

# INTRODUCTION

In 1928, H. L. Mencken published an essay in the *American Mercury* in which he asked, “How many American lawyers are remembered, *as lawyers?*”<sup>1</sup> Thinking only of dead lawyers, Mencken offered three nominees: John Marshall, Daniel Webster, and Joseph Choate. In 1928, these three might have been the only suitable candidates. But anyone answering the same question today would have to include Clarence Darrow on the list (and remove Choate). Darrow, who died in 1938, is the most celebrated lawyer in American history, and he will likely remain so for a long time.

The number of books and other writings about Darrow or about the cases in which he was involved is considerable, and steadily increasing. Many adult and juvenile biographies have been written about him; the adult biographies began appearing several years before he died. Dissertations and other academic studies have also been written about him, his cases, and his writings. Most of Darrow’s own books and many of his speeches and other writings have been reprinted several times, and many are anthologized or otherwise in print today—more than seventy years after his death. Many fictional characters and plots have been based on Darrow or his cases, and Darrow has often been portrayed onstage and on television and in movies (which have played no small part in making him such a celebrated lawyer)—by Spencer Tracy, Orson Welles, Henry Fonda, Jack Lemmon, Christopher Plummer, and Kevin Spacey, among others.

1. H. L. Mencken, “Stewards of Nonsense,” *American Mercury*, January 1928, 35–37 (reprinted in H. L. Mencken, *A Second Mencken Chrestomathy*, ed. Terry Teachout [New York: Knopf, 1995], 85–88).

Of course, many lawyers in American history have achieved some degree of fame or attention from the practice of law. In 1907, William Draper Lewis edited an eight-volume set of books titled *Great American Lawyers*, which included essays on ninety-six people. Lewis's goal was to include profiles of all the lawyers and judges who had "acquired [a] permanent national reputation"—"those names with whom educated lawyers and laymen everywhere are alike familiar."<sup>2</sup> With the exception of Daniel Webster, not one of the lawyers profiled in Lewis's eight-volume set has proved to have a permanent reputation as a lawyer.

Both the *Dictionary of American Biography* and the *American National Biography* list hundreds of names under "lawyer" in their occupation indexes. Yet if you exclude from those lists the lawyers who became famous or notable as judges or for reasons other than the practice of law, the remaining names are probably unfamiliar to most Americans. Every major library in the United States has a substantial number of autobiographies and biographies of American lawyers. But how many people today remember the careers, the cases, or even the names of Emory Buckner, Samuel S. Leibowitz, George F. Vanderveer, or William Travers Jerome? Each of those lawyers—excellent lawyers, by all accounts—had cases and careers that a publisher thought warranted a book-length biography. But today they are hardly remembered. William Kunstler, Melvin Belli, and Johnnie Cochran might be names that are better known today, but they have not been dead long enough to stand the test of time (nor do they appear likely to stand the test).

Like many lawyers, Darrow sought attention and fame. In his autobiography, he quipped that in the first half of his life he was "anxious to get into the papers" and in the last half he was "often . . . eager to keep out."<sup>3</sup> Whether he actually made much effort to stay out in the last half is doubtful. Still, no lawyer in American history has found fame on the same level and for such a sustained period of time as Darrow. Oddly, though, whatever place he holds in the history of American law, Darrow would probably maintain that his standing is not much of an accomplishment. Unlike many lawyers (and judges), Darrow did not worship "the law," and he generally did not see the practice of law as an esteemed profession—especially in the latter part of his life (by which time he seems to have held very few institutions or professions in high esteem). He acknowledged that a person in his line of work could do some good for people in need, but he thought this happened far too infrequently.<sup>4</sup>

So why is it that so few lawyers hold any memorable place in American history? More to the point, how is it that Darrow—who professed to care so little for the law or the legal profession—survived the usual wash of time? Mencken argued that most lawyers are quickly forgotten because they waste their "intellectual steam" on "causes and enterprises that live and perish with a day" and that in fact have "no genuine existence at all." He further claimed that most lawyers are forgotten because they "stand on all fours with theologians, and stand in the same shadows"—that is, they make no aim at truth but

2. *Great American Lawyers*, ed. William Draper Lewis (Philadelphia: John C. Winston Co., 1907), i:iv–v.

3. *Story*, 45.

4. See, e.g., Darrow to William Essling, 15 January 1934.

simply “carry on combats under ancient and archaic rules.”<sup>5</sup> Mencken was probably right, at least in part, and his statements help explain how Darrow found a spot in history. Darrow was nothing if not an iconoclast, and many of his causes and enterprises—like his lifelong opposition to the death penalty—have not perished yet. But more would be needed (much more than this introduction can supply) to explain how Darrow came to hold such an exalted position among lawyers in American history. Some insight, though, can be gleaned from his letters.

E. B. White once said that “[a] man who publishes his letters becomes a nudist—nothing shields him from the world’s gaze except his bare skin.”<sup>6</sup> Darrow’s letters may not offer such an unobstructed view of him; after all, they are only fragmentary evidence of his life. Also, the amount of his extant correspondence is not as complete as one might hope. Very little of Darrow’s professional correspondence, for example, has surfaced; so the cases on which Darrow worked and his interactions with clients and other lawyers are not well documented. Although no one knows for sure, Darrow was probably not a daily writer of personal letters—at least not on the scale of, say, Mencken, Oliver Wendell Holmes Jr., or Theodore Roosevelt. And he was also not as revealing in his letters as one might hope or expect, especially during the difficult times in his life (although no one knows, of course, what he said in letters that are missing). The surviving letters of Clarence Darrow show him if not nude, then in his skivvies.

Many of his letters are candid and emotional. With the exception of those that he submitted for publication (in newspapers or magazines), there is no reason to believe that Darrow ever planned to have any of his letters published, and—although he surely wrote some of them with the intention of impressing his reader in some way—he probably did not write very many of them, if any, with an eye to posterity. As Darrow once told his friend Fremont Older, “I have little desire for immortality, either personal or in the way of remembrance in the future. The logical thing, and to me the inevitable thing, is to be annihilated by the process of decay, and why should I be interested even in the memory of my life remaining.”<sup>7</sup> (This from someone who wrote a novel about his childhood *and* an autobiography.) Many of Darrow’s letters were hastily written, in what could sometimes be atrocious handwriting, poorly punctuated, without even a full date on them. But this is not to say that the picture of Darrow that emerges from his unvarnished letters is a particularly embarrassing one; a reader of Darrow’s letters should see many of his good qualities. But this is also not to say that every feature of character or detail of life revealed by his letters is admirable. As with most people standing in their skivvies, not everything is pretty.

5. Mencken, “Stewards of Nonsense,” 36.

6. E. B. White to Corona Machemer, 11 June 1975, in *Letters of E. B. White*, ed. Dorothy Lobrano Guth (New York: Harper & Row, 1976), 655.

7. Darrow to Fremont Older, 22 February 1925.

Many aspects of Darrow's personality—his interests and ambitions, his philosophy of life and usual everyday mood, his politics and the events of his day, and his relationships with his family and friends—are revealed to varying degrees in his letters. But one aspect of his personality and attitude toward life stands out among everything else: his pessimism. Especially by the time he was an older man, Darrow believed strongly that life was purposeless and random. In a speech that he gave in Chicago in 1920, under the arrangement of something called the Rationalist Educational Society, Darrow defined his pessimism as accepting life for what it is, without any false hopes, and tempering his happiness with the knowledge that unhappiness will come soon enough:

The pessimist takes life as he finds it, without the glamor that false creeds and false teachers and foolish people have thrown about it. He knows he must meet this thing day after day, year after year. He knows that it is not good. He knows that it is not entirely bad. He knows it is life. And he adjusts life to meet those conditions. He does not live in the clouds. He does not live with the thought that he will be happy in another world. He lives it from day to day in the knowledge of what it means, and, as a rule, he is a better man and a kindlier man than the optimist.<sup>8</sup>

In his letters, Darrow often expressed his pessimistic view of life ironically or playfully, but his expressions seemed to grow darker as he grew older. In fact, Darrow expressed such a bleak view of life at times that it must have startled (or bemused) his friends when they received his letters.

