

Clarence Darrow State & Federal Cases

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1885

Brockway v. Jewell

The earliest published appellate decision from a case that Clarence Darrow worked on is from his practice in Ohio: *Brockway v. Jewell*.¹ Darrow recalled the *Brockway* case in his autobiography: “The most important case I had in Ohio was an action of replevin for a harness worth fifteen dollars.”² Darrow’s client, James Brockway, was a boy who received a harness worth \$15 for attending a wealthy man who was a habitual drunkard and was ill. The man failed to pay for the harness and the creditor wanted it back. The litigation in the case began around 1885.

Darrow received five dollars from his client for the first trial, but the litigation went through two trials and three appellate court decisions over seven years before it ended. Darrow’s client was unable to pay more than the initial five dollars so Darrow worked for free and paid the necessary expenses throughout the long legal process. Darrow had already moved to Chicago before the case was finished and he had to travel back to Ohio to complete it. Darrow did have co-counsel, an attorney named E. B. Leonard, during the appeals. Darrow said of the case: “I had spent money that I could not afford to spare, but I was determined to see it through. This was long ago. There was no money involved, and not much principle, as I see it now, but then it seemed as if my life depended on the result.”³

1903

United States ex rel. Turner v. Williams

In 1903 and 1904 Darrow and Edgar Lee Masters worked on their most significant case, *United States ex rel. Turner v. Williams*.⁴ John Turner was an English anarchist who worked as an organizer for the Amalgamated Union of Shop Assistants and Warehousemen and Clerks of Great Britain. Turner came to the United States in 1903 to give speeches and gather information on trade unionism. Turner’s legal troubles can be

¹ *Brockway v. Jewell*, 39 N.E. 470 (Ohio 1894).

² CLARENCE DARROW, *THE STORY OF MY LIFE* 34 (1932).

³ *Id.* at 35.

⁴ *United States ex rel. Turner v. Williams*, 194 U.S. 279 (1904).

traced to the assassination of President McKinley, who was shot on September 6, 1901 by Leon Czolgosz, “an anarchist” and native-born American of Polish parentage. McKinley died on September 14. Many believed that Czolgosz was an immigrant because of his surname. Congress reacted by enacting a statute on March 3, 1903 entitled *An Act to Regulate the Immigration of Aliens into the United States*.⁵ The act authorized the exclusion of “anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States or of all government or of all forms of law, or the assassination of public officials.”⁶

Turner was arrested in New York City on October 23, 1903 after he gave a speech on Trade Unionism and the General Strike at a mass meeting. He was arrested pursuant to a warrant issued a few days previously by the Secretary of the Department of Commerce and Labor of the United States.

William Williams was the United States Commissioner of Immigration for the Port of New York. Turner was taken to the Ellis Island immigration station, where he was examined by a board of special inquiry. The board found him to be an alien anarchist and by a unanimous decision ordered him deported from the country. Turner’s arrest and deportation proceedings generated protests in several cities.

Turner was released on \$5,000 bail while his appeal was pending. During this time he gave a speech to the Central Federated Union which along with the Free Speech League had helped to secure his release on bail. In his speech he said that it was erroneously reported he was arrested for making a speech, but in reality the arrest warrant was issued some days before the speech. He also told the crowd, “I had a fine time in the pen at Ellis Island. I was stared at as if I was a wild animal in the iron-barred cage nine feet by six. A Government representing 80,000,000 . . . seem[ed] to be actually frightened at a small, insignificant man like myself, and I felt complimented.”⁷ The Free Speech League had been created by the anarchist Emma Goldman for the express purpose of helping defend Turner.

The evidence against Turner showed the enduring legacy of the 1886 Haymarket riot to inspire fear of anarchy:

Certain papers were found on Turner, one of them being a list of his proposed series of lectures (which, when the warrant was in execution, he rolled up and threw away), the subjects including: “The Legal Murder of 1887,” and “The Essentials of Anarchism;” notices of meetings, one of a mass-meeting November 9, at which “speeches will be delivered by John Turner in English, John Most, in German, and several other speakers. Don’t miss this opportunity to hear the truth expressed about the great Chicago tragedy on the eleventh of November, 1887;”

⁵ Immigration Act of March 3, 1903, ch. 1012, § 2, 32 Stat. 1213, 1214 (1903).

⁶ *Id.*

⁷ *Anarchist Turner Tells of His Fight*, N.Y. TIMES, Mar.14, 1904, at 14.

and another, stating: “It may be interesting to all that Turner has recently refused to accept a candidacy to Parliament because of his anarchistic principles.”⁸

Turner refused to disclose how he had entered the United States but it was stipulated that he had been in the country for at least ten days before he was arrested. Six years prior, Turner had started the paperwork process to become a naturalized citizen. Turner appealed to the United States Supreme Court and Darrow and Masters submitted a 187-page written brief and both gave oral arguments before the Court. They were opposed by Assistant Attorney General James Clark McReynolds, who in 1914 became a Justice on the United States Supreme Court. McReynolds served on the Court until 1941 and he gained a reputation as one of the most ardent opponents of Franklin Roosevelt’s New Deal legislation. He was one of the “Four Horsemen,” the nickname given to four conservative U.S. Supreme Court justices during the time period 1932-1937.

Darrow and Masters tried to show that Turner was a philosophical anarchist and was not the type of person the statute was enacted to exclude. They also argued that the statute was unconstitutional on several grounds, including that it violated the First Amendment. The Court disagreed:

It is, of course, true, that if an alien is not permitted to enter this country, or, having entered contrary to law, is expelled, he is in fact cut off from worshipping or speaking or publishing or petitioning in the country; but that is merely because of his exclusion therefrom. He does not become one of the people to whom these things are secured by our Constitution by an attempt to enter, forbidden by law. To appeal to the Constitution is to concede that this is a land governed by that supreme law, and as under it the power to exclude has been determined to exist, those who are excluded cannot assert the rights in general obtaining in a land to which they do not belong as citizens or otherwise.⁹

In his autobiography, Masters blamed Darrow for the legal defeat because he was not adequately prepared. Masters said of Darrow “His wings wobbled, and in five minutes more he came down. He made a very bad talk.”¹⁰

According to one of his biographers, Masters may be partly to blame because he spoke to the Court for an hour and a half before Darrow’s twenty-minute argument. So Masters may have “antagonized the Court well before” Darrow’s argument.¹¹ Darrow and Masters’ plea was sold in pamphlet form by the Free Speech League.

United States ex rel. Turner v. Williams is still good law. The class of “inadmissible aliens” is found in 8 U.S.C. § 1182 (2006).

⁸ *Turner*, 194 U.S. at 283. The reference to the Chicago tragedy is to the hanging of the Haymarket defendants Albert Parsons, August Spies, George Engel, and Adolph Fischer on November 11, 1887.

⁹ *Id.* at 279.

¹⁰ HERBERT K. RUSSELL, *EDGAR LEE MASTERS: A BIOGRAPHY* 49 (2005).

