs. Crosby to resist by force if necessary any attempt to evict her.<sup>1</sup> Mrs. Crosby and her son were charged with murder and Darrow and William Prentiss, a former judge, represented them. The trial, which began on April 26, 1899, was big news in Chicago and followed closely by the newspapers. The boy was acquitted but his mother was convicted of manslaughter. Darrow and Prentiss represented her in 1901 on an appeal before the Supreme Court of Illinois. The court reversed the conviction and remanded the case because there was insufficient evidence to sustain a conviction for manslaughter.<sup>2</sup>

**1901**

***Unger Case***

Darrow participated in another sensational case in Chicago in 1901 called *People v. Unger*.<sup>3</sup> Dr. August M. Unger was a medical doctor who concocted a plan with one of his patients, Marie Defenbach, to defraud insurance companies:

Unger's plan was that the girl should insure her life for large sums of money; that he would later give her a drug which would make her appear desperately ill and lapse into a coma simulating death; that it would be given out that she had died; and that he would issue the necessary death certificate, upon which the insurance could be collected.<sup>4</sup>

After Defenbach was declared dead another body would be secured and quickly cremated. But something went very wrong and Defenbach died on August 25, 1900 under suspicious circumstances. Unger, Francis W. Brown, and Frank H. Smiley were arrested and charged with conspiracy to defraud various insurance companies in Chicago by taking out policies on the life of Marie Defenbach between April 12 and August 1, 1900. These policies totaled \$67,000. During the investigation it was discovered that Doctor Unger's brother died in New York in September of 1899 under circumstances similar to those arising from the death of Marie Defenbach. Smiley, who was a detective, pled guilty and turned state's evidence. The trial of Unger and Brown began on May 21, 1901. One source states that they were tried for conspiracy to defraud the New York Life Insurance Company out of \$5,000. Clarence Darrow defended Brown.

Francis X. Busch, who observed the trial as a court reporter, recalled in a 1957 book: "One thing fixing the case indelibly in my memory is that it was the first of many in which I saw Clarence

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<sup>1</sup> *Lawyers Implicated in a Murder*, N.Y. TIMES, Dec. 25, 1898, at 2.

<sup>2</sup> *Crosby v. People*, 59 N.E. 546 (Ill. 1901).

<sup>3</sup> *People v. Unger*, Criminal Court of Cook County, Ill., No. 61606-A.

<sup>4</sup> FRANCIS XAVIER BUSCH, *LAW AND TACTICS IN JURY TRIALS: THE ART OF JURY PERSUASION, TESTED COURT PROCEDURES* 541 (1949).

Darrow in action.”<sup>5</sup> Busch later became a friend of Darrow’s and would also become a founders and dean of the law college at DePaul University. During the trial one of the prosecution’s witnesses had testified convincingly so Darrow took an unusual approach on cross-examination. In another book Busch described the witness in this fashion:

[T]here was the witness himself! He was a squat, heavy-set man of medium height, possibly fifty years of age. His swollen face, bleary eyes, puffy eyelids, and reddish-purple nose marked the habitual drunkard. His shaggy, graying hair had been stranger to brush or comb so long as to have become tangled and matted. His clothes were not ragged, but were covered with dirt and grease. His huge hands, with which he gesticulated frequently in indicating directions and emphasizing his testimony, were covered in grime.<sup>6</sup>

Busch then described how Darrow cross-examined the witness:

Mr.\_\_\_\_\_, would you mind standing up for just a moment?

The witness got up out of his chair and cast a startled look at Darrow. Would you mind turning just a little that way? said Darrow (indicating the left). The witness turned to the left.

Not that way, the other way, please, Darrow continued. The witness turned and faced the right.

That’s all, said Darrow, I just wanted the jury to get a good look at you.<sup>7</sup>

According to Busch, this was a shrewd move by Darrow:

No conceivable cross-examination could have been more effective. Nothing was known to the examiner which was derogatory to the witness. The only thing against him was his appearance. Darrow’s cross-examination fixed an indelible picture of that appearance in the minds of the jurors.<sup>8</sup>

Despite Darrow’s efforts, the defendants were convicted on June 10, 1901 and given indeterminate sentences. Unger’s appeal was denied and he was sentenced to five years in prison. Busch also states: “Brown was more fortunate. Darrow’s argument had convinced Judge Tuley, a most understanding and tender-hearted man, of the wide difference between Unger’s guilt and Brown’s. With the consent of the state’s attorney, the verdict was set aside, and a judgment entered sentencing Brown to pay a fine of \$2,000.”<sup>9</sup>

The *New York Times* said of the plot:

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<sup>5</sup> FRANCIS XAVIER BUSCH, CASEBOOK OF THE CURIOUS AND TRUE 120 (1957) [hereinafter CURIOUS AND TRUE].