In a letter to Brand Whitlock in 1910, when Whitlock was ruminating about his job as mayor of Toledo, Ohio, and considering what he would do after holding office, Darrow gave Whitlock no confidence that his political service would have any lasting positive effects: "You will accomplish nothing and it is not possible to accomplish any thing. The people are not ready and after you are done they will return to their vomit; the only thing worth while is to develop your own individuality and leave something that will do a little to liberalize the few who knew and cared because you lived."<sup>9</sup> In 1916, when Darrow heard that a mutual friend had died, he wrote to the poet and lawyer Charles Erskine Scott Wood: "I am glad he is dead & still I will be glad when you are dead and any one else that I love except perhaps my boy."<sup>10</sup> Two years later, he wrote a birthday greeting to Wood that had to be one of the least hope-filled greetings that Wood received on any birthday: "I can not tell you that you will live to be ninety or a hundred for you will not. [He lived to be ninety-two, dying six years after Darrow.] All of us as we grow older think

8. Clarence Darrow, *Pessimism: A Lecture* (Chicago: J.F. Higgins, 1920), 19 (reprinted in *Clarence Darrow: Verdicts out of Court*, ed. Arthur Weinberg and Lila Weinberg [Chicago: Quadrangle Books, 1963; repr., Chicago: Elephant Paperbacks, 1989], 293).

9. Darrow to Brand Whitlock, 17 December 1910.

10. Darrow to Charles Erskine Scott Wood, 6 October 1916.

gravely of the end, and I am quite sure you are like the rest. I am sorry that you are so far along the road though but a step in advance of me. My consolation at death is that I will miss nothing.”<sup>11</sup> He wrote in a similar vein to his friend Fremont Older, the journalist and newspaper editor, on Christmas day in 1920: “I gave no presents to any one and wished no one a Merry Christmas. This is one kind of bunk I cut out long ago. I am as fast as possible cutting out all bunk, so if I live a few years longer (as I fear I shall) there will be nothing left in life.”<sup>12</sup>

From the earliest date, almost all of his letters to the journalist Mary Field Parton contain some expression of pessimism: “The future will justify us all, but we won’t be here.”<sup>13</sup> “I did not say to Older that I was not going to Cal. or that I was happy, but he probably inferred both. I will never be happy, no more will you.”<sup>14</sup> “No one is happy who is built like you & me.”<sup>15</sup> Darrow would sometimes say that his pessimism sprang from the fact that he knew too much—that “weak-minded people” who take “dope” in some form (e.g., religion, political causes) were the only ones who could be happy. He wrote to a woman who had sent him a copy of her self-published book, explaining to her that fools are generally happier than thinkers: “I am also convinced that the book is not true in another regard. It assumes that intelligence and reason tend to happiness. I am satisfied that they do not. The intelligent person is less happy than the fool.”<sup>16</sup>

Darrow also sometimes alluded to his work in the law as contributing to his bleak outlook on life. At the age of sixty-three, he told Parton, in a letter in October 1919, that he was “still working like the devil” to keep people out of the “clutches of the law.”<sup>17</sup> But a month later, on Thanksgiving Day, he painted such a dreary picture of his law office to Parton that it sounded as though he, too, in his own way, was trapped in the law’s clutches:

I, like you, find nothing new from day to day. My office is filled all the time mainly by poor clients in trouble, people who have got money against the rules of the game & are trying to stay out of jail, people in all sorts of troubles: their wives crying & begging me to help as if I could do any thing if I only tried: how I wish I could but I can’t. Lord what an awful mad house the world is, and it is Thanksgiving day and all the damn fools in the world are giving thanks that they are alive. Well I am not.<sup>18</sup>

But Darrow’s pessimism was not something that always weighed him down or that even discouraged him. In another letter to Parton, he told her that he liked it when she wrote pessimistic letters to him—that he “thrive[d] on pessimism” and that “[n]o one but

11. Darrow to Charles Erskine Scott Wood, 15 February 1918.

12. Darrow to Fremont Older, 25 December 1920.

13. Darrow to Mary Field, 29 November 1912.

14. Darrow to Mary Field Parton, 31 March [1914?], ALS, ICN, Parton-Darrow Papers, Box 1, Folder 4.

15. Darrow to Mary Field Parton, 4 March 1915.

16. Darrow to Anna Scherff Tzitlonok, 23 September 1921.

17. Darrow to Mary Field Parton, 16 October 1919.

18. Darrow to Mary Field Parton, 25 November 1920.

idiots & dope fiends are optimists.”<sup>19</sup> To Parton’s sister, Sara Field, whose son had died when a car she was driving rolled off a cliff, he said that “death is better than life” and that for him pessimism was consoling: “In the dark things that come to me, I find that pessimism is the most consoling. Life is nothing but a foolishness, a burden, and a tragedy. Death is peace—it is nothing.”<sup>20</sup>

Darrow left some people wondering about the sincerity of his pessimism. Two lawyers who worked closely with him for many years—Peter Sissman and Victor Yarros—considered Darrow’s pessimism to be a bit of an act. Yarros wrote that Darrow “loved to pose as a pessimist and a cynic, but he was neither.”<sup>21</sup> Peter Sissman, according to Yarros, used to say that Darrow was only a pessimist because he loved life deeply and hated the fact of death: “If Darrow was a cynic, the Hebrew prophets were cynics. He expected little from the average man, and was charitable toward all.”<sup>22</sup> The writer Hamlin Garland—whose experiences with Darrow would have been more limited than Sissman and Yarros’s—considered the possibility that Darrow’s pessimism was simply part of an image that he had cultivated for himself. But Garland concluded, in one of his diary entries, that Darrow’s views, for the most part, were genuine:

Clarence Darrow and his wife came over to supper and we had a great deal of talk. He is a big personality and a most interesting one, but bitter, bitter and essentially hopeless. I can not find that he has any ideals or convictions left. His deep voice booms along on a minor note, a plaintive note, as though life were a mere mechanical going on for him. Part of this might be pose but much of it is, I fear, the truth. What he gets out of life while travelling in this mood I can not understand. His philosophy is essentially destructive, and yet there is something admirable about his honesty of statement.<sup>23</sup>

Eugene Debs did not doubt the sincerity of Darrow’s philosophy; he considered Darrow to be “one of the most pessimistic men” he had ever known: “He has few beliefs in the feasibility of movements for human betterment, and but slight faith in the ability of mankind to rise above animal stature. He is skeptical of nearly every social philosophy. He does not think that man is capable of rising much beyond his present mental and spiritual demonstration.”<sup>24</sup>

Darrow knew that some people said his “pessimism [was] just a pose.” He once dismissed this talk as coming from people who simply thought that he should know better than to hold such a dour view of life.<sup>25</sup> Darrow’s letters sometimes give the impression that he was putting on a show or that he was using his pessimism as a means to charm

19. Darrow to Mary Field Parton, 27 April 1916.

20. Darrow to Sara Bard Field, 16 November 1918.

21. Victor S. Yarros, *My 11 Years with Clarence Darrow* (Girard, KS: Haldeman-Julius, 1950), 9.

22. Ibid.

23. *Hamlin Garland’s Diaries*, ed. Donald Pizer (San Marino, CA: Huntington Library, 1968), 121–22.

24. David Karsner, *Talks with Debs in Terre Haute* (New York: The New York Call, 1922), 102.

25. Darrow, *Pessimism*, 14.

or otherwise impress his reader with his unusual views—especially in his letters to Mary Field Parton. Some people no doubt saw his pessimism as alluring. The writer Ben Hecht, in one of his columns for the *Chicago Daily News*, said that the opportunity of listening to Darrow's pessimism justified the price of admission to his public debates: "For years and years Mr. Darrow has been gently disproving the intelligence of man, the importance of life, and the necessity of thought. For years and years Mr. Darrow has been whimsically deflating the illusions in which man hides from the purposelessness of the cosmos. God, heaven, politics, philosophies, ambition, love—Mr. Darrow has deflated them time and again—charging from \$1 to \$2 a seat for the spectacle." Darrow's public debates, Hecht said, "have been always worth \$1, \$2 and even \$5—for various reasons. It is worth at least \$5 to observe at first hand what a cheering and invigorating effect Mr. Darrow's pessimism has had upon Mr. Darrow after these innumerable years."<sup>26</sup>

Darrow's pessimistic view of life, if broadly considered, was probably a substantial factor in his life as a lawyer, and might even be said to be one of the reasons for his success as a lawyer. His pessimism certainly colored his view of the legal system. He was not so naive as to think that the law consisted of neutral principles that could be applied equally to everyone; but he also did not see the system as always or as necessarily corrupt, as a true cynic might. His letters suggest that as a younger man, he believed in the law as a means for achieving justice. After meeting with the convicted Haymarket defendants in their jail cells in August 1887, he wrote to the *Ashtabula Democratic Standard*, rejecting the defendants' anarchistic beliefs, saying that he believed the "injustice of this world can only be remedied through law, and order and system."<sup>27</sup> But as he grew older and had more experiences with the law and courts (including the hanging of some of the Haymarket defendants later in 1887 and the injunction and contempt actions following from the Pullman strike in 1894), we see increasing instances of him scoffing at the very notion of justice and challenging the independence of the judiciary. He began to see the courts—as many socialists and radicals did—as part of a system that guarded the ruling class, and judges (who were chosen by that ruling class) as maintaining the status quo: "I do not believe and have never intimated," he wrote to the *Chicago Daily News* in 1900, "either publicly or privately, that judges were influenced by any corrupt consideration—it is simply a result of the environment from which they are chosen, and the tendency to tyranny that goes with arbitrary power."<sup>28</sup>