¹¹ *Id.*

1906

Blair v. City of Chicago

In January of 1906 Darrow, as special counsel for traction affairs, and several other attorneys represented the City of Chicago in an appeal before the Supreme Court of the United States. The controversy was over whether an 1865 amendment to an 1859 Illinois law gave an irrevocable grant from the state to two railway companies. The law granted the right to use city streets for street railway purposes for a term of 99 years from the passage of the law. The City of Chicago argued that there was no grant to the railways to occupy the streets of the city except with the authorization of the city council and upon such terms and conditions, including the term of occupancy, as that body may see fit to fix by contract with the companies. On the issues involving the constitutionality of the law and the jurisdiction of the Federal Court, the decision was in favor of the railway companies. The merits of the case were decided in favor of the city.¹²

1908

Christian Ansoff Rudowitz

A legal case with international importance arose in Chicago in 1908 when the Russian consul in Chicago, Baron Ernest von Schilling, requested the extradition of a Russian refugee named Christian Ansoff Rudowitz¹³ who was living in Chicago. The Russians alleged that Rudowitz was wanted for murder, arson, burglary, robbery and larceny committed in a village in a Baltic province during the winter of 1905-06. This was part of a wave of political terrorism, strikes, peasant unrest, and mutinies, some unorganized and some directed at the government, that is referred to as the 1905 Russian Revolution. The 35-year-old Rudowitz admitted to joining the Russian Social Democratic party in 1905. He participated in raids to acquire arms for the coming revolution. The Russians requested Rudowitz be turned over under the extradition clause of the 1907 treaty between Russia and the United States.

Extradition hearings were held before United States Commissioner Mark A. Foote in Chicago. Darrow, Peter Sissman, Northwestern University Professor Charles C. Hyde, and Isaac A. Horwich represented Rudowitz without charge. William C. Rigby represented the Russian consulate.

The case drew intense coverage from the radical or left segment of Chicago, and news coverage carried the story to other parts of the country and even overseas. Soon the Political Refugee Defense League was formed to help Rudowitz and others the Czar might try to extradite. Rudowitz's supporters wanted to prevent him from being extradited. But they were also very worried that if he was turned over to the Russians, it would set a terrible precedent and endanger political asylum in the United States.

At the hearing, Darrow warned Commissioner Foote that there were about 20,000 men in the United States under political asylum from Russia, and that if Rudowitz was

¹² Blair v. City of Chicago, 201 U.S. 400 (1906).

¹³ Some sources spell his name Rudovitz.

extradited, all the other political refugees would “go with him as fast as the Russian government can furnish the means and the guns to execute them.” The defense admitted that Rudowitz had attended a meeting during which a vote was taken to kill three government spies. But the defense also insisted that Rudowitz did not participate in any murders.

In his closing argument Darrow said, “Czar Nicholas II is plotting to reach the hand of despotism into the United States and drag back, no man knows how many, political offenders of Russia.”

Foote listened to two weeks of testimony and on December 7 ruled that Rudowitz could be extradited. The decision was roundly denounced by radical newspapers. The day after the ruling, Darrow and Hyde sought a meeting with Secretary of State Elihu Root. Root declined to meet with them because the State Department did not hear oral arguments in extradition cases. However, the Department would read a written brief. Root told the lawyers to wait until Commissioner Foote made a formal report. Foote’s report was made on December 26, and Hyde sent Secretary Root the defense’s brief in early January 1909.

Hyde also got his colleague John H. Wigmore, the dean of Northwestern University Law School, involved in the case. Wigmore was a highly respected expert on the law of evidence and he went over the more than 300 pages of hearing transcripts and the report. Wigmore reported that Rudowitz was a political refugee and thus should not be subject to extradition. Wigmore’s written report was endorsed by James Parker Hall, the dean of the University of Chicago Law School, and this report was sent to Secretary Root.

On January 26, 1909, Secretary Root decided that Rudowitz’s crimes were political in nature and he was therefore not extraditable under the treaty between the United States and Russia.

1910

Fred D. Warren

Darrow and several other attorneys represented Fred D. Warren during an appeal to the Eighth Circuit Court of Appeals. Warren, a well-known socialist, believed that William Taylor had murdered William Goebel during a disputed Kentucky gubernatorial election in 1900. Taylor was initially declared the winner but the Kentucky General Assembly reversed the election results and gave the victory to Goebel. The day before he was to be sworn in as governor, Goebel was shot and mortally wounded. He was sworn in the next day but died on February 3, 1900. Suspicion was directed at deposed governor Taylor, who fled to Indianapolis, Indiana. Taylor was later indicted but the governor of Indiana refused to extradite Taylor and he was never investigated about his possible role in a plot to kill Goebel. Taylor later became a successful lawyer in Indiana and he was pardoned by Governor Augustus E. Willson in 1909.

Warren was convicted of sending “nonmailable matter” through the mail because he sent an envelope which displayed writing that was of a “scurrilous, defamatory, and

threatening character.” On the envelope was printed in large red letters: "\$1,000 Reward will be paid to any person who kidnaps Ex. Gov. Taylor and returns him to Kentucky authorities."

Warren was sentenced to six months hard labor and a \$1,500 fine. The Eighth Circuit upheld the conviction.¹⁴

1914

In December of 1914 Darrow was hired to represent Carleton Hudson. A wealthy Chicago resident, Hudson was arrested at the request of the New York police as a fugitive from justice for committing forgery in New York nearly 20 year earlier.¹⁵ While in New York, Hudson had used the name Carleton H. Betts.¹⁶

1915

California-Calaveras Mining Co. v. Walls

Around May of 1915, Darrow and several other attorneys successfully represented a corporation in a lawsuit over a \$100,000 promissory note before the Supreme Court of California.¹⁷ This was an appeal of a case that Darrow and other attorneys had worked on in 1911.

Eastland Disaster

Early in the morning on July 24, 1915, thousands of passengers waited at a dock on the Chicago River near the Clark Street Bridge in downtown Chicago to board one of five ships to take them across Lake Michigan to an employee picnic. About 2,500 passengers boarded the Eastland, a ship that had gained a reputation for being unstable. Before departing, the Eastland rolled over next to the dock in about 20 feet of water, trapping hundreds of passengers. Despite rescue efforts about 844 people died. It was the third worst disaster in U.S. maritime history. The enormous loss of life led to federal and state criminal charges including criminal conspiracy and to civil litigation.

Clarence Darrow defended the Chief Engineer, Joseph Erickson. Darrow's defense was based on the theory that the ship must have been resting on an underwater obstruction. During the course of the federal trial this was proven not to be true. In February 1916 a federal judge found the defendants not guilty of criminal conspiracy to operate an unsafe ship. Erickson died in April, 1919, before he could face state criminal charges. Civil litigation dragged on for 20 years before the final lawsuit was decided in 1935.

In 1915 Darrow and another attorney assisted the Northern California Branch of the NAACP in an unsuccessful effort to suppress the showing of the racist movie *The Birth of a Nation* in Los Angeles. At these early screenings the movie was titled *The Clansman*

¹⁴ Warren v. United States, 183 Fed. 718 (8th Cir. 1910).

¹⁵ *Twenty Years a Fugitive*, N.Y. TIMES, Dec. 4, 1914, at 1.