<sup>6</sup> FRANCIS X. BUSCH, LAW AND TACTICS IN JURY TRIALS 751 (3d ed. 1963).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> CURIOUS AND TRUE, *supra* note 5, at 154.

The Unger insurance conspiracy will go down in criminal records as among the most remarkable of its kind. Though the secret of the plot is perhaps locked in the breasts of the girls who were co-conspirators, it has seemed reasonable that Miss Defenbach expected that a corpse would be substituted for her body and cremated in her name, while she escaped to Germany to appear afterward as Marie Huntsman, a fictitious cousin, and share in the insurance which Dr. Unger and his fellow-conspirators should collect.<sup>10</sup>

### ***The Chicago American and William Randolph Hearst***

In 1901 Darrow also represented two editors of the *Chicago American* newspaper after they were jailed for contempt of court by Judge Elbridge Hanecy, of the Circuit Court of Cook County, who was angry because the paper criticized a court decision he made. In 1897, the Illinois legislature enacted a law that legalized the consolidation of all gas companies in Chicago except one. Ten companies then combined under the name Peoples Gas Light & Coke Company. At first this aroused little commentary, but after 1900 the powerful gas company came under criticism because some considered it a monopoly.

The *Chicago American*, founded by William Randolph Hearst, printed its first edition on July 4, 1900, several years after the 1897 law was enacted. Darrow and Altgeld's firm had actually been hired to help incorporate the *Chicago American*. Darrow would help represent Hearst's newspapers for several years. The paper began to criticize the 1897 law and argued it was unconstitutional. The criticism led to quo warranto proceedings questioning the authority under which the gas company operated. A state attorney obtained permission from a circuit court judge to file the information in the quo warranto proceedings, but the gas company attorneys went to Judge Hanecy to have the order of the other judge vacated. Both sides offered arguments on this motion. Darrow, then with Altgeld, Darrow & Thompson, and another attorney, appeared in the case by request of the state's attorney. Judge Hanecy took the motion under advisement and on October 28 dismissed the petition and writ of the other judge on the grounds that the gas act was constitutional and did not jeopardize the rights of the public.

The same day Judge Hanecy issued his opinion, the *Chicago American* criticized the decision and printed a cartoon caricature of Judge Hanecy. An angry Hanecy charged several people at the paper with contempt of court, including William R. Hearst and the paper itself as a corporation. Judge Hanecy justified his actions because the paper's criticism was "intended to terrorize and intimidate this court in the performance and discharge of its duties." According to Judge Hanecy, when the paper printed its criticism the case was still pending because the court had not yet entered any judgment or order. At the beginning of November, several of the defendants appeared before Judge Hanecy and were released on bond and a hearing date was set. During the hearing the defendants were represented by John P. Altgeld, Clarence S. Darrow, William Thompson, Samuel Alschuler, Adolf Krause, and Charles R. Holden. Judge Hanecy appointed another attorney to prosecute the proceedings on the grounds that the Attorney General was absent and not in the jurisdiction of the court, and the state's attorney was part of the cause.

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<sup>10</sup> *What Chicago Talks About*, N.Y. TIMES, June 16, 1901, at 20.

Altgeld made a motion for a change of venue because Judge Hanecy's personal interest made him unqualified to hear the case, but the motion was denied. Judge Hanecy also denied a request for a jury to hear the case. Two of the defendants took responsibility for publishing the article. The defense and prosecution made their arguments during the hearing. According to a Darrow biographer, at one point Hanecy tried to stop Darrow by telling him, "You might as well know, Mr. Darrow, what you are saying is going into one ear and out the other."<sup>11</sup> To which Darrow replied, "I'm not surprised, Your Honor, Maybe it's because there's nothing to interfere with the passage, Your Honor."<sup>12</sup> Surprisingly, given Judge Hanecy's thin skin, he let the remark pass and Darrow was not held in contempt.

After arguments were finished, Judge Hanecy took the matter under advisement. He later found the two editors in contempt and sentenced one defendant to 40 days in jail and the other to 30 days. The defendants immediately appealed to Judge Edward F. Dunne on a writ of habeas corpus. They were released on \$3,000 bond and a hearing was set for November 25. At this hearing, Darrow and Alschuler argued on behalf of the two men. According to an account of the hearing: "[t]he arguments closed December 3 with a brilliant speech by Clarence S. Darrow. The subject of constructive contempt was gone into more exhaustively than ever before in the legal history of Cook County."<sup>13</sup> On December 1, 1901 Judge Dunne held that no contempt had been committed.