Pessimism and its close cousin determinism also figured heavily in some of Darrow's jury summations, presumably with some success. In his plea in 1924 to save Leopold and Loeb from the death penalty, Darrow argued his deterministic view of life repeatedly to the judge: "I know that every influence, conscious and unconscious, acts and reacts on

26. Ben Hecht, *A Thousand and One Afternoons in Chicago* (Chicago: Covici-McGee, 1922), 161.

27. Darrow to *Ashtabula (Ohio) Democratic Standard*, 24 August 1887.

28. Darrow to *Chicago Daily News*, 26 February 1900.

every living organism, and that no one can fix the blame. I know that all life is a series of infinite chances, which sometimes result one way and sometimes another.”<sup>29</sup> Darrow’s pessimism must have often provided a backdrop, too, against which he viewed his clients’ cases, especially clients who were charged with crimes. We have relatively few examples of the actual advice that Darrow gave to his clients. But whatever advice he gave and steps that he took to protect their interests were often likely fused with his own grim or realistic view of the matter and the workings of the legal system. He likely never gave his clients false hopes, especially as an older lawyer. In 1929, for example, after he helped obtain a new trial for John Winters, who had been convicted of murdering a woman in Vermont and sentenced to die, Darrow apparently urged his client to see his prospects in the next trial realistically—that he would be convicted again: “There is no doubt in my mind that John should plead guilty. There isn’t a chance that the jury will acquit him. To stand against it means death.”<sup>30</sup> (For whatever reasons, Winters did not plead guilty and he was convicted again, but not sentenced to death.)

Uncharacteristic, perhaps, for a pessimist, Darrow worked on reform efforts all his professional life, although apparently much more so when he was younger (and more optimistic). His reform work included efforts to improve the legal profession and to aid labor and criminal defendants. Some of that work is reflected in his letters, where he is sometimes shown undertaking the work less than wholeheartedly. He seemed to believe that if matters could be improved at all, it could only be done incrementally. Darrow’s letters to Vivian Pierce are an example. In 1925, Pierce started what became known as the American League to Abolish Capital Punishment. She convinced Darrow to serve as president of the league and as a member of its board of directors. Over the course of his tenure as president, Pierce sometimes pleaded with Darrow to get more involved with the organization—to give speeches and participate in the league’s efforts to convince state legislatures to either abolish the death penalty or refrain from enacting laws allowing it. Once, in 1931, after Darrow had twice missed board meetings for the league (much to Pierce’s frustration), Darrow confessed that he had done nothing recently to try to prevent the Kansas legislature from passing a bill to restore capital punishment in that state: “I did not wire the Kansas legislature. I knew none of the members and I felt that it would do more harm than good. They would have felt it another reason to pass the bill. I get sick and discouraged at the cruelty of man, and often wonder if I should not stop, but I have been at it so long that I can’t stop.”<sup>31</sup>

In his day, Darrow was roundly criticized by some people on the left for charging money—some would simply say, too much money—for his legal talents, and for representing what

29. *The Plea of Clarence Darrow, August 22, 23, and 25, 1924, in Defense of Richard Loeb and Nathan Leopold, Jr., on Trial for Murder* (Chicago: R. F. Seymour, 1924), 83.

30. Darrow to Fred Bicknell, March 1929 or later.

31. Darrow to Vivian Pierce, 8 February 1931.



they perceived as the wrong type of clients. This criticism of Darrow, which continues today, is reflected in an undated typewritten letter that Darrow might have sent to an unknown “Miss S” in 1895.<sup>32</sup> That letter—which appears to be no more than a transcript or draft of something that might have been sent to Miss S—related to two ordinances that the Chicago City Council passed in February 1895 granting utilities-franchise rights to an electric company and a gas company. Many believed that the ordinances were obtained by graft, and a public uproar that followed passage of the ordinances received a great deal of attention in the press. Darrow—who was in private practice at the time and had left his job as a lawyer for the city eighteen months earlier—was hired by the electric company to help obtain some favorable amendments so the mayor would approve the ordinance relating to the electric company. Darrow also defended the electric company against a citizens’ lawsuit seeking to enjoin the company from operating its franchise. Miss S wrote to him sometime shortly after learning that he was representing the utility company. She criticized him in some manner for acting as a lawyer for the company and told him that her opinion of him had now changed, and that many of his other friends shared her feelings.

Darrow wrote back to Miss S (or may have written back to her)—in a rambling, not-very-tightly reasoned letter—with no apologies for what he was doing, although he did acknowledge that he was “very sensitive to public opinion, even the opinion of those who are glad to criticize what I do.” Darrow told her that he did not know how the ordinance had been passed but he knew enough about municipal affairs to believe that it was “passed for boodle like every ordinance granting valuable privileges in this city.” (This is an extraordinary—if not improper—thing for a lawyer to say about a client’s conduct.) Darrow refused to rationalize his work to Miss S with the argument that most lawyers might use—that is, that everyone has a right to legal representation, whether good or bad or guilty or innocent. But instead—acknowledging that his “preaching” and his “practicing” had “never been the same”—he explained at length how he had long ago decided that he would work within the system to change it and that he would sell his services to anyone who would buy them, provided that he was not hurting the poor.

Darrow told Miss S that back in Ohio, he and his friend “Swift” (Morrison Isaac Swift) had both had in mind doing some good in the world but they had taken radically different paths to achieve their goals. As Darrow explained it, Swift had destroyed the patent medicine bottles in his late father’s drugstore, “left . . . town without money,” “refused to compromise with the world,” and become “nearly a tramp”—“shunned by most earnest people.” Darrow’s approach, on the other hand, was a compromise of his ideals; he decided to “take [his] chances with the rest, to get what [he] could out of the system and use it to *destroy* the system.” Darrow denied that he cared much about money for himself: “I care nothing whatever for money except to use it in this work and to bring me such comforts as I want and to help my friends.”

32. Darrow to “Miss S,” March 1895.

This one letter and the circumstances involved are, of course, inadequate evidence alone that Darrow was a greedy lawyer who too often represented the “wrong” clients. The letter appears to represent little more than the personal anguish of a man who could not square his capitalist actions with his radical socialist rhetoric and beliefs or the expectations of his radical friends. Representing the electric company might have made Darrow a hypocrite, a label that he seemed to accept, but his work for the company does not, in itself, show that he was greedy or that he did anything unscrupulous as a lawyer. The fact is that Darrow did not always represent the poor, and he would have had a hard time making a living if he had. The poor, as he sometimes noted, could pay little or nothing for legal services. Serving them exclusively would not enable him to maintain a law office. In a letter to Mary Field Parton, written in a self-pitying tone, he complained of the fact that his friends seemed only to think of him as a lawyer for the poor:

One of my good friends (formerly of a settlement) came in yesterday panned that I should defend men accused of graft, and wanted to know why I did. I told her for the money and because I hated jails and good people. I said that I had fought for many things that her people believed in, but I had never seen the time that one of them had sent me a case where there was a fee; they had sent many poor to me, that no one else would look after, but if one had money they sent them to a respectable lawyer, which is true. Any how it never occurs to me that I should refuse to defend any one. All I dread about it is the hard work and the long time it will take.<sup>33</sup>

There is other evidence that Darrow was subjected to harsh criticism inside and outside his circle of friends and supporters because of his choice of clients or his fees. In the spring of 1903, for example, after Darrow disappointed some of the labor forces in Chicago with his decision to support Carter Harrison Jr. in the mayoral election, several people who identified themselves as representing labor wrote a stinging public letter to Darrow. They asked him what sacrifice he had ever made for labor and what money he had made representing the American Railway Union in the Pullman matter. They asked whether he had not received fifty dollars a day for defending the labor leader Thomas Kidd in criminal charges arising out of the woodworkers’ strike in Oshkosh, Wisconsin, and seventy-five dollars a day from the streetcar employees’ union for representing them in an arbitration, and one hundred dollars a day plus expenses representing the striking anthracite miners in Pennsylvania. Darrow’s public response to this letter was not inconsistent with his statements to “Miss S.”<sup>34</sup>

33. Darrow to Mary Field Parton, 1 February 1923; see also, e.g., Darrow to Harry Elmer Barnes, 12 March 1932 (“I don’t know what I should have done if now and then a fairly well-to-do client had not come my way; the ravens have never called on me”).