¹⁶ *Betts Admits Identity*, N.Y. TIMES, Dec. 5, 1914, at 15.

¹⁷ *California-Calaveras Mining Co. v. Walls*, 170 Cal. 285 (1915).

because it was based on *The Clansman: An Historical Romance of the Ku Klux Klan*, a novel written by Thomas F. Dixon, Jr. that was published in 1905.

1916

Jacob “Mont” Tennes

In the early 1900s an employee of the Western Union in Cincinnati named John Payne quit his job after Western Union adopted a policy that it would not transmit the results of horse races. Payne then set up the Payne Telegraph Service to fulfill the demand from bookies for racetrack results.¹⁸ Payne greatly expanded his wire service over the next few years. In 1907 a violent Chicago gangster named Jacob “Mont” Tennes took over the Illinois franchise of the Payne wire service.¹⁹ Tennes, known by his nickname “Mont,” had acquired a very lucrative business because he demanded Illinois bookies pay him half of their daily take - and there were more than 700 bookies in just Chicago.²⁰ But other gangsters wanted in on such a profitable enterprise, and Tennes’ home was bombed six times between July and September of 1907.²¹ Tennes eventually broke ties with Payne and expanded his own General News Bureau to other major cities.

Tennes was so successful that his activities prompted Judge Kenesaw Mountain Landis of the United States District Court, Northern District of Illinois, to launch an investigation. The principals were subpoenaed to appear before Judge Landis. On October 2, 1916, Tennes, without a subpoena, was surrendered by his special counsel, Clarence Darrow. Tennes took Darrow’s advice and refused to answer incriminating questions. But others who knew of Tennes operations reluctantly testified that the General News Bureau, with Tennes owning 65%, made \$20,000 to \$25,000 per month profit but kept absolutely no paperwork of its business. Adjusted for inflation, \$25,000 in 1916 is worth about \$494,000 in 2009.

In October 1916 Judge Landis requested the cooperation of Illinois Bell Telephone in the investigation. But Judge Landis ended the investigation when he concluded local gambling was not within the jurisdiction of the federal courts and the interstate transmission of sporting news was not a crime. In 1921 Judge Landis was appointed to be the first commissioner of Major League Baseball and he served as commissioner until 1944.

In 1929 a massive report of over 1,100 pages called the *Illinois Crime Survey* was published. The report devoted a 39-page chapter to Mont Tennes called “Tennes As A Vice Chief.” The chapter began: “The complete life history of one man, were it known in every detail, would disclose practically all there is to know about syndicated gambling as

¹⁸ WILLIAM POUNDSTONE, *FORTUNE'S FORMULA: THE UNTOLD STORY OF THE SCIENTIFIC BETTING SYSTEM THAT BEAT THE CASINOS AND WALL STREET 3* (2006).

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *Id.*

a phase of organized crime in Chicago in the last quarter century. That man is Mont Tennes.”²²

1916

Stewart v. Ramsay

In November 1916 Darrow argued before the Supreme Court of the United States on behalf of Charles H. Ramsay. Ramsay had previously traveled from Colorado to Illinois to testify as a witness in a case. A few minutes after Ramsay testified an individual named Stewart served process on Ramsay for an unrelated matter. Darrow successfully argued that process could not be served in this manner because a witness coming from another state or jurisdiction is exempt from the service of civil process while attending court, and during a reasonable time in coming and going.²³ The opinion was written by Justice Mahlon Pitney (1858 – 1924). According to some sources, Pitney is the great-grandfather of the actor Christopher Reeve. *Stewart v. Ramsay* is still good law.

1917

In October 1917 former Populist Senator Richard F. Pettigrew of South Dakota was indicted for violating the Espionage Act because he told a reporter among other things that "There is no excuse for this war. We should back right out of it. We never should have gone into a war to help the Schwabs make forty million dollars per year." The reference to the Schwabs was to Charles M. Schwab, president of Bethlehem Steel Company. Darrow assisted Charles O. Bailey²⁴ (1860 - 1928) in defense of Pettigrew. After much legal maneuvering, the case against Pettigrew was dropped in November, 1919.

1918

Vincent St. John

On August 17, 1918, after a four month trial, 100 members of the Industrial Workers of the World (IWW) including Big Bill Haywood and Vincent St. John were convicted for violating the Espionage Act.²⁵ Judge Kenesaw Mountain Landis presided over the trial and on August 30 he sentenced Haywood to 20 years in Leavenworth Prison and fined him \$20,000. Thirteen other defendants received 20-year sentences. St. John was sentenced to 10 years. Others received a range of less harsh sentences. Darrow did not defend Haywood but he represented St. John on several appeals before the Seventh Circuit Court of Appeals in 1918 and 1920.²⁶ St. John served two and a half years in prison before receiving executive clemency on June 27, 1922. Haywood served a year at

²² THE ILLINOIS CRIME SURVEY 867 (1929).

²³ *Stewart v. Ramsay*, 242 U.S. 128 (1916).

²⁴ See Woods Fuller Shultz & Smith P.C., Our Founding Partners, <http://www.woodsfuller.com/about/partners.cfm> (last visited Mar. 16, 2010).

²⁵ *Haywood v. United States*, 268 Fed. 795 (7th Cir. 1920).

²⁶ *United States v. St. John*, 254 Fed. 794 (7th Cir. 1918); *St. John v. United States*, 268 Fed. 808 (7th Cir. 1920).

Leavenworth, but while out on appeal in 1921 he jumped bond and fled to the Soviet Union, where he remained until his death in 1928.

1919

Bianchi v. State

In March 1919 Darrow and Peter Sissman worked on the appeal of eleven Italian immigrants, who held anarchist views, and who had been convicted in Wisconsin for assault and being armed with a loaded revolver with intent to commit murder. In September 1917 they had been arrested after an altercation with a minister who was holding a meeting in Milwaukee to support the United States war effort. When the police intervened shots were fired and two of the demonstrators were killed. On November 24th, four days before the trial was to begin, a suspicious package was found outside the minister's church. It was taken to the police station and about 10 minutes later it exploded, killing nine police officers and one civilian. Two of the police officers who were killed had been involved in the arrest of the 11 defendants.

The judge refused to grant the defendants a change of venue despite the heavy newspaper coverage of the bombing and the general belief that it was related to the dispute with the minister. All 11 defendants were convicted and sentenced to 25 years of hard labor. Darrow and Sissman submitted a written brief and argued before the Wisconsin Supreme Court. The Court held that there was not enough evidence to prove a conspiracy among the defendants. The Court reversed the convictions of nine of the defendants and affirmed the convictions of two defendants who were found to have firearms when they were arrested.²⁷

1921

Indiana Bank Robbery and Murder

Darrow and co-counsel defended several bank robbers charged with murder after a shootout with local townspeople following a botched robbery in Kosciusko County, Indiana.²⁸ The robbery and shootout occurred on December 29, 1920 and one of the townspeople wounded in the shootout later died. The Defendants were convicted but they avoided the death penalty and received life sentences. Darrow participated in the Defendants' appeal, but their convictions were upheld by the Supreme Court of Indiana.²⁹

Carpenter v. State

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

²⁷ *Bianchi v. State*, 171 N.W. 639 (Wis. 1919).