### *Hearst's Chicago American v. Spiss*

In 1901 Hearst used his considerable influence to get the Chicago City Council, by resolution, to grant his company a permit to put up a huge sign, 75 feet by 20 feet and weighing more than a ton, across State Street in downtown Chicago. The sign was installed to advertize Hearst's *Chicago American* newspaper. However, a city ordinance prohibited such a sign and the ordinance could not be amended, repealed or suspended by a resolution. Thus, the sign was illegal even though the city council had approved it. On February 28, 1902, a pedestrian named Mary E. Spiss was walking on the sidewalk near the sign. During a heavy wind the sign pulled some stone away from the building, which hit Ms. Spiss. She was seriously injured, suffering a broken thigh and arm and other injuries. Darrow helped defend the *Chicago American* in a personal injury action. The jury found Hearst's paper liable and awarded the plaintiff \$8,000. This is equal to about \$196,000 in 2009.

Darrow also helped represent Hearst's paper when it appealed the judgment in favor of Spiss to the Illinois Court of Appeals. At the trial and on appeal Hearst's lawyers argued that because the city issued the permit to put up the sign the paper had acted lawfully, and because the sign was put up by an independent contractor the defendant was not liable for injuries sustained through the negligence of the independent contractor.<sup>14</sup> On appeal they also argued that the damages were excessive. But the court affirmed the judgment and the amount of damages.

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<sup>11</sup> ARTHUR WEINBERG & LILA SHAFFER WEINBERG, CLARENCE DARROW: A SENTIMENTAL REBEL 181 (1980) [hereinafter SENTIMENTAL REBEL].

<sup>12</sup> *Id.*

<sup>13</sup> WILLIAM L. SULLIVAN, DUNNE: JUDGE, MAYOR, GOVERNOR 15 (1916).

<sup>14</sup> *Hearst's Chicago American v. Spiss*, 117 Ill. App. 436 (App. Ct.-1st 1904).

## 1902

### *Lawyers Indicted for Conspiracy*

In June of 1902 Darrow helped defend three lawyers who were indicted along with several other lawyers for conspiracy for bribing jurors to return favorable verdicts for the Chicago Union Traction Company. All the defendants were convicted, although several successfully appealed.<sup>15</sup>

## 1903

### *Labor Union*

In November of 1903 Darrow represented a labor union during the Chicago City Railway strike. Although the strike only lasted two weeks it was very serious because an estimated 300,000 people depended on that railway line every day.

## 1904

### *Iroquois Theater Fire*

On the afternoon of December 30, 1903 a fire tore through the supposedly “fire-proof” Iroquois Theater in downtown Chicago during a play. Within minutes about 575 people, mostly women and children, were dead. Many of the badly injured would soon die, bringing the final death toll to 602. Such a tragic loss of life quickly generated a need to hold someone responsible. Several factors lead to the extraordinary death toll: the fire curtain could not be lowered because the operator most familiar with it was absent that day and the curtain caught part way down; numerous lobby doors were locked; doorways opened inwards instead of outwards; fire exits used bascule locks that required the operation of a small lever that patrons were not familiar with; and the crowd panicked while fleeing the fire.

At first it appeared that Mayor Carter Harrison Jr. would be held responsible, but it was revealed the mayor had ordered that no license was to be issued to any theater unless the building department had verified it was safe. The license for the Iroquois had been withheld for a time but Building Commissioner George Williams had eventually approved the license. A grand jury heard 11 days of evidence before returning indictments of five people. Will Davis and Thomas J. Noonan, the Iroquois treasurer and assistant manager, and James E. Cummings, the stage manager, were each charged with manslaughter. Building Commissioner Williams and Building Inspector Edward Laughlin were both charged with malfeasance.

Clarence Darrow helped several of the defendants as he “worked behind the scenes to find ways to quash the indictments and, as far as it can be determined, never appeared personally in court.”<sup>16</sup> In Darrow’s view, over the years many others had played fast and loose with fire and building codes and inspections and these defendants were just unlucky. As Darrow saw it, “[I]t is not just to lay the sins of a generation upon the shoulders of a few.”<sup>17</sup> Darrow was also very

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<sup>15</sup> O’Donnell v. People, 110 Ill. App. 250 (App. Ct.-1st 1903); Gallagher v. People, 211 Ill. 158 (1904).

<sup>16</sup> NAT BRANDT, CHICAGO DEATH TRAP: THE IROQUOIS THEATRE FIRE OF 1903, 129 (2003) [hereinafter CHICAGO DEATH TRAP].