34. Undated, unidentified newspaper clipping, “Darrow Makes Reply to Attack in Letter,” ICN, Darrow Family Scrapbooks, Box 3 (quoting text of a letter to Darrow from Hugh M’Gee, William F. Dunn, Edward Quinn, W. E. Kern, H. D. Lighthall, James Curran, John Maloy, N. B. Travis on 4 April 1903).

To the first question put to him, Darrow answered that he had never made a sacrifice for labor because the cause was his as much as it was labor's cause: "I believe in it, and I am not in it for the purpose of getting money." With respect to the Pullman matter, Darrow said that he received one thousand dollars for approximately three months of work. And he acknowledged that he had received fifty dollars a day in the woodworkers' strike and seventy-five dollars a day representing the streetcar employees. But he denied receiving one hundred dollars a day in the anthracite arbitration. With respect to the anthracite arbitration, he said that he would ordinarily charge one hundred dollars a day but that he told the mine workers' union at the outset that they could pay him what they wanted to pay him or nothing at all. When the matter was over, he sent the union a bill for ten thousand dollars, telling the union leaders that he would have sent a corporation a bill for fifty thousand dollars for the same work and that they could pay him less than ten thousand dollars if they wanted to. They promptly paid him ten thousand dollars. Darrow said, in short: "When an organization has the money to pay I let them pay."<sup>35</sup>

Another example of criticism comes a few years later. This was near the end of the trial of "Big Bill" Haywood, after Darrow had given his long closing in defense of Haywood—which moved and infuriated so many people. Joseph Pulitzer's *New York World* published a caustic editorial (which was later republished by the *Chicago Tribune*) suggesting that Darrow's reputation as a defender of the underdog and his real character and life were two different things.<sup>36</sup> The editorial said that Darrow "has grown gray and rich . . . in the service of labor, and no man living has been able to coin more money out of popularity with workingmen than he." The *World* acknowledged that Darrow was a "good lawyer and an effective pleader" who "probably earns all that he gets," but it went on to declare that he cannot "be thoroughly understood unless the fact is borne in mind that he invariably gets all that he earns." The scathing editorial took issue with Darrow's radical writings and utterances, suggesting that Darrow went too far in his attack on the system that made him money, and concluded that Darrow was someone whom no young lawyer should try to imitate:

An infidel, a misanthrope, a revolutionist, a hater of the rich, a contemnor of the educated and the polite, a hopeless cynic, a man whose soul revolts at every manifestation of intelligent self-interest in others and one who evidently has lost faith in his fellows, Mr. Darrow nevertheless cherishes the idea that he is the champion of the oppressed, and he has persuaded a good many people to think likewise.

Young lawyers will find some phases of this man's career which are worthy of imitation, but more of them against which they should turn their faces like flint. He is able and he is eloquent, but he is otherwise a solecism. A household, a community, a State or a nation of Darrows would be impossible.

35. Ibid.

36. "Clarence Darrow," *New York World*, 27 July 1907.

This editorial is probably typical of the sentiments of some people who were critical of Darrow. But how many people held this view is impossible to say. The praise seems to be just as plentiful as the criticism. There are no opinion polls to help sort it all out, and we know surprisingly little about his day-to-day law practice, so proof of the matter eludes us. We do not have any of his client and law-firm records. They might exist somewhere, but they have not turned up yet. Other than the information revealed or suggested by court opinions, newspapers, and other sources (which shows a great deal of charitable work, much of it for labor or radical causes), we do not know the identity of most of Darrow's many clients during the late nineteenth and early twentieth century. Surely, there were hundreds. And we do not know how much of his time was devoted to clients whom he knew would be unable to pay his usual fee. We do not know how much money his law firms made. We do not know how many people his firms employed (although it was definitely several for many years), and we do not know how much he paid his employees. Ruby Darrow, Darrow's second wife, suggested in a letter to Irving Stone that Darrow, as a general rule, devoted a third of his firm's time to representing people who were unable to afford his services.<sup>37</sup> Much of what Ruby said in praise of Darrow has to be read with skepticism, for she was extremely protective of him. But Darrow himself told a correspondent in 1917 that more than half his time for twenty-five years had been "given to industrial and labor cases . . . without any financial reward."<sup>38</sup> If this is true (or even approximately true), Darrow's devotion to people who were likely unable to afford his services far exceeded the highest pro-bono standards of most law firms today.

We also do not have any detailed financial records for Darrow. In fact, other than many interesting but general statements about his financial condition in his letters and some other more specific bits and pieces about his investments and finances (in his own letters and a few other sources),<sup>39</sup> we have very little detail on this subject. We do not know how much money he made from his law practice each year (he practiced more than fifty years), how much he made and lost from his investments over the years (other than in the stock market crash of 1929), how much he contributed to charitable causes, and so forth. We do not have a personal calendar of his activities, including his lectures and debates. And we do not know how much of his time in these activities was contributed for free (although

37. Ruby Darrow to Irving Stone, 18 September 1940, DLC-MSS, Darrow Papers.

38. Darrow to George P. Costigan Jr., 10 January 1917. See also Transcript, *The People of the State of California v. Clarence Darrow*, Sup. Ct. Calif., vol. 71 (29 July 1912), 5889, CLL (Darrow testifying: "I suppose nine-tenths of my practice has been civil practice and perhaps one-tenth of it criminal and about one-third of it charity for the last twenty years").

39. See, e.g., Darrow to Horace Traubel, 28 January 1903 ("All my life I have been harrassed over money matters, although I make a good income. I have so many people to look after & obligations of all sorts that I am always in debt & unable to do what I would like."); Darrow to Edgar Lee Masters, 29 November 1907 (explaining that he [Darrow] could probably earn one hundred dollars a day in Chicago practicing law and otherwise providing some financial information about the law firm); Darrow to Paul Darrow, 14 May 1911 (revealing that a fee received of twenty-five thousand dollars plus income of three thousand dollars from the gas company would approximately cover his debts, but saying nothing of his assets); Darrow to Charles Erskine Scott Wood, 6 October 1916 ("I am working hard & doing fairly well financially, but there are always so many worthy & unworthy looking for help that it keeps me poor").

it might be safe to assume that it was a great deal of time) or how much income these activities generated. And this is just a sampling of the types of information and documents that we do *not* have on Darrow and that we will likely never have.

We also have only bits and pieces of evidence of how a very few of Darrow's many friends and family members might have felt about him at various points in his life, especially when he was younger—letters here and there, telegrams, diary entries, some memoirs, transcripts of short depositions—nothing that paints a complete picture. There is simply no way to say today how Darrow's friends (if they could all be identified) felt about him at most points in his life. We do not have enough records to make these generalizations. We cannot even say with any certainty how *many* close friends Darrow had at any given point in his life—especially in Ohio (where he spent the first thirty years of his life) and Chicago (where he probably had his longest and closest relationships).<sup>40</sup> Although the names of many of Darrow's friends in Chicago are known through various sources, there are very few surviving letters between those friends and Darrow, which is not surprising, because it is doubtful that Darrow exchanged many letters with people who lived in the same city with him, except when he was away. In his autobiography, Darrow wrote about only a few of his friends from Chicago—including George Schilling and John Altgeld—but many other friendships can be inferred from his law partnerships and newspaper accounts of his cases and other activities. Still, there is just no way of knowing the extent of his circle of friends and how close he really was with them or with various family members—how much time he spent with any particular person, how many ideas they shared in common (politically or otherwise), whether he played poker with the person, whether he confided in the person, and so forth.

Outside Chicago, it is safe to assume that Darrow's frequent correspondents were also good friends—especially Henry Demarest Lloyd, Brand Whitlock, Fremont Older, Charles Erskine Scott Wood, Frank Walsh, Lincoln Steffens, and Mary Field Parton. He spoke fondly of many of them. But we have no idea how many letters to other people have been lost or have yet to be discovered. (Darrow's letters to Parton only came to light in the early 1980s.) Darrow's surviving letters and other evidence suggest that Darrow had a very large circle of friends of varying degrees of intimacy—one that reached far beyond his surviving correspondence. John Francis is a good example. He was superintendent of the Los Angeles schools. From some of Darrow's letters, we can infer that Francis and Darrow were good friends—Darrow and Ruby drove from Iowa to Colorado with Francis and his wife one summer and, for a short while, Darrow employed Francis's son as a lawyer in his office. These are curious facts because no writer on Darrow has ever mentioned John Francis. This omission cannot be because of the lack of a relationship, but, instead, seems to follow from the lack of a record. No letters between the two men seem to have survived. John Randolph Haynes is another example. He was a physician in Los Angeles

40. See, e.g., Darrow to Ruby Hamerstrom, 21 March 1903 ("Besides all of this I hardly believe I have more friends than any one in Chicago, . . . & there are many who love me as devotedly as any one I ever knew").

when Darrow had an operation there in 1908.<sup>41</sup> Haynes was progressive in his politics and probably shared many opinions with Darrow. In 1908, Darrow and Ruby lived for a while with Haynes in his home in Los Angeles. In his autobiography, Darrow mentions Haynes as a good friend. But beyond this, we know almost nothing about their relationship, especially Haynes's thinking about Darrow.