²⁸ Florence S. Stauffer, *Darrow Defends Bank Bandits Here in 1921*, WARSAW TIMES-UNION, Nov. 13, 1975, available at <http://yesteryear.clunette.com/darrow.html>.

²⁹ *Burns v. State*, 136 N.E. 857 (Ind. 1922).

medical doctors. The practitioner was convicted for the illegal practice of medicine and the Supreme Court of Nebraska affirmed the conviction.³⁰

1925

On June 16, 1925 a passenger train derailed during a storm in Rockport, New Jersey killing 50 people. It was reported in July that several relatives of the victims had signed a joint agreement to retain Clarence Darrow to represent them in filing claims with the Delaware, Lackawanna & Western Railroad.

1926

In the summer of 1926 Darrow and another Chicago attorney appealed a first degree murder conviction before the Wisconsin Supreme Court but the conviction was affirmed.³¹

1927

The NAACP reported that in December of 1926 Arthur Garfield Hays filed a lawsuit on behalf of Blanche S. Brookins, a black woman, against the Pullman Company and the Atlantic Coast Line Railway for damages of \$25,000.³² Mrs. Brookins, who lived in Orlando and reportedly was wealthy, was traveling to New York and riding in a Pullman berth on the Atlantic Railway line. When she got to Jacksonville on July 1, 1926 she was informed that she would have to give up the Pullman car and go to a “Jim Crow” car. When she refused, the conductor called ahead to authorities in Palatka, Florida and when the train arrived there she was removed and put in jail for the night. The next day she was brought before a judge and fined \$500 and court costs. The NAACP also reported in February of 1927 that Clarence Darrow would help represent Mrs. Brookins. According to one source, she was awarded \$2,750 from the Atlantic Coast Line in 1928.

Francesco Caruso

On February 13, 1927 a terrible double tragedy took place in the South Brooklyn area of New York that would draw Clarence Darrow into another legal battle. On February 11, Joey Caruso, the 6-year-old son of 35-year-old Sicilian immigrant Francesco Caruso, became ill. The next night his father sought help from a local drugstore owned by Joseph Pendola. The pharmacist called his brother Casper Pendola who was a doctor. The doctor examined the boy and diagnosed his illness as diphtheria, a very serious bacterial disease of the upper respiratory system. The doctor ordered an antitoxin injection and an oral medication and later gave the boy the injection at the family’s apartment. The father was given instructions to administer the oral medication. The doctor then left, promising to return the next morning.

³⁰ *Carpenter v. State*, 106 Neb. 742 (1921).

³¹ *Eckman v. State*, 191 Wis. 63 (1926).

³² *Inter-State “Jim Crow,”* 33 THE CRISIS 194 (1927).

The boy grew sicker during the night and became delirious. The doctor had not returned by 10:00 a.m. the next morning and the panic-stricken father returned to the Pendola drugstore to call an ambulance because there was no phone in the apartment. When Francesco Caruso returned to his apartment he found his son in convulsions, and the boy soon he died in his father's arms. Dr. Pendola returned to the Caruso apartment around noon. When informed that the boy had died, Dr. Pendola reacted in a way that Francesco Caruso interpreted as a laugh. A decision from the Court of Appeals of New York recounts what happened:

About 12 o'clock Dr. Pendola arrived. The child had been dead for some time. He was told, and then Caruso says the doctor laughed, and he "lost his head." This seems incredible. Yet Caruso apparently believed it, for his testimony on the stand is a repetition of the same charge made in his statement that same night, before it is likely that a man of Caruso's mentality would be preparing a false defense. The probability is there was, from one cause or another, some twitching of the facial muscles that might be mistaken for a smile.³³

Caruso also claimed that when he filled the prescription for the antitoxin injection the druggist told him that the dose was too large for a child his son's age. Caruso said he related this to Dr. Pendola, but the doctor indignantly ignored the information. The druggist later denied telling Caruso this. Whatever the truth, Caruso believed the injection may have killed his son, the doctor did not return in the morning as promised, and after being informed that the boy had died, Caruso believed the doctor laughed about it. This was too much for the grieving father: "Caruso accused the doctor of killing his child. The doctor denied it. Caruso attacked him in anger, choked him until he fell to the floor, then went to a closet ten or twelve feet away, took a knife, and stabbed him twice in the throat, so killing him."³⁴

Caruso was arrested and charged with murder. In April he was tried and convicted of murder in the first degree, which automatically resulted in a death sentence. He was sent to Sing Sing prison to await execution.

Italian Americans launched a campaign to help Caruso appeal his conviction and death sentence. In May they succeeded in getting Clarence Darrow to help with the appeal. In November of 1927 the Court of Appeals of New York reversed the conviction and ordered a new trial. When the case was called for retrial, Caruso pleaded guilty to manslaughter in the first degree. He was sentenced to an indeterminate sentence, with a minimum of five years and a maximum of ten years, and an additional five to ten years under section 1944 of the Penal Law.³⁵ In November of 1928 the Court of Appeals of New York affirmed Caruso's conviction for first degree manslaughter.³⁶ Caruso actually served 6 years and was released. He would later have another son.

³³ People v. Caruso, 159 N.E. 390, 391 (N.Y. 1927).

³⁴ *Id.* at 443.

³⁵ People v. Caruso, 164 N.E. 106 (N.Y. 1928).

³⁶ *Id.*

In 1952 Francesco Caruso told his 16-year-old son Dominic that Dr. Pendola was not the first man he had murdered. He then confessed that for many years he had been an enforcer for the Sicilian Mafia, specifically for Salvatore D'Aquila, an associate of Al Capone. In 2008 Dominic Caruso wrote a book about his father and his family and what happened during and after the murder of Dr. Pendola.³⁷

Obscenity Trial

In April of 1927 Theodore Dreiser's *An American Tragedy*, which was published in 1925, was banned in Boston on the grounds that it was obscene. Horace Liveright, an American publisher and stage producer, became involved in Dreiser's freedom of expression fight in an obscenity trial. Clarence Darrow was a witness for the defense and also assisted the defense team. During the trial Darrow read a chapter from the book to the jury. Darrow also argued that "not all literature should be tailored for the feeble minded and the very young, but the prosecutor read some of the more controversial parts of the book and summed up by asking the jury if they would want their fifteen-year-old daughters to read the passages he had recited."³⁸ An assistant editor for the publisher was convicted of obscenity for "selling an obscene, indecent, and impure book." The Supreme Judicial Court of Massachusetts upheld the conviction.³⁹ The litigation took a long time and cost both Dreiser and the Liveright firm a lot of money.