<sup>17</sup> KEVIN TIERNEY, DARROW: A BIOGRAPHY 195 (1979).

wary when the public demanded someone be punished for a crime. Despite the public outcry and the demands for justice, none of the defendants were convicted.

The Iroquois Theater Company faced as many as 272 lawsuits but the company was insolvent and the relatives of the victims went uncompensated. Darrow also helped defend the producers of the musical comedy that was showing when the fire started. According to one source, the producer's attorneys, "one of whom was Clarence Darrow—had succeeded in winning one adjournment after another."<sup>18</sup> In the end the construction company that built the Iroquois Theater paid a settlement of \$29,750; this was the only civil defendant to pay any compensation to the victims' relatives.<sup>19</sup>

The death toll from the Iroquois Theater Fire was at least twice as great as the death toll from the Great Chicago Fire that burned from October 8-10, 1871. Up until the September 11, 2001 terrorist attack on the World Trade Center, the Iroquois Theater Fire was the single largest loss of life in a single building fire in American history.<sup>20</sup>

In 1926, the Oriental Theater - Ford Center for the Performing Arts was opened on the site of the former Iroquois Theater.

## 1911

### *Myerhoff Case*

In May of 1911 Darrow was asked to help defend the McNamara brothers, who were accused of the bombing of the *Los Angeles Times*. At that time, Darrow was representing the Kankakee Manufacturing Company against Charles H. Myerhoff. Myerhoff, an elderly Civil War veteran, had invested most of his life savings with the Defendants. Myerhoff and numerous other small businesses and individuals had been persuaded to invest based on slick and deceptive brochures that made false claims about the company's assets. Myerhoff lost his entire investment and sued the company's board for fraud. Myerhoff claimed they had defrauded him of \$5,000. Darrow defended Kankakee Manufacturing's board. A jury found for Myerhoff and assessed his damages at \$7,475. The Defendants appealed to the Illinois Appellate Court. Darrow helped represent the Defendants on appeal, but the court found no reversible error and affirmed the judgment.<sup>21</sup>

## 1913

### *United Garment Workers*

In 1910, about 40,000 clothing workers who toiled in Chicago's men's clothing industry went on strike for 19 weeks. The focus of the strike was Hart, Schaffner and Marx, the largest company that refused to join the Chicago Wholesale Clothiers Association (an organization of large firms).

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<sup>18</sup> CHICAGO DEATH TRAP, *supra* note 16, at 134.

<sup>19</sup> *Id.*

<sup>20</sup> National Fire Protection Association, The 20 Deadliest Single-building or Complex Fires and Explosions in U.S. History, <http://www.nfpa.org/itemDetail.asp?categoryID=954&itemID=23343&URL=Research/Fire%20statistics/Deadliest/large-loss%20fires> (last visited Feb. 14, 2010).

<sup>21</sup> *Myerhoff v. Tinslar*, 175 Ill. App. 29 (Ill. App. Ct.-2nd 1912).

The strike began when several women workers refused to take a cut in pay and walked out. This quickly ignited a large strike. Eventually an agreement was reached by representatives of the workers and Hart, Schaffner and Marx on March 13, 1911. The agreement was a compromise between the United Garment Worker's (UGW) demand for a closed shop and management's demand for an open shop.

The agreement set up an arbitration board to rule on shop grievances. Clarence Darrow represented the workers and Carl Meyer represented the company. Dean John Wigmore of Northwestern Law School was chosen as an impartial chairman but he was unable to serve, leaving Darrow and Meyer to work out the issues between them. Darrow's law partner, William O. Thompson, later took his place when Darrow went to Los Angeles to defend the McNamara brothers who were arrested after the bombing of the *Los Angeles Times* building in October of 1910. The clothing workers strike led to the formation in 1914 of the Amalgamated Clothing Workers of America, which was led by Sidney Hillman.

### ***Arson Case***

In 1912 Paul and Edward Covitz, two brothers who were woolen merchants, approached Joseph Clarke, a public insurance adjuster who was part of a nationwide arson ring, and requested he torch their business. Clarke arranged this but the fire that was set on the night of November 5, 1912 was obviously arson and the three were arrested and indicted by a Cook County grand jury in April of 1913 for arson and burning to defraud. The arsonist was also arrested. Just three days after he was arrested, Clarke tried to bribe one of the assistant state attorneys to quash the proceedings before the grand jury. Clarke was arrested for the bribery attempt. Darrow defended at least one of the defendants, most likely Clarke, because Darrow is named as counsel for Clarke on his appeal. During the trial, evidence of Clarke's bribery attempt was ruled admissible to show that Clarke was in conspiracy with the Covitz brothers and equally guilty of causing the fire. The defendants were convicted by a jury in August and sentenced to the Joliet penitentiary. Their convictions were upheld by the Supreme Court of Illinois in 1914.<sup>22</sup>

### ***Carlin v. City of Chicago***

Darrow and Francis S. Wilson participated in a wrongful death action against the City of Chicago.<sup>23</sup> The litigation began in 1904 following a tragic accident in which a boiler near a city street rolled over and killed a six-year-old child.