In the end, whether someone was a good friend of Darrow, a mere acquaintance, a critic who never met him, a friend with infrequent contact, or something else entirely, we often cannot assess the accuracy of any statements by that person about Darrow unless we also understand at least a fair amount about that person and his or her involvement, if any, in Darrow's life. The journalist and author Hutchins Hapgood suggests this same thing in his statements about Darrow in *The Spirit of Labor*, published in 1907. Hapgood describes Darrow as a "rich personality, often distrusted, generally inconsistent in all but humanity, too complex to be philosophic, but a gathering point for all the 'radical' notions of the time."<sup>42</sup> Hapgood seemed to recognize, though, that the opinions on Darrow varied greatly according to *who* was expressing them: "[I]n Chicago this interesting man is pretty nearly appreciated at his proper value; for, although he is regarded as 'dangerous' by the ultra-conservative, and as 'crooked' by the pure idealists, and as 'immoral' by the inexperienced ladies of blue stocking tendency, he occupies, nevertheless, a position of sufficient respectability to enable him to work and live to the best advantage."<sup>43</sup>

. . .

Of course, with Darrow, there is not only the question whether he was ever a greedy lawyer, but also the question whether he was ever a corrupt or unscrupulous lawyer. A few rumors circulated among his opponents about his methods in the Idaho cases in 1906 and 1907 (the reliability of whisperings from the losing side of the cases should not be overestimated), and he was indicted for jury bribery in 1912.<sup>44</sup> The alleged bribery arose out of the trial of James B. McNamara, who blew up the Los Angeles Times Building in 1910, killing twenty-one men and injuring many more. In one indictment, Darrow was accused of bribing a prospective juror named Lockwood. That case went to trial in 1912, and Darrow was acquitted. In the other indictment, Darrow was accused of bribing a juror name Bain. That case was tried in 1913, and there was a hung jury. Darrow was never retried. People close to those events as well as commentators long after have come to a variety of conclusions about Darrow's guilt or innocence and the ethics of his conduct during the McNamara trial. Darrow's biographers offer differing views. Most of the older biographies suggest that he was innocent on the bribery charges, and most of the more

41. See Tom Sitton, *John Randolph Haynes: California Progressive* (Stanford: Stanford University Press, 1992).

42. Hutchins Hapgood, *The Spirit of Labor* (New York: Duffield, 1907; repr., Urbana: University of Illinois Press, 2004), 141.

43. Ibid.

44. See, e.g., J. Anthony Lukas, *Big Trouble* (New York: Simon & Schuster, 1997), 331–33 (discussing rumors that Darrow, in the Idaho trials, had been involved in payments to Steve Adams's uncle to convince Adams to recant a confession; no charges were ever brought or even discussed publicly).

recent ones maintain that he was guilty.<sup>45</sup> Any consensus on whether he was guilty or innocent is made difficult by the incompleteness of the record, misunderstandings about the record, and the many varying interpretations to which the record is subject. Darrow's letters to his friends and family help to establish his state of mind and some of his activities during those years, but they also offer something for an analysis of his guilt or innocence. One letter, in particular, relates to Darrow's alleged bribery of Robert Bain.

The state tried to show in both of Darrow's bribery trials that Darrow had made deep-laid plans with one of his investigators (Bert Franklin) to bribe Bain before he was questioned by attorneys during jury selection in McNamara's trial. In fact, Franklin, who delivered bribe money to Bain, testified on behalf of the prosecution in Darrow's first bribery trial. As part of a plea bargain that allowed him to avoid a prison sentence, Franklin testified that Darrow himself had suggested bribing Bain, that Franklin reported in writing to Darrow about Bain, and that he had many conversations with Darrow on "divers occasions" about bribing Bain—all before Bain was selected for the jury.<sup>46</sup> If Franklin's testimony was true, it seems odd that Darrow would have misidentified Bain as "Bean" in a letter to his son Paul just a few days after Bain was selected for the jury. Darrow's handwriting is difficult to decipher, but he did not merely misspell the name—he got the name wrong.<sup>47</sup> Now, this fact alone does not exonerate Darrow, of course, but it is puzzling. If Darrow and Franklin had conspired to bribe Bain, there should have been very few names that Darrow knew better during jury selection than Bain's.<sup>48</sup> This letter, which apparently remained unnoticed in a pile of Paul's letters from his father for the next eighty years, is consistent with his innocence or at least consistent with a lack of hands-on involvement in the details of the alleged bribery scheme.

The real work and planning behind the bribery scheme could have been carried out, in theory, by any of the more than thirty labor leaders who were indicted in January 1912 and convicted in Indianapolis in December 1912 for conspiring to transport explosives, including those for the Times bombing in Los Angeles. Those labor men—especially the

45. John A. Farrell, *Clarence Darrow: Attorney for the Damned* (New York: Doubleday, 2011), 278 (concluding that Darrow "most assuredly" "participate[d] in the bribery scheme"); Andrew E. Kersten, *Clarence Darrow: American Iconoclast* (New York: Hill & Wang, 2011), 146 ("It seems hard to believe that [Darrow] didn't [know about the bribery]"); Geoffrey Cowan, *The People v. Clarence Darrow* (New York: Times Books, 1993), 434 ("it is fair to conclude that Darrow bribed both Lockwood and Bain"); Arthur Weinberg and Lila Weinberg, *Clarence Darrow: A Sentimental Rebel* (New York: G. P. Putnam's Sons, 1980), 262–64 (providing reasons for believing in Darrow's innocence); Kevin Tierney, *Darrow: A Biography* (New York: Thomas Y. Crowell, 1979), 274 (stating that a review of facts did not show guilt beyond reasonable doubt, "but neither does it give confidence that he was innocent"); Miriam Gurko, *Clarence Darrow* (New York: Thomas Y. Crowell, 1965), 168–80 (implying that Darrow was innocent); Irving Stone, *Clarence Darrow for the Defense* (Garden City, NY: Doubleday, Doran & Co., 1941), 307–42 (written as though Darrow were innocent); Charles Yale Harrison, *Clarence Darrow* (New York: Jonathan Cape & Harrison Smith, 1931), 198–99 (never suggesting that Darrow was guilty and stating that his "acquittal was a popular one").

46. Transcript, *The People of the State of California v. Clarence Darrow*, Sup. Ct. Calif., vol. 5 (28 May 1912), 363–65, CLL.

47. Darrow to Paul Darrow, 11 November 1911.

48. See also, e.g., "Darrow Passes Buck to Davis," *Los Angeles Times*, 14 February 1913 (during his own opening statement in his second trial, "Darrow said his recollection of Bain was slight. He declared that Franklin urged [LeCompte] Davis to retain Bain on the panel.").



San Francisco union leaders among them, who may have been behind the dynamiting of the Times building—would have had an incentive to try to ensure an acquittal in the McNamara case.<sup>49</sup> An acquittal would potentially prevent their own indictments, or so they might have believed. Many of the labor leaders—including Olaf Tveitmoe and Anton Johannsen—were friends or acquaintances of Darrow’s.<sup>50</sup> In fact, Darrow himself might have been alluding to their involvement in the bribery when he wrote to his son in early December 1911, after the McNamaras pleaded guilty and while reports were circulating publicly that Darrow might have been involved with bribing jurors. “Try not to worry over me,” he told Paul. “I have lots of friends & am all right. They may get me into trouble, but the end will be all right some of these days.”<sup>51</sup>

Among many misunderstandings about the facts underlying Darrow’s alleged involvement in the bribery is one relating to Bain. One recent biographer (Kersten) claims that Darrow only asked Bain one question during his examination of Bain as a potential juror, implying that Darrow—because he had already bribed Bain—had no need to do a more searching examination. Kersten cites one newspaper article for this proposition (the *New York Times*), which does indeed quote only one question put to Bain by Darrow.<sup>52</sup> But other newspapers show that Darrow asked Bain many more questions than just one. Unfortunately, the transcript of the jury selection process does not seem to have survived. But from other newspaper accounts it appears that Darrow spent approximately two hours examining Bain and one other prospective juror (Roberts) on the afternoon of 16 October 1911, ending the day with Bain and then briefly questioning Bain again the next morning.<sup>53</sup> How much of the time on 16 October was spent with Bain and how much with Roberts and exactly how many questions were asked of each is not settled by the record. But the newspaper accounts of the jury selection process do not provide any basis to support the conclusion that Darrow bribed Bain.