On July 5, 1927 it was announced that the National Association Opposed to Blue Laws, with Clarence Darrow as its chief legal counsel, had offered its services to help the American Baseball Club of Philadelphia fight a ban on Sunday baseball in Pennsylvania. This was in response to a ruling on June 25 by the Supreme Court of Pennsylvania that playing baseball on Sunday violated a 1794 statute that provided:

If any person shall do or perform any worldly employment or business whatsoever on the Lord's day, commonly called Sunday (works of necessity and charity only excepted) * * * and be convicted thereof, every such person so offending shall, for every such offense, forfeit and pay four dollars, to be levied by distress; or in case he or she shall refuse or neglect to pay the said sum * * * he or she shall suffer six days' imprisonment in the house of correction of the proper county.⁴⁰

The court stated, "We cannot imagine in this sense anything more worldly or unreligious in the way of employment than the playing of professional baseball as it is played today. It is not only worldly employment which is forbidden, but business."⁴¹ Sunday baseball remained banned in Philadelphia until 1934 when it became the last major league city to allow Sunday games.

³⁷ DOMINIC CARUSO, *NO MORE TOMORROWS* (2008).

³⁸ MANDY MERCK, *HOLLYWOOD'S AMERICAN TRAGEDIES: DREISER, EISENSTEIN, STERNBERG, STEVENS* 31 (2007).

³⁹ *Commonwealth v. Friede*, 171 N.E. 472 (Mass. 1930).

⁴⁰ *Commonwealth ex rel. Woodruff v. Am. Baseball Club of Phila.*, 138 A. 497 (Pa. 1927) (citing Pa. St. 1920, § 20252).

⁴¹ *Id.* at 141.

Carillo and Greco

In another New York case, Darrow and Arthur Garfield Hays defended Donato Carillo and Cologero Greco, well-known anti-fascists, who were charged with murdering two Italian Fascists in the Bronx on May 30, 1927. The victims, dressed in Fascist clothing, were stabbed to death as they headed to a subway to attend a Memorial Day march. Pressure was put on the police and prosecution when the Italian ambassador attended the funeral and Mussolini and others in the Italian government made the two victims into martyrs. More than a dozen suspects were arrested including Carillo and Greco. Anti-fascist support for the defendants was headed by Carlo Tresca, a prominent Italian-American editor and anarchist. Arthur Garfield Hays was hired to defend the two men and he asked that Darrow be hired as lead counsel. Hays and Greco's brother convinced the 70-year-old Darrow to take the case. Darrow recalled:

Neither Arthur G. Hays nor I asked or received any payment for our services. The case hinged around the identification and proof of an alibi, and was colorful and interesting to a rare degree. The mother of Grecco was a fine type, like one who had stepped out of an old Italian landscape by some master. When she had told her story, she turned to the judge and asked with motherly affection and womanly dignity, "Please, may I embrace my son?" Grecco had shown no emotion until then; suddenly he burst into tears, and there were few eyes in that court-room that were not equally affected.⁴²

The jury acquitted both defendants.

George Remus

In December Darrow testified as a character witness for George Remus (1876 – 1952), formerly a well-known Chicago lawyer. Remus was born in Germany and his family immigrated to Chicago when he was 5. He started working in a pharmacy when he was 14 and purchased the pharmacy when he was 19. But then he decided to enter law school and became a lawyer at age 24. He became a very successful criminal defense attorney in Chicago.

After national prohibition was enacted in 1920 Remus noticed that some of his clients were making a lot of money through illegal alcohol. Remus recalled, "I was impressed with the rapidity with which those men, without any brains, piled up fortunes in the liquor business."⁴³ This observation led Remus to a decision "I saw a chance to clean-up."⁴⁴ He decided to get into the action and moved to Cincinnati because it was near most of the whiskey distilleries in the country. He studied the Volstead Act and found loopholes that allowed him to buy distilleries and pharmacies and sell alcohol for medicinal purposes to himself. He would then have the shipments intercepted and sell it illegally. It has been estimated that he made \$40 million in less than three years (\$40 million in 1923 is equal to about \$500 million in 2009). It is believed he bribed hundreds

⁴² THE STORY OF MY LIFE, *supra* note 2, at 312. Most sources use the spelling Greco.

⁴³ Bob McKay, *The Bootlegger*, 12 CINCINNATI MAG. 79, 80 (1978).

⁴⁴ *Id.*

of government and law enforcement personnel, including police officers and judges. Remus became one of the most notorious bootleggers during the prohibition era.

Known as “The King of the Bootleggers,” Remus was eventually convicted and in 1923 sent to the federal penitentiary in Atlanta for two years. His wife then took up with a prohibition agent and the two looted Remus’s fortune, selling his assets and hiding the money. She reportedly also tried to have him deported and only gave him \$100 from the sale of one of his distilleries; furthermore, Remus believed she hired hit men to kill him. His wife filed for divorce and on October 6, 1927 in Cincinnati, while she and her daughter were riding in a cab to court to finalize the divorce, Remus instructed his driver to chase the cab. He had the driver force it off the road and Remus accosted his wife and shot her. She died later that day. Remus turned himself into the police an hour later.

Remus was charged with first degree murder. He went on trial in November and the prosecutor in the case was Charles Taft, the 30-year-old son of Chief Justice and former President William Howard Taft. The trial drew nationwide and even international public interest. Remus hired several high-priced defense attorneys, but he also participated in his own defense. Remus claimed that he shot his wife because he was suffering from “transitory maniacal insanity” caused by his wife and her lover’s persecution of him over the previous two years.

During the trial, Remus announced that Clarence Darrow would appear as a character witness. This prompted Taft to declare that if Darrow appeared, the prosecution would get Kenesaw Mountain Landis, the Commissioner of Major League Baseball and a former federal judge, to testify against Remus. When Remus practiced law in Chicago he engaged in legendary clashes with Judge Landis.

Remus did call Darrow to testify on his behalf and Darrow took the stand on December 8. Darrow testified that he had not seen Remus in 10 years but from what he remembered, Remus had a good reputation. He also said Remus was an emotional fellow and somewhat unstable. At one point Remus leapt to his feet and said, “Mr. Darrow, I thank you. The sage of the twentieth century—proud indeed, am I, that so great a humanitarian takes up his valuable time to come here to testify for me.”⁴⁵ Taft objected to Remus’ remarks and the judge sustained the objection so the remarks were stricken from the record. On December 27, after 19 minutes of deliberation, the jury found Remus not guilty on the sole ground of insanity.

The fact that the jury found Remus insane was certified to the probate court of Hamilton County, Ohio. On December 30, 1927, the probate court found that Remus was then insane, and ordered him committed to the Lima State Hospital for the insane to be “confined until such time when he shall be restored to reason, or until otherwise discharged by due process of law.”⁴⁶ On February 1, 1928, Remus filed an application in the Court of Appeals of Allen County for a writ of habeas corpus, alleging that he was unlawfully restrained of his liberty by detention in the Lima State Hospital. On March 30,

⁴⁵ WILLIAM A. COOK, KING OF THE BOOTLEGGERS: A BIOGRAPHY OF GEORGE REMUS 155-56 (2008).

⁴⁶ *Ex parte* Remus, 162 N.E. 740 (Ohio 1928).

1928 the Court of Appeals found that Remus was not insane, and ordered his discharge from the Lima State Hospital. In June the Supreme Court of Ohio affirmed this decision.⁴⁷ During his murder trial Remus was also found guilty of contempt of court for “unseemly and boisterous conduct in open court” but this was later dismissed.⁴⁸

Some sources speculate that Remus was the inspiration for Jay Gatsby, the title character in F. Scott Fitzgerald’s *The Great Gatsby*.