### ***Louise Van Keuren***

In Chicago on June 4, 1913 John B. Van Keuren was notified by a private detective that a man named George Penrose had gone to the apartment of Van Keuren's estranged wife Louise Van Keuren. John Van Keuren was a hardware dealer and George Penrose was a jeweler. John Van Keuren tried to get into his wife's apartment by breaking a window and she shot and killed him. Mrs. Van Keuren was charged with murder, as was Penrose, but a judge dismissed the charges against Penrose. Mrs. Van Keuren went on trial for murder and she was defended by Clarence Darrow and Charles Erbstein. On March 14, 1914 Mrs. Van Keuren was found not guilty by the jury after less than an hour of deliberation.

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<sup>22</sup> *People v. Covitz*, 104 N.E. 887 (Ill. 1914).

<sup>23</sup> *Carlin v. City of Chicago*, 177 Ill. App. 89 (App. Ct.-1st 1913).

## 1914

### *Isaac Bond*

According to Darrow, after returning to Chicago in the aftermath of his bribery trials, “[t]he first case of any importance that came to me was an indictment of a negro named Isaac Bond.”<sup>24</sup> Bond was accused of killing a white woman who was found murdered on October 5, 1913. In January 1914 Bond had turned himself into the police after learning his name was mentioned in connection with the murder in a newspaper. It is not clear when Bond was tried but Darrow helped defend Bond at his murder trial. At one point after Bond’s alibi witnesses testified, the trial judge called Darrow over for a bench conference so the jury could not hear; he told Darrow, “[T]here is a whole lot of clumsy perjury in this testimony.”<sup>25</sup> Bond was convicted but the jury rejected the prosecution’s demand for the death penalty and Bond was sentenced to life in prison. Darrow and his co-counsel helped Bond appeal to the Illinois Supreme Court in 1917 but the court affirmed the conviction.<sup>26</sup> Several years later Darrow unsuccessfully took up Bond’s case with the pardon board.

## 1915

### *Newton C. Dougherty*

In March of 1915 Darrow and another attorney represented Newton C. Dougherty in his request for a pardon before Illinois Governor Dunne. Dougherty was convicted of forgery committed while he was the Superintendent of Schools for Peoria County and had spent seven years in prison. Dougherty had faced 140 indictments but pleaded guilty to five, which amounted to \$750 worth of forgery. Governor Dunne granted the pardon.

### *William Russell Pethick*

On May 6, 1915 a 22-year-old man named William Russell Pethick<sup>27</sup> was working as a deliveryman in Chicago when he delivered groceries to a home owned by the Coppersmith family. Ella Coppersmith, age 28, was home with her two-year-old son Jack. Ella attempted to pay Pethick with a ten dollar bill and a dispute arose over the change. At one point Pethick reached for Ella’s blouse and she hit him in the face. Pethick grabbed a butcher knife and stabbed her repeatedly. He also fractured her skull with a hammer. As she lay dying her two-year-old son came into the kitchen. Pethick, thinking the boy could identify him, slashed the boy’s throat, killing him. He then sexually abused the body of Ella Coppersmith.

Darrow followed the news about the murders and was fascinated by the case. He was convinced that Pethick was mentally ill. He offered to defend the accused and Pethick’s father gladly accepted. Darrow knew that a jury would very likely convict his client instead of finding him not guilty by reason of insanity. Darrow surprised the prosecution by having Pethick plead guilty on the first day of trial. Darrow then pleaded with the judge to take into account Pethick’s mental defects to mitigate punishment. He brought in experts to testify about Pethick’s mental problems. The prosecution tried to counter the defense’s testimony. In the end, the judge

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<sup>24</sup> CLARENCE DARROW, *THE STORY OF MY LIFE* 205 (1932).

<sup>25</sup> DARROW: A BIOGRAPHY, *supra* note 17, at 283.

<sup>26</sup> *People v. Bond*, 118 N.E. 14 (Ill. 1917).

<sup>27</sup> At least one source spells his name Pethrick.

sentenced Pethick to life in Joliet prison instead of the death penalty. In several ways the case was a dress rehearsal for the Leopold and Loeb case in 1924. Pethick spent 47 years in prison before being paroled on December 21, 1962. According to a news account Pethick was paroled to the Salvation Army and would live and work at the Men's Social Service Station in Chicago.