There are other misunderstandings relating to Darrow’s Los Angeles years that have arisen from misreadings of Darrow’s correspondence. For example, one recent writer

49. Sidney Fine, “Without Blare of Trumpets”: Walter Drew, the National Erectors’ Association, and the Open Shop Movement, 1903–57 (Ann Arbor: University of Michigan Press, 1995), 97–98 (explaining why the San Francisco unionist might have been behind the dynamiting).

50. Farrell, *Clarence Darrow*, 279–80 (giving a short analysis of the theory that Tveitmoe—who handled some of the money raised for the defense of the McNamaras—was the architect, without Darrow at “the center of the plot”); Cowan, *The People v. Clarence Darrow*, 435 (summarily dismissing the theory that labor leaders were responsible for the bribery because “no evidence points to [other labor leaders]”).

51. Darrow to Paul Darrow, 5 December 1911.

52. Kersten, *Clarence Darrow*, 148 (citing “Too Much Biased against M’Namara,” *New York Times*, 17 October 1911).

53. See, e.g., “McNamara Attorneys Win Point,” *San Francisco Call*, 17 October 1911 (quoting Darrow asking Bain a question other than the one the *New York Times* reported); “M’Namara Wins Point in Court,” *Chicago Tribune*, 17 October 1911 (suggesting several of the questions that were asked); “M’Namara Jurymen,” *The (Ogden City) Evening Standard*, 17 October 1911 (reporting that the questioning of Bain continued the next day, 17 October); “Rapid Progress Is Expected in M’Namara Case,” *Los Angeles Tribune*, 17 October 1911 (quoting some of the questions Darrow asked Bain and implying that others were asked); “Two Near-Jurors Found in the M’Namara Case,” *Los Angeles Examiner*, 17 October 1911 (quoting or implying questions asked by Darrow of Bain).



(Farrell) contends that after Darrow was indicted he wrote a letter to his brother-in-law J. Howard Moore in which he said: “But the evidence against me is strong . . . I may have to leave you all for a time.”<sup>54</sup> This is a misreading of Darrow’s handwriting (which is easy to do). Darrow often did not bother to dot his *i*’s or cross his *t*’s. If a reader takes this into account, it can be seen that “evidence” is actually “interests.” With this correction, the subject and verb agree (Darrow wrote “are,” not “is”), and it becomes clear that the sentence as a whole is not an admission about the weight of the evidence against him: “I feel quite sure I can win but the interests against me are strong, & if I fail I may have to leave you all for a time.”<sup>55</sup> Similarly, during his first bribery trial, in 1912, Darrow did not write to his son saying “I am afraid there is no way to win,” as Farrell reports.<sup>56</sup> Farrell incorrectly assumed that the letter was written in July 1912, but in fact Darrow wrote the letter one year earlier (in July 1911), when he was surveying the prospects of winning the McNamara cases, not his own.

Neither does Farrell’s statement that “[i]n his correspondence with his family, Darrow did not assert innocence—only righteousness” seem well supported.<sup>57</sup> Darrow’s complete correspondence from those years (and every other year) does not exist, and we have no idea how many letters are missing. But if it is right nonetheless to expect Darrow to have protested his innocence to his own family in his surviving correspondence (which is not necessarily a reasonable expectation), there are letters to family members that can be read as alluding to his innocence (and not just righteousness), and there are letters that have become available since the most recent biographies were published that show that Darrow did, in fact, also expressly deny his involvement in the bribery. Fred Hamerstrom, one of Ruby’s brothers, wrote to Darrow, apparently questioning his involvement in the bribery, and Darrow responded by stating outright that he was innocent: “*Of course I didn’t*, still there are suspicious circumstances & they are bound to get me & the interests are strong.”<sup>58</sup>

Darrow’s letters also provide some context for assessing the suggestion by Farrell that Darrow might have been so corrupt as to have actually paid off one of the jurors in his own bribery trial *and* involved his son in the process. Farrell says: “And Darrow, after the trial, would pay [juror Fred] Golding \$4,500—some \$55,000 in today’s currency—or more.”<sup>59</sup> At the back of his book, Farrell includes a note regarding the basis for this

54. Farrell, *Clarence Darrow*, 238 (quoting Darrow to J. Howard Moore, 6 February 1912); see also <http://darrow.law.umn.edu/letters.php?pid=37&skey=Moore,HowardJ.>, accessed 16 July 2011 (facsimile of the handwritten letter together with a transcript that includes a similar misreading).

55. See also Darrow to Frederick Hamerstrom, 6 February 1912 (using similar phrasing, about how “the interests are strong” against him).

56. Farrell, *Clarence Darrow*, 248 (quoting Darrow to Paul Darrow, 4 July 1911 [mistaken as 1912 by Farrell]); see also <http://darrow.law.umn.edu>, accessed 16 July 2011 (facsimile of the handwritten letter together with a transcript, listed under letters to Paul and dated 4 July [1912] on the website).

57. Farrell, *Clarence Darrow*, 278.

58. Darrow to Frederick Hamerstrom, 6 February 1912 (emphasis added); see also, e.g., Darrow to Paul Darrow, 29 December 1911 (“There is no right to get me in trouble . . .”); Darrow to Paul Darrow, 1 January 1912 (“There is really nothing to it except some suspicious circumstances”); Darrow to J. Howard Moore, 6 February 1912 (“They had no right to do this to me & I don’t believe it will stick”).

59. Farrell, *Clarence Darrow*, 244.

statement: a letter written by Darrow to Paul in 1927—*fifteen years* after the bribery trial—instructing Paul to send Golding \$4,500. A reader of the letter will see that Golding was having some financial problems, and Darrow wanted to help him out (“Mr. Golding is one of my dearest friends. He was one of the strongest men on the jury in Los Angeles & seems to need this now. . . . I am sure I will get it back in a year but I would send it just as quickly if I knew I would not”).<sup>60</sup> Darrow was trying a case in New York at the time, so he could not send the money himself. He knew that Paul would have cash at hand because they had just sold their gas plant in Colorado.<sup>61</sup> Darrow became good friends with Golding after the bribery trial. In a letter to E. W. Scripps three years after the trial, Darrow described Golding as a “staunch friend,” “one of the best fellows that you ever met,” and “absolutely honest.” Darrow added that “of course my personal feeling toward him is one which would be difficult to describe.”<sup>62</sup> In this context, Darrow’s instruction to Paul to send \$4,500 to Golding should not be viewed with suspicion.

Another letter in Darrow’s surviving papers—this one written *to* Darrow and part of the collection of his papers at the Library of Congress—serves as an example of the varying interpretations to which the historical record of Darrow’s guilt or innocence is subject. The letter shows that witnesses for the prosecution were apparently hoping that Darrow would pay them off. The letter, which requires some detailed description to appreciate, is from Darrow’s friend George Schilling. Schilling wrote the letter from Chicago on 12 February 1913, during Darrow’s second trial in Los Angeles for jury bribery. In the letter, Schilling informs Darrow that he has learned from Ed Nockels (an electrician and secretary of the Chicago Federation of Labor and another friend of Darrow’s) that one of Darrow’s investigators in the McNamara matter—a twenty-two-year-old investigator named Cooney, who had testified against Darrow in Darrow’s first bribery trial—had telephoned Nockels some months earlier with a proposition. According to Schilling, Cooney “proposed for a consideration to fix things up so that neither he nor Mr. Harrington [John Harrington, a friend of Cooney’s and an alleged accomplice in the bribery, who also testified against Darrow] would be witnesses at [Darrow’s] second trial.” Cooney told Nockels, according to Schilling, that “it would take considerable money to fix this up and that they would have to be taken care of for the time they would lose.”<sup>63</sup> Nockels, according to Schilling, was suspicious of what Cooney was up to when Cooney telephoned him. So later, when Nockels arranged to meet Cooney, he had the secretary of the Milk Wagon Drivers Union (William Neer) stand near him while he spoke with Cooney by the entrance to city hall in Chicago. In his letter, Schilling did not explicitly tell Darrow what

60. Darrow to Paul Darrow, 16 December 1927; see John A. Farrell, “Darrow in the Dock,” *Smithsonian* (December 2011): 98–111 (referring to this letter as “another incriminating detail” against Darrow).