1928

State v. Winters

In May of 1927 Darrow went to Dartmouth College in Hanover, New Hampshire to deliver a lecture against capital punishment. At some point while he was at Dartmouth an elderly cleaning lady at the school showed him a letter that had been given to her 23 years earlier by Darrow’s son Paul when he was a student at Dartmouth. One day in June of 1904 Paul had been riding in a horse-drawn carriage near Hanover when the horse became frightened by the sound of a train and bolted, killing a four-year old child.⁴⁹ Paul Darrow gave the letter to the child’s mother, telling her that if any member of the Darrow family could help in the future she should show the note. The mother who had lost her son in 1904 now told Clarence Darrow that her nephew, John Winters, had been convicted of first degree murder and sentenced to the electric chair in Vermont. Darrow, who was unaware of the accident or his son Paul’s promise, agreed to help on Winters’ appeal. Winters had been convicted of murdering 40-year-old Cecelia S. Gullivan, a resident of Windsor, Vermont. Gullivan was found bludgeoned to death on November 8, 1926.

In a letter dated June 5, 1927 Darrow wrote to his son Paul:

When I was down to Dartmouth, one of the boys came to me and told me the lady wanted to see me and told me what it was all about. I told the boy that she must be crazy that no such thing could have happened, but I told him to bring her to me. She came and showed me your letter (it was a very nice letter) she said that you were in no way to blame[.] She told me that her nephew had been convicted and given a death sentence in an adjoining county and I had her telephone the lawyer who came over to see me. It is very doubtful if any thing can be done. But it is pending on appeal and as soon as the lawyer has the record perfected he is to send it to me and I will see what I can do with an argument in the supreme court. If they are beaten I will go with them to the Governor. She said that they could raise a little money, And I told her I didn’t want any[.] Of course I will do all I can for her. It is a matter that will not take much time or energy. I am sorry that this has bothered you all these years. Of course there was nothing you could have done to prevent it[.]

⁴⁷ *Id.*

⁴⁸ *State v. Remus*, 27 Ohio N.P. (n.s.) 156 (Ohio C. P. 1928).

⁴⁹ There are several different accounts of the accident. One account says that Paul was riding a horse that became uncontrollable and killed a five-year-old child.

In January of 1928 Darrow and co-counsel appealed the case to the Vermont Supreme Court. One of the points Darrow argued was that the trial court had erroneously excluded testimony from the defendant that he might have gotten blood on his pants after he cut his finger prior to the murder. The court had not rendered a decision by the following January when President Calvin Coolidge appointed one of the Vermont Supreme Court justices to a federal court. The Vermont legislature then appointed a new justice and Darrow went back to Vermont in March of 1929 to argue the blood evidence issue before the new justice. About a week later the court rendered its decision, upholding the trial court's decisions except for the exclusion of the defense's explanation of how blood stains could have gotten on the defendant's clothing prior to the homicide. Because the blood evidence was erroneously excluded, the court set the verdict aside and granted a new trial.⁵⁰

Darrow did not participate in Winters' second murder trial. Some sources say that Winters was again convicted and sentenced to life in prison instead of death. Another source states that he pled guilty to second degree murder and received a life sentence. Winters was paroled in 1949 because he had tuberculosis.⁵¹

James Munsene Trials

Darrow returned to Ohio to practice law in his home county of Ashtabula one more time before he retired. He came to the defense of James Munsene⁵² who was charged with attempting to bribe Sheriff J.H. Smith of Trumbull County. Facts for the following description of the Munsene trials are from a 2007 thesis by Jonathan A. Kinser.⁵³

Sheriff Smith alleged that Munsene approached him about opening a gambling establishment in Warren, Ohio. When Smith said he would raid it, Munsene inquired what would happen if the sheriff received \$500. A day or two later the sheriff's wife received an envelope from a man she later identified as Munsene who asked her to give it to the sheriff. In the envelope was \$500 and a note informing the Sheriff he would receive that much or more every month. Sheriff Smith arrested Munsene and he was charged with bribery.

Munsene was convicted twice but he successfully appealed both convictions. He hired Darrow to defend him in the third trial. Several other high profile local attorneys assisted Darrow. The trial began on May 6.

Taking a break from the trial on the evening of May 8, Darrow spoke at the Kiwanis club in Ashtabula. He told the estimated 500 club members in attendance and their wives that

⁵⁰ State v. Winters, 145 A. 413 (Vt. 1929).

⁵¹ JOHN STARK BELLAMY II, VINTAGE VERMONT VILLAINIES: TRUE TALES OF MURDER & MYSTERY FROM THE 19TH AND 20TH CENTURIES 129 (2007).

⁵² There is some discrepancy concerning Munsene's name. Court documents refer to him as James Mancini.

⁵³ Jonathan A. Kinser, The Racketeer and the Reformer: How James Munsene Used Clarence Darrow to Become the Bootleg King of Warren, Ohio (Aug. 2007) (unpublished M.A. thesis, Youngstown State University), available at http://etd.ohiolink.edu/view.cgi?acc_num=ysu1198268853.

he moved to Chicago after getting turned down when he tried to buy a house in Ashtabula many years ago.

Darrow raised intrigue during the trial when he cross-examined Sheriff Smith and an attorney the sheriff knew about an unnamed organization they allegedly belonged to. Darrow did not name the organization, but the newspapers later revealed that the organization was the Ku Klux Klan. The defense raised this as an issue because Munsene was born in Italy in 1899 and this allowed the defense to insinuate that ethnic intimidation was behind the prosecution. Darrow gave the closing argument for the defense.

The trial ended in a hung jury on May 12 and was set for retrial the following month. Darrow again helped defend Munsene in his fourth trial which began on May 20, 1929. An interesting dynamic in Munsene's fourth trial was tension between the new prosecutor, George H. Birrell, and Clarence Darrow because of a murder case in 1907. On June 18, 1907 in Kinsman, Ohio, where Darrow grew up, 37-year-old Alfred S. Kinsman shot and killed George W. Birrell in a hardware store. The victim, a wealthy and prominent banker and businessman, was the father of the prosecutor Darrow was now facing in the fourth Munsene trial. Kinsman had been disinherited under his father's will but other family members provided a fund to support him that was administered by the elder Birrell as the trustee. Kinsman accused Birrell of mismanagement. The murder and subsequent trial was the biggest news in the small town of Kinsman for several reasons. The victim was a prominent citizen, and the Kinsman family was one of the oldest and most prominent in that part of Ohio. Moreover, the defendant's brother was an Ohio state senator.

Darrow and the defendant Alfred Kinsman were classmates and had stayed friends over the years. Kinsman's family tried to hire Darrow to defend Kinsman during his murder trial. Darrow was in Idaho at the time defending George Pettibone who was facing murder charges for the assassination of former governor Frank Steunenberg. Darrow wanted to participate in Kinsman's defense but he became very ill during the Pettibone trial and had to withdraw to seek medical treatment. Kinsman went on trial without Darrow and was found insane; he spent the rest of his life in an insane asylum. George Birrell never forgave Darrow for attempting to help his father's murderer.