## 1917

### *Oscar DePriest*

In 1917 Illinois State Attorney for Cook County Maclay Hoyne began investigating corruption in Chicago. As part of the Hoyne investigation in early 1917 Oscar DePriest,<sup>28</sup> a black alderman from Chicago's Second Ward and a strong supporter of Mayor Thompson, was indicted on conspiracy charges for allegedly protecting illegal gambling and prostitution operations.<sup>29</sup> DePriest, born in Alabama in 1871 to former slaves, became Chicago's first black alderman. Since vice and corruption were common in the city of Chicago, the black population resented DePriest's indictment and believed he was targeted because of his race.<sup>30</sup> Also Mayor Thompson was popular among black voters. Darrow worked with Edward H. Morris, a prominent black attorney in Chicago, to defend DePriest. Morris, born a slave in Kentucky in 1859, was the fifth black lawyer to pass the Illinois bar.

During his final summation to the jury, Darrow warned them to be on guard against racial prejudice when rendering their verdict. Darrow was able to persuade the all-white jury to find DePriest not guilty. In 1928, DePriest was elected to Congress as a member of the Republican Party. He was the first black elected to Congress since Reconstruction.

### *Charles C. Healey and Billy Skidmore*

The ongoing investigations of Illinois State Attorney for Cook County Maclay Hoyne snared Chicago Chief of Police Charles C. Healey,<sup>31</sup> who was indicted in 1917 for malfeasance in office and as a conspirator in a plot to nullify anti-gambling laws. Others were also indicted, including a detective sergeant and an underworld bail bondsman named Billy Skidmore. Darrow helped defend Healey and Skidmore when they were tried in October. To the surprise of many Healey and the others were acquitted. Darrow was associated with Charles Erbstein, a very successful criminal defense attorney in Chicago, during the Healey trial and several other cases. Erbstein was also a radio pioneer and owner of the radio station WTAS.

## 1918

### *William Isaac Thomas*

In April of 1918 Darrow defended Professor William Isaac Thomas, who was arrested for disorderly conduct after he was found in a hotel room with a woman named Mrs. R. M. Granger. Mrs. Granger was the much younger wife of an army officer who had left in February to fight in Europe. Thomas was arrested for violating the Mann Act. Darrow successfully argued before the

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<sup>28</sup> DePriest's last name is often spelled De Priest. He used the spelling Depriest in a letter he wrote to Darrow in 1931.

<sup>29</sup> SENTIMENTAL REBEL, *supra* note 11, at 272-73.

<sup>30</sup> *Id.*

<sup>31</sup> Sometimes spelled Healy.

Morals Court that although the two were found in a hotel room together, their action did not constitute disorderly conduct.

Thomas was a pioneer in the field of sociology. He was a professor at the University of Chicago from 1897 until his arrest in 1918, after which he was fired. From 1895 until 1917 Thomas co-edited the *American Journal of Sociology*. In 1927 he served as President of the American Sociological Society, which later changed its name to the American Sociological Association.

## 1919

### *Emma Simpson*

Darrow was drawn into another high-profile murder trial in Chicago in 1919. Emma Simpson shot and killed her husband in April of 1919 in a crowded Chicago courtroom during alimony proceedings. The couple was separated at the time but Emma Simpson refused to divorce her husband. She declared that she would be acquitted because “the new unwritten law, which does not permit a married man to love another woman, will be my defense.”<sup>32</sup> Clarence Darrow defended Simpson and argued to the all-male jury: “You’ve been asked to treat a man and a woman the same – but you can’t. No manly man can.” The jury deliberated for half an hour before finding Emma Simpson insane as the prosecutor had urged. In a letter to his son dated September 4, 1919 Darrow wrote:

Where did you get that stuff about my losing [the] Simpson case. I won it. The jury returned a verdict of not guilty of murder finding she was insane at the time & still insane. She has gone to the asylum at Elgin and as soon as she recovers she will be released.

## 1920

### *People v. Arthur Person*

Darrow defended Arthur Person in April 1920 in Rockford Illinois. Person was born in Sweden but had come to the United States about twenty years earlier. Person was charged with violating an Illinois law that prohibited joining an organization that called for the violent overthrow of the government because he was a member of the Communist Labor Party. Person was acquitted in a jury trial.

### *People v. Lloyd*

Several months after the Person trial, Darrow and several other attorneys defended twenty members of the Communist Labor party arrested and charged in Illinois with advocating the forceful overthrow of the government. One of the defendants was William Bross Lloyd, referred to as the “millionaire Communist” because he was the son of Darrow’s close friend Henry Demarest Lloyd who was very wealthy. Their trial took place from June to August 1920 in the Criminal Court in Cook County. A significant part of the evidence against the defendants involved a general strike in Seattle on February 6, 1919 which was portrayed as an attempt to take control of the city. Ole Hanson, former Mayor of Seattle, was one of the main witnesses against the defendants.