61. Darrow to Paul Darrow, 17 December [1927], ALS, MnU-L, Darrow Papers (“I wrote you yesterday about the Draft to Golding. I forgot to tell you what the reason I asked you to do it is that I am here [in New York City] and can not get the money that he needs as easily as you can. Am really glad the plant is sold.”).

62. Darrow to E. W. Scripps, 19 May 1915.

63. George Schilling to Darrow, 12 February 1913, DLC-MSS, Darrow Papers.

he should do with this information, but he told Darrow that he had talked the matter over with Nockels and “Thompson” (which is probably a reference to Darrow’s old law partner, William O. Thompson) and that they all thought Darrow “ought to know these facts,” and “if it [was] desirable for Mr. Nockels to come to Los Angeles in regard to this or any other matter in connection with your case,” they wanted Darrow to send a telegram and they would “take care of [Nockels’s] coming.”

Schilling’s letter to Darrow is the only known record of this matter. No response from Darrow exists and there is no other record of how the matter was handled. We know that Harrington testified against Darrow in his second trial (which suggests that Cooney’s proposition was not taken up). In fact, Harrington actually testified for the prosecution two days *before* Schilling wrote this letter, which is likely *why* Schilling wrote his letter when he did. (Whether Cooney testified is unclear; newspaper coverage is sketchy, he would have been a relatively minor witness, and no full transcript of the second trial apparently exists.) Darrow’s friends probably wanted him to know that if he needed Nockels to testify about Cooney’s offer—to discredit Cooney or Harrington or both—they would send Nockels to Los Angeles. If this is a correct interpretation of Schilling’s letter, a biographer might reasonably ask: If Cooney and Harrington were trying to extract money from Darrow in exchange for not testifying against him in his second trial, how does that affect the credibility of their testimony against him, especially when Harrington had already made a deal with the prosecution to testify against Darrow? Yet the only biographer to mention this letter interprets it in an entirely different light. Farrell reads it as showing that Darrow’s friends and Darrow *himself* (even though no response from Darrow exists) were all willing to consider taking up Cooney’s offer: “Schilling’s letter,” says Farrell, “throws further light on Darrow’s ethical standards, and what he and his associates were willing to consider.”<sup>64</sup> Given the timing and content of the letter, this interpretation seems doubtful.

In the end, anyone reviewing the matter should concede that it is possible that Darrow was involved with jury bribery. But the evidence against him is not nearly as compelling as some writers have characterized it, especially considering the reliability of the evidence. In my view, for example, the record as a whole and the weaknesses in the prosecution’s case, in particular, have been underexplored; too much stock has been put in historical material that should be openly acknowledged for its weaknesses and given the slightest weight, if any; the unfair and corrupt methods of the state and how those should weigh in the mix have been underappreciated, especially when the prosecution’s case relied so heavily on the testimony of witnesses who had made plea agreements regarding their own conduct; the number of Darrow’s friends whom we can confirm believed that he was guilty has been exaggerated and the number of friends who expressed their confidence in his innocence has been overlooked; the argument that Darrow had lost his moral bearings before the McNamara case, as evidenced by his cases and clients, is deeply flawed

64. Farrell, *Clarence Darrow*, 272.

and misses and misinterprets a wealth of contrary information; the things said and written by various participants and observers, both in those days in Los Angeles and later, have been inadequately analyzed. In short, I believe there is much that can be said yet on the subject of Darrow's innocence, beyond an analysis of some of his letters (which is all that I have tried to do here). Clarence Darrow, the great criminal-defense attorney—renowned for his ability to empathize with his clients and to present compelling explanations for their motives and conduct—has yet to receive, from historians or biographers, the best defense available.

. . .

Putting questions of Darrow's character and ethics aside, his letters also help to illuminate his relationships with many people in his life. Some writers have been especially harsh on Darrow's first wife, Jessie, whom Darrow married in Ohio in 1880. They have described her in various ways and to varying extents as provincial and domestic by nature, uninterested in the events and movements around her, dull-witted, and unsophisticated—someone who bored Darrow and his friends.<sup>65</sup> Kersten says that "the rumors of other women" (none of whom he identifies) were too much for her and that Darrow's "nastier side [which he also does not describe] . . . made appearances at home."<sup>66</sup> Stone's 1941 biography appears to have started this thinking about Jessie. At the time, Stone might have had sources for his statements. But if he did, he apparently was not willing to reveal them.<sup>67</sup>

There are no surviving letters from Jessie to Darrow. In fact, other than a few bits of recently discovered writings here and there, there appear to be no surviving writings of any kind by Jessie. And except for the rather voluminous newspaper scrapbooks that Jessie kept (which were only made public in the last ten years or so), there are no diaries, no memoirs, and no long letters—certainly nothing on which an assessment could be made of her personality or the intelligence that she exhibited in the 1880s or 1890s, much less of Darrow's manner in their home. The marvelous record of Darrow's early literary, legal, and political activities that Jessie compiled in her scrapbooks is some evidence, though, that Jessie was not as pedestrian and provincial as some writers have suggested. Twenty letters exist that Darrow wrote to Jessie. Eleven of them are published here. Most of them are very interesting and help to show something about the relationship between Darrow and Jessie at various times in their lives. But they do not reveal Jessie's personality or her intelligence and interests, which may have been modest compared to Darrow's.

65. Stone, *Clarence Darrow*, 82 (describing Jessie as "lethargic and slow-thinking," lacking "an exciting intellect," etc.); Tierney, *Darrow*, 136–37 ("Clarence for his part was uncomfortable with Jessie's lack of sophistication and distinction. It hurt his pride to be married to a woman who was a living reminder of his past.").

66. Kersten, *Clarence Darrow*, 87–88.

67. William H. Holly, review of *Clarence Darrow for the Defense*, by Irving Stone, *American Bar Association Journal* 28 (1 February 1942): 140–42 (Darrow's friend and former law partner, then a federal judge, reviewing Stone's biography and noting that Stone had "said some things about Darrow's first and his second wife that are unkind and untrue").

All indications in those letters confirm Darrow's short statement about Jessie in his autobiography, where he simply noted that they were divorced (in 1897) "without contest or disagreement and without bitterness on either side, and our son has always been attached to both of us, and she and I have always had full confidence and respect toward each other."<sup>68</sup>

One of the letters from Darrow to Jessie was written in January 1896, before they were divorced but when their marriage was coming to an end. Darrow does not spell out the difficulties in their marriage but suggests that they were incompatible in many ways: "I presume that we never in any way were fitted for each other. Of course we were too young to know it then, and it is always terribly hard to correct such mistakes." Darrow recognized Jessie's equal contribution to what they owned and pledged to always support her: "I have enough, or will within a year, for both and if we did not I could not take it & could not have a moment's peace or comfort unless you had enough. The house you know is yours. Two lots are also yours. You have done as much to get and save what we have as I. It is yours as much as mine and nothing in the world could make me take it from you . . ."<sup>69</sup> Darrow's divorce petition in March 1897 proposed that he pay Jessie "not less than" \$150 a month for the rest of her life and that she receive title to their house on Vincennes Avenue in Chicago, Darrow being obligated to pay the property taxes on the house for as long as Jessie lived there.<sup>70</sup>

Jessie did receive the house as part of the divorce, but there are no financial records to show whether Darrow regularly supported her financially throughout his life. All indications, though—including Darrow's letters to Jessie and Paul—suggest that Darrow did support her, even after she remarried. Another letter to Jessie, on the eve of Darrow's marriage to Ruby Hamerstrom in 1903, shows that Darrow continued to care about Jessie a great deal many years after their marriage had failed, which is consistent with his financial support for her: "I am sure of this that always I have meant to think of you as I do more tenderly & gently than of any one else, & I am sure I always shall."<sup>71</sup> (*That is an extraordinary statement to make shortly before marrying another woman—regardless of whether it was sincere [as it seems to have been] or motivated by guilt [as it might have been].*) Of course, there are other angles from which some of Darrow's letters to Jessie can be read. Darrow, for example, seems to exhibit a notable degree of self-pity in them. But the affection and love that he expresses for Jessie in the surviving letters seems deep and genuine.

. . .

Darrow's relationship with Paul, his only child, is shown in more detail in Darrow's letters than Darrow's relationship with Jessie (Paul's mother). There are 325 extant letters

68. *Story*, 33; see also Darrow to Victor Yarros, 28 May 1930.

69. Darrow to Jessie Darrow, 8 January 1896.

70. Bill (for divorce), *Clarence S. Darrow vs. Jessie O. Darrow*, Circuit Court of Cook County, February Term 1897 (copy in ICN, Arthur and Lila Weinberg Papers, Box 12).