During this fourth trial, Darrow used a legal tactic he had used before to upset the prosecution. After the prosecution gave half of its closing argument and gave the defense its turn, Darrow announced that the defense would forgo its closing argument. Darrow then asked that the jury be brought in and given deliberation instructions. The judge agreed to do so, which prevented the prosecution from completing its closing arguments. The jury deliberated for 10 hours before announcing that they were deadlocked.

The prosecution decided to try Munsene in a fifth trial which was scheduled to begin on October 28, 1929. But the defense filed a continuance because Darrow was in Europe. The stock market in the United States began to crash on October 24 and worsened on October 28th and on "Black Tuesday", October 29. The stock market crash, along with the

government's realization of how much the previous trials had cost, eventually led the prosecution to agree to a plea bargain with the defense. Munsene agreed to plead guilty and be sentenced to a year of probation and pay a fine.

Kinser, in his 2007 thesis about the case, argues "Darrow's defense of James Munsene unintentionally launched the young businessman-racketeer's career to unparalleled heights and firmly established him as the 'Bootleg King of Warren,' and allowed for the expansion of his criminal operations."⁵⁴ This eventually led to the town's domination by organized crime for decades. James Munsene and his nephew, who was also a business partner, were murdered in their own restaurant on the evening of March 24, 1941. The men were shot multiple times in front of witnesses in what was most likely a planned hit by the Cleveland mob. Two men were eventually arrested but only one was tried and convicted of the murders.⁵⁵

1929

Darrow played an unusual and unintended role in a murder case in Iowa. A defendant named Frank Bittner and another defendant were charged with murder for hiring a "professional gunman" to kill another man. The defendants and the victim were described as "professional gamblers and bootleggers." While Bittner was in the county jail, Darrow traveled to Fort Dodge, Iowa on business. Bittner's mother learned that Darrow was coming to Iowa and asked him to talk to her son. Darrow did go to the jail to speak with Bittner and their conversation was overheard by a deputy. Later Bittner was convicted of murder in the first degree and sentenced to life in prison. He appealed, and one of his points on appeal was that the conversation he had with Clarence Darrow while in jail was confidential. The Supreme Court of Iowa ruled against this argument:

It happened that at the time the defendant, Bittner, was in the care and keeping of the sheriff at the Webster county jail, Clarence Darrow of Chicago was in the city of Ft. Dodge attending to some legal business. The defendant's mother, learning of the presence of Darrow, solicited him to interview her son (defendant Bittner). Out of the kindness of his heart, and probably due to his intense interest in the welfare of accused persons, he met the request and did visit the defendant at the jail. The conversation was overheard by the son of the sheriff, who was then and there acting as a deputy. Darrow is quoted as making the following statement to Bittner: "Well, I promised your mother that I would get over here and talk to you, but I am very tired. I have been very busy all day and it is late, but I have just dropped in to give you a little encouragement, if I can, and suggest that you get an attorney and fight to the last ditch." The only question presented on this proposition is whether a confidential relation existed between Darrow and Bittner, and therefore what was said became a confidential communication. There is no basis in the record for such a claim. Darrow was not Bittner's attorney, and it is

⁵⁴ *Id.* at 79.

⁵⁵ *State v. Viola*, 82 N.E.2d 306 (Ohio Ct. App. 1947).

obvious that he visited the defendant in a friendly way and on account of the request made by the mother.⁵⁶

1930

Lila Jimerson

Darrow was nearly drawn into another sensational murder case in 1930. On March 7, 1930 the 12-year-old son of Henri and Clothilde Marchand returned home from school to find his mother dead at the foot of the stairs. There were signs of a struggle and the victim had a wad of paper soaked in chloroform shoved down her throat. Henri Marchand was a talented French sculptor who studied under Rodin. He did work for the Buffalo Natural History Museum, and as part of his work, Marchand traveled to Indian reservations to make sculptures of Indian life.

A neighbor reported seeing two Indian women walking up and down the block and pausing before the Marchand house. After interviewing Henri, suspicion fell on a 36 year old Cayuga Indian woman named Lila Jimerson. Jimerson was arrested a few hours later and she quickly implicated Nancy Bowen, an elderly Cayuga traditional healer, who was also arrested. Both women confessed within a few hours. Jimerson was indicted for first degree murder on March 10, 1930.

Marchand had known Jimerson for several years through his sculpting work about Indian life for the museum. Jimerson had posed partially nude for Marchand's Iroquois village scenes. It would soon be revealed that Marchand had been having an affair with Jimerson.

The case was widely followed and the press dubbed Jimerson the "Red Lilac of the Cayugas." During the trial Henri Marchand admitted that he had an affair with Jimerson but he said it was only a "professional necessity" to induce her to pose as a model. On April 1, 1930 during her trial, Jimerson, who had a history of pulmonary tuberculosis, either became ill or feigned illness.⁵⁷ The court declared a mistrial due to her ill health. While she was in the hospital she withdrew her not guilty plea and pled guilty to second degree murder. She faced a sentence of 20 years to life. On April 22 it was announced that Jimerson was going to withdraw her guilty plea; but this meant she would have to stand trial a second time for first degree murder.

Because Jimerson lived on the reservation of the Seneca Indian Nation, representatives from that nation asked Clarence Darrow to aid in her defense. Darrow conferred with Jimerson's attorneys on April 29 in Buffalo. After the meeting Darrow issued a formal statement that he would not be participating in the defense. Darrow explained that it was a serious responsibility for a lawyer to imperil a client's life in the hopes of getting a better verdict.

⁵⁶ State v. Bittner, 227 N.W. 601 (Iowa 1929).

⁵⁷ People *ex rel.* Jimerson v. Freiberg, 243 N.Y.S. 590 (N.Y. Sup. Ct. 1930).

During the second trial Nancy Bowen, who admitted to murdering Mrs. Marchand, testified for the prosecution. She related a tale that involved pagan beliefs in witchcraft and she claimed that Jimerson urged her to kill the “white witch” Mrs. Marchand. On February 28, 1931 Jimerson was found not guilty. Jimerson later tried unsuccessfully to get compensation for the cost of handwriting experts she hired.⁵⁸ Bowen, who had been sentenced to one to ten years, was freed on March 13, 1931 because she had already served the minimum time period.

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

1931

Prohibition Raid

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

D. C. Stephenson

In all of the historical or contemporary accounts of Darrow’s legal career there is hardly any mention of one of Darrow’s most notorious clients: David Curtiss “D. C.” Stephenson (1891 – 1966), former Grand Dragon of the Indiana Ku Klux Klan and 22 other northern states. As leader of the Klan, Stephenson had become very politically and financially powerful. On the evening of March 15, 1925 in Indianapolis, Stephenson had some of his henchmen kidnap Madge Oberholtzer, a 28 year-old schoolteacher, whom Stephenson had occasionally dated during the preceding two months.⁵⁹ Oberholtzer was made to drink whiskey and forced onto a train to Chicago, where in a private train car she was brutally raped and bitten all over her body by a drunk and demented Stephenson. She was held captive in a hotel for nearly two days during which time she attempted suicide twice, once with a gun and once by ingesting bichloride of mercury. When Oberholtzer became very ill her kidnapers decided to drive her back to Indianapolis. At one point Oberholtzer threatened Stephenson with arrest, at which he allegedly laughed and told her, “I am the law.” Oberholtzer was eventually taken to her home and she sought medical attention. But her condition worsened and on March 28 she described the crime she suffered at the hands of Stephenson. She died on April 14 from infection and kidney failure due to mercury poisoning.