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<sup>32</sup> Marianne Constable, *Chicago Husband-Killing and the "New Unwritten Law,"* 124 TRIQUARTERLY 85 (2006).

They were convicted for violating an Illinois statute that made it unlawful to advocate reformation or overthrow of the existing form of government by violence or other unlawful means.<sup>33</sup> They were sentenced to various terms of one to two years and fined. Darrow and co-counsel participated in their appeal before the Illinois Supreme Court but the court upheld the convictions.<sup>34</sup>

On November 29, 1922, Illinois Governor Len Small pardoned the defendants. Darrow recalled “the chief justice of the court, Orrin Carter, wrote a vigorous dissenting opinion which breathed the spirit of the liberty of the individual. The governor, quoting from this opinion, then pardoned them before they spent a single day in prison.”<sup>35</sup> One of the prosecution attorneys arguing against Darrow in the appeal was Robert E. Crowe. They would both meet just two years later in the Leopold and Loeb case.

### ***Typhoid Jennie***

In November 1919 a 65 year old woman in Chicago named Jennie Barmore was identified as a carrier of typhoid. Barmore, who had a disabled husband, made a living by taking in boarders. Barmore and her house were placed under quarantine and a large placard was posted on her house warning all persons that a typhoid carrier resided in the house. Barmore had to remain in her home, she was forbidden from preparing food for anyone but her husband, and no one could come into her home unless they had been immunized from typhoid fever. This effectively shut off Barmore’s source of income. In December 1919 it was announced that Barmore and the American Medical Liberty League would fight the order of the health officer and Clarence Darrow agreed to take the case. A Cook County Superior Court judge heard the case and in November 1920 declared that Barmore was a menace to the health of Chicago and quarantine was necessary. In June 1921 her defense filed an application for a writ of habeas corpus, claiming she was unlawfully restrained of her liberty at her home in Chicago by the commissioner of health, and an epidemiologist of the department of health. But the Supreme Court of Illinois ruled against her.<sup>36</sup>

## **1921**

Darrow defended several labor leaders charged with instigating violence during a strike in Chicago by local members of the International Upholsterers and Trimmer’s Union. The strike began in August of 1919 and ended in 1920. Darrow helped defend Edwin E. Graves, the International Union’s vice president, and Roy Hull, business agent for Local 111. On May 10, 1921 Graves and Hull were found guilty and sentenced to one to five years in prison and fined \$2,000 each. Prior to the trial Graves had unsuccessfully fought extradition from Massachusetts.<sup>37</sup>

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<sup>33</sup> Laws 1919, p. 420, S.H.A. ch. 38, §§ 558-564.

<sup>34</sup> *People v. Lloyd*, 136 N.E. 505 (Ill. 1922).

<sup>35</sup> *THE STORY OF MY LIFE*, *supra* note 21, at 219.

<sup>36</sup> *People ex rel. Barmore v. Robertson*, 134 N.E. 815 (Ill. 1922).

<sup>37</sup> *Ex parte Graves*, 128 N.E. 867 (Mass. 1920).

### ***McCormick Divorce***

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

### **1923**

#### ***Fred Lundin***

In 1923 Darrow faced prosecutor Robert Crowe in a large graft and corruption scandal involving the finances of the Chicago public schools. Fred Lundin, a friend and political operative of Mayor Thompson, and 23 others were accused of stealing more than a million dollars from the schools.

There appeared to be overwhelming evidence of guilt. Even so, during one part of his argument to the jury Darrow said, "If Fred Lundin or any other man in this case could be convicted on this evidence, made up of suspicions and cobwebs, then I want to retire to a cannibal island where I would be safe! This is an infamous conspiracy against the liberties of man." Despite the State's evidence, the jury found Lundin and the others not guilty. During the Lundin investigation Mayor Thompson decided not to run for re-election. However, the acquittal of Lundin and the other defendants allowed Thompson and his administration to escape without any convictions, and enabled Thompson to be elected mayor in 1927 with Al Capone's support. Thompson's last administration was more corrupt than his previous administration, and Thompson is widely viewed as being one of the most corrupt mayors in the history of the United States.