⁵⁸ People v. Jimerson, 250 N.Y.S. 475 (N.Y. Sup. Ct. 1931).

⁵⁹ Prior to the crime she was employed by the state as the manager of the Young People's Reading Circle.

Stephenson was arrested, tried and on November 16, 1925 he was convicted of murder in the second degree and sentenced to life imprisonment for the death of Madge Oberholtzer. The kidnapping and murder of Oberholtzer was so shocking it helped end the rise of the KKK in Indiana.

Stephenson and Darrow corresponded by letter between 1928 and 1931 while Stephenson was incarcerated at the Indiana State Prison in Michigan City, Indiana. Stephenson wrote to ask Darrow to work on his appeal. It was reported that on July 7, 1931 Darrow had joined Stephenson's defense.⁶⁰ The news story noted that Darrow's appearance before the Indiana Supreme Court was prevented when the attorneys agreed to file written briefs instead of making oral arguments. In January of 1932 the Supreme Court of Indiana affirmed Stephenson's murder conviction.⁶¹

Stephenson was paroled on March 23, 1950, but violated parole by disappearing around September of that year. Stephenson moved to Robbinsdale, Minnesota where he was arrested on November 11, 1950. He was held in the Hennepin County jail for about a year while he fought extradition to Indiana. The Supreme Court of Minnesota ruled against Stephenson in November of 1951 and he was sent back to Indiana.⁶² In 1951 he was sentenced to serve another 10 years in prison. On December 21, 1956, Stephenson was given a Christmas clemency, along with dozens of other prisoners, but this was conditioned on his leaving Indiana and never returning. In 1961 he was arrested on charges of sexually assaulting a 16-year-old girl in Missouri. Some sources state the charges were dropped, other sources state he was fined and still others state that he was sent to prison but was paroled in November of 1961.

1932

Scottsboro Case

One of the most notorious cases involving racial prejudice in the history of the United States was the legal travesty inflicted on the "Scottsboro boys," the name given to nine young black men accused of raping two white women on a freight train in Alabama on March 25, 1931. While in jail, the defendants were nearly lynched by an angry crowd. They were indicted for rape and went on trial just 12 days after being arrested. All but one defendant was convicted and sentenced to death. The trial of one defendant, who was only age 12 or 13 when arrested, ended in a mistrial because some jurors held out for the death sentence despite the prosecution's request for life imprisonment due to the defendant's age.

It soon became apparent to many observers, largely in the North, that the rape victims were lying and the prosecution was based on the defendants' race. The convictions would be appealed and the legal odyssey would drag on for years. The NAACP was reluctant to get involved at first because the charge of raping white women was so explosive that if the charges were true, it would damage the NAACP's standing among whites.

⁶⁰ *Darrow Joins Staff of Lawyers to Fight to Free Stephenson*, CHI. DAILY TRIB., July 8, 1931, at 13.

⁶¹ *Stephenson v. State*, 179 N.E. 633 (Ind. 1932).

⁶² *State ex rel. Stephenson v. Ryan*, 50 N.W.2d 259 (Minn. 1951).

Eventually, the NAACP decided to help the defendants, but this created a battle between the NAACP and the International Labor Defense (ILD) for the right to represent the Scottsboro defendants. The ILD was the legal arm of the Communist Party of the United States of America.

Clarence Darrow and the Scottsboro Defendants

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

Darrow and Hays met with several lawyers representing the ILD about the case. The ILD informed them that they would be glad to have them work on the case but only if Darrow and Hays repudiated the NAACP and left the trial tactics up to the ILD. Darrow and Hays proposed that all lawyers sign a memorandum which in effect stated that they represented the defendants and not any organization because eight lives were at stake. The ILD lawyers refused to sign the statement. Darrow and Hays could not remain in the case with the ILD's conditions, so they withdrew. They knew the ILD wanted to turn the case into a political trial and they could not forsake the NAACP. Darrow said that "you can't mix politics with law" and the case had to be won in Alabama and "not in Russia or New York."

According to one of his biographers, the Scottsboro defense was the only case Darrow withdrew from in his career. The NAACP withdrew from the case in January of 1932. The Scottsboro case would result in numerous reversals, retrials and convictions and the case would eventually be argued before the United States Supreme Court several times.⁶³ Although none of the defendants were executed, they spent many years in prison and it was not until 1950 that the last defendant was paroled. In October of 1976 one of the defendants was pardoned by Alabama Governor George Wallace.

1934

Luke Lea

Luke Lea was a United States Senator from Tennessee and the founder of the *Nashville Tennessean* and its first editor and publisher. During the 1920s, he became a major stockholder in numerous banks, all of which failed during the Great Depression. Lea and several others, including his son, were charged with conspiracy to commit bank fraud. They stood trial and were convicted on several counts in August of 1931. Luke Lea was sentenced to 6-10 years in prison.

⁶³ Powell v. Alabama, 287 U.S. 45 (1932).

Lea was allowed out on bond to travel to his home in Nashville, but when his appeal was unsuccessful he did not return to North Carolina. Instead, he traveled about Tennessee searching for a judge who would grant a writ of habeas corpus. He was denied relief by a judge in Montgomery County and the Supreme Court of Tennessee affirmed the denial, holding that North Carolina could extradite him as a fugitive from justice.⁶⁴

Clarence Darrow, Arthur Garfield Hays and several co-counsel petitioned for a Writ of Certiorari to the U.S. Supreme Court on Lea's behalf which was denied on April 30, 1934.⁶⁵ Ten days later Luke Lea and his son reported for imprisonment at Raleigh, North Carolina. Luke Lea was paroled in April of 1936, and pardoned on June 15, 1937. Luke Lea maintained for the rest of his life that he and his son were wrongly prosecuted. He believed they were scapegoats for the bank collapse and the prosecution was politically motivated.

Anna Antonio

In July of 1934, Darrow publicly called for New York Governor Herbert Lehman to grant clemency to a 28-year-old woman named Anna Antonio who was facing execution for having her husband murdered on Easter Sunday of 1932. She was accused of having her husband killed for life insurance money, but some accounts describe Antonio as a battered wife who simply wanted him killed to avoid more abuse. Her execution had been delayed numerous times and Darrow's involvement garnered more support for Antonio. Despite the numerous pleas on her behalf, Antonio was executed in an electric chair at Sing Sing prison on August 9, 1934. The execution was presided over by Lewis Lawes, the warden of Sing Sing. Lawes was a noted prison reformer and opponent of the death penalty. Lawes was a good friend of Clarence Darrow and in 1925 Darrow, Lawes and others had formed the American League to Abolish Capital Punishment.

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

⁶⁵ Tennessee *ex rel.* Lea v. Brown, 292 U.S. 638 (1934).