### **1924**

#### ***Michael Faherty***

In February and March of 1924, Darrow helped defend Michael Faherty, president of the Board of Local Improvements in the Thompson Administration. Faherty was accused of paying a \$28,000 bribe to Herbert Detwiler, an official in the White Paving Company, during the construction of the Michigan Boulevard Bridge in Chicago. Detwiler was defended by another attorney. The defense argued that Faherty did pay extra money for bonuses, but that was done to get the bridge completed under schedule which saved the city a lot of money. In his closing argument Darrow described Faherty's actions as heroic and not criminal. The defendants were found not guilty.

### **1930**

#### ***George "Red" Barker and William "Three-fingered Jack" White***

In early October a judge in Chicago issued vagrancy warrants for the arrest of 26 notorious gangsters. The warrants were based on a "public enemies" list created by Colonel Robert Isham Randolph, president of the Chicago Association of Commerce. In September a grand jury had used an old vagrancy law to indict the men. The list included Alphonse "Scarface Al" Capone, George "Bugs" Moran, and Joseph "Joe" Aiello. Darrow announced he was coming out of

retirement to help defend the men because they were unfairly given high bonds under the vagrancy law. Darrow appeared as counsel for two of the men, George "Red" Barker and William "Three-fingered Jack" White. Barker had ties to the Teamsters union. Darrow told the judge hearing the matter that he had always been "close to unions." Darrow also said, "If the authorities wish to harass the lawless they should do it legally. There is no such charge in law as a 'Public Enemy.' The vagrancy law provides for release under \$100 bond, yet men are being . . . made to furnish \$10,000 bonds.'"<sup>38</sup>

## 1932

### *Russell McWilliams*

Darrow came out of retirement to defend a 17-year-old named Russell McWilliams who was charged with first degree murder for killing a street car conductor on August 29, 1931. McWilliams was 11 days past his 17th birthday when he committed the murder. He pled guilty on October 26, 1931 and two days later the presiding judge heard evidence in aggravation and mitigation of the crime and then sentenced McWilliams to death. The defense twice got the conviction reversed and remanded. Darrow, William H. Holly and other attorneys represented McWilliams during his second appeal. Darrow argued before the Illinois Supreme Court on February 16, 1932. The defense successfully argued that the trial court erred when it denied a change of venue and the court reversed and remanded the case.<sup>39</sup> Darrow then helped defend McWilliams during his third murder trial. McWilliams was again convicted and despite Darrow's pleas for mercy he was sentenced to death. Darrow later traveled to Springfield to plead before the Illinois State Board of Pardons and Parole to recommend clemency before the Governor. On April 18, 1933 (Darrow's birthday), Illinois Governor Henry Horner commuted McWilliams' sentence to 99 years in prison. McWilliams was released on parole in 1951.

## 1936

### *Jesse Binga*

On March 30 Darrow, accompanied by the Reverend Joseph Eckert, a Catholic priest, and two nuns, appeared before the Illinois State Parole Board to plead for the release of 71-year-old Jesse Binga. Eckert presented a petition signed by 10,000 blacks in support of Binga. Binga was a prominent black banker in Chicago who lost everything due to the Great Depression and a conviction for embezzlement. In 1933, Binga was convicted of embezzling \$22,000 and sentenced to 10 years in prison. Darrow knew Binga for about 30 years. It was not until 1938 that the work of Darrow and other Binga supporters gained Binga's release. Binga lived 12 more years, eking out an existence as a janitor.

### *Joseph Rappaport*

Darrow worked with several other attorneys on the appeal of 30 year old Joseph Rappaport, the son of a rabbi, who was convicted of murder and sentenced to death for killing a government informant in a narcotics case. The Supreme Court of Illinois affirmed the conviction and sentence.<sup>40</sup> His execution was delayed five times by Governor Henry Horner including one delay

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<sup>38</sup> *CRIME: Lingle, Darrow*, TIME, Oct. 13, 1930.

<sup>39</sup> *People v. McWilliams*, 183 N.E. 582 (Ill. 1932).

<sup>40</sup> *People v. Rappaport*, 4 N.E.2d 106 (Ill. 1936).

because it fell on a Jewish holiday. Horner, the first Jewish governor of Illinois, was personally opposed to the death penalty although he swore to carry out such sentences. The day before Rappaport was to be executed his sister accosted Governor Horner on a train and said he would be cursed if he did not grant clemency to her brother. Governor Horner then announced that he would consider a further reprieve if Rappaport submitted to a polygraph test. Horner placed great faith in such tests. Just hours before Rappaport was to be executed, a polygraph machine was taken to his death cell. It was administered by Leonarde Keeler, co-inventor of the polygraph and the first full-time professional polygraph examiner. Keeler, who worked at the Scientific Crime Detection Laboratory at Northwestern University, was also a friend of Governor Horner. Keeler announced that Rappaport had failed the test and he was executed in the electric chair two hours later on March 2, 1937.