71. Darrow to Jessie Darrow, 14 July 1903.

written by Darrow to Paul (seventy-four of which are published here). Nowhere is there indication of a strained or difficult relationship as adults, as some writers have suggested existed.<sup>72</sup> The letters begin when Paul was a boy—but there are only a few from those early years. They continue much more regularly starting in 1911, when Darrow was in Los Angeles in connection with the McNamara case, and later, during Darrow's own bribery trials beginning in 1912. After Paul moved from Greeley, Colorado, back to Chicago in 1928—moving with his family into an apartment one block from his father (another sign of no serious strain in the relationship)—the letters from Darrow to Paul continue, but these were usually written when Darrow was traveling outside of Chicago.

Darrow's letters to the adult Paul are not written as loving missives from a father to son. The letters usually concern Darrow's travels or lecture activities or their gas business together in Greeley. During the McNamara and bribery-trial years in Los Angeles, Darrow's letters seem to be designed to reassure the son that the father is holding up well under the circumstances, sometimes giving Paul a report on a turn of events. On a few occasions, Darrow's letters involve politics, as when he wrote in some frustration to Paul about the loyalty of Darrow's brother, Everett, to the Harding administration during the Teapot Dome scandal.<sup>73</sup> Just how many of Darrow's political ideas were shared by Paul is unclear. On some points (such as free trade and states' rights), they might have been in agreement. On Prohibition, they were not in agreement. Their interests were not always different: they both liked to play the stock market, they shared some of the same investments, and, of course, they shared the gas plant that Paul managed in Colorado.<sup>74</sup> They spent a fair amount of time together: Darrow often visited Paul in Greeley (as reflected in the letters) and he became friends with many of Paul's friends in that city.<sup>75</sup> In 1915, when a friend of Darrow's was expecting a baby, Darrow told her about the importance of Paul in his life: "Life isn't worth while & still we keep producing it—and there is no joy like a child—perhaps some sorrow too. Through the last thirty years nothing has brought me the consolation that Paul has brought and I have had many loyal & good friends . . ."<sup>76</sup>

No significant record exists of what type of parent Darrow was when Paul was a child. A letter from Paul when he was a young boy and pages from a diary that Paul kept when he was a young man show that he sometimes traveled with his father.<sup>77</sup> But there is not much beyond this. In fact, relatively little is known about Darrow's parenting. Paul reportedly told Irving Stone that his father "was always liberal with his allowance" and that Paul could spend

72. See, e.g., Tierney, *Darrow*, 164 (maintaining that "[n]either father nor son ever fathomed the complexities of their loving but difficult relationship"; and that Paul was embarrassed by Darrow's stand for unpopular causes and Darrow, for his part, was "hurt and mystified to the end" that "Paul wanted neither to follow in his . . . footsteps nor to live in his shadow"), 434 ("In almost every way, father and son contrasted . . .").

73. Darrow to Paul Darrow, 12 March 1924; Darrow to Paul Darrow, 19 March 1924.

74. Darrow to Paul Darrow, 19 March 1924.

75. See, e.g., "Paul Darrow Dies Thursday of Heart Attack," *Greeley Tribune*, 21 December 1956 ("Because of [Paul's] interest in Rotary, the father addressed the club on his frequent visits to Greeley . . .").

76. Darrow to Mary Field Parton, 29 May 1915.

77. Paul Darrow to Jessie Darrow, 25 August 1892, ALS, MnU-L, Darrow Papers; Diary of Paul Darrow (photocopy in editor's files); see also Stone, *Clarence Darrow*, 117.

“any amount of money [he] wanted on books.” According to Stone, Paul also described his father as calm and not dictatorial: “He never lost his temper, rarely punished me. He was patient in explaining, even if I had done something wrong. He always took time to reason things out with me.”<sup>78</sup> These qualities—especially his non-authoritarian and sympathetic nature—might be fair to assume from his writings. Darrow was decidedly opposed to corporal punishment of children—judging from the views expressed in *Farmington*. That novel—written when Paul was twenty years old—shows an understanding and sympathy for a child’s view of the world. Darrow’s experience in raising Paul probably contributed to his appreciation of how the world might seem to a child.<sup>79</sup> Like his father before him, Darrow probably placed a high value on his son’s education; the fact that Paul graduated from Dartmouth College might be one indication of this. (But Darrow, who was a firm believer in the manual-school movement, did *not* believe that every child should be college bound.)

When Paul was five years old, Darrow signed an autograph book for him that Paul’s aunt had given him as a Christmas present. Darrow signed the book with an admonition about caring too much about money: “Paul | Nothing good or great was ever done for money. | Your father | C. S. Darrow, | March 2d—1889.”<sup>80</sup> Although there is little contemporaneous evidence beyond a few scraps such as this to support any conclusions about Darrow as a parent, he probably tried to instill noble values in his son. But Paul was surely raised much more by his mother than by his busy father, and how much influence Darrow exercised over Paul is unknown. In one of his letters to Jessie, Darrow acknowledges Jessie’s closer relationship to Paul: “He is yours more than mine & he loves you more than he does me. . . . Whatever it would mean to me or him, I would rather die than let you part from him.”<sup>81</sup> Jessie, for her part, signed the autograph book with the wish of many parents: “To my little *darling Boy* | Hoping he may grow up to be an honest good man. So that the world may be better for his having lived in it. So that *Papa* & I will both be proud of you. Is the wish of your *mama*.”

. . .

Darrow was married to Ruby (Hamerstrom) Darrow for thirty-five years—from 1903 until his death in 1938. There is probably more of a record of his relationship with Ruby than there is of any other relationship in his life, although this is not saying much; the correspondence between them has great gaps, and it is one-sided. All of the 150-some extant letters between the two were written by Darrow to Ruby. Ruby’s letters to Darrow are missing. But a fair amount of information is available about Ruby herself: several

78. Stone, *Clarence Darrow*, 118; see also Handwritten Notes of Irving Stone (apparently from an interview with Paul Darrow), undated, DLC-MSS, Darrow Papers, Box 12 (showing the same statement from Paul Darrow).

79. But see Margaret Parton, *Journey through a Lighted Room* (New York: Viking Press, 1973), 24–25 (the daughter of Darrow’s friend, Mary Field Parton, who, as a child, viewed Darrow as someone who “didn’t care for children very much”).

80. Photocopy in editor’s files.

81. Darrow to Jessie Darrow, 8 January 1896.

hundred letters from Ruby to other people exist, as well as some letters written to Ruby by a few of those same correspondents. Ruby's 450-plus pages of mostly undated letters to Darrow's biographer Irving Stone—primarily in the Darrow Papers at the Library of Congress—contain a great deal of information about her life with Darrow, but they require sifting through many idolizing and defensive statements about her late husband. The papers of Darrow's nephew (Karl Darrow) at The American Institute of Physics also contain many letters written by Ruby to Darrow's family members.

Generalizing about the relationship between Darrow and Ruby is difficult. Like many marital relationships, it probably changed over time. There is some indication of a potentially strained relationship at several points.<sup>82</sup> But the early letters from Darrow to Ruby show a man passionately in love. In June 1902, for example, a little over a year before they were married, Darrow wrote to Ruby in rhapsodic tones:

I want you to know that I love you more than I have ever loved any one in life—that you have been kinder truer & nobler to me than any one else has ever been, that I never can be happy without you. I want you to know that I have never spent a dull hour with you, that I have never for one moment wished to be away and that I have never had an unkind thought of you. I can not think of living without you—the greatest happiness—the only happiness that I can think of is to be with you while I live and near you—*very very* near you in the last long sleep. Any thing else to me now would seem like a sacrifice.<sup>83</sup>

At other points before their marriage, Darrow was not without his doubts about how permanent his feelings were for Ruby, which he openly acknowledged to her, and they were both entangled in other relationships at the time.<sup>84</sup> But the doubts appeared to fade as the months passed, and by late 1902, when Darrow was in the thick of the anthracite coal arbitration in Pennsylvania, he was looking forward to their marriage.<sup>85</sup>

Darrow never publicly—or, apparently, even among most friends—revealed his close relationship and engagement with Ruby before they were married, and their marriage took at least some of his friends by surprise.<sup>86</sup> Why Darrow kept their plans a secret is

82. See, e.g., Darrow to Ruby, 9 November 1911 (Darrow apologizing to Ruby for something he did or said and reassuring her of his love and respect for her); Darrow to Ruby, 7 December 1914 (apologizing for something that he said to Ruby).

83. Darrow to Ruby Hamerstrom, 4 June 1902.

84. See, e.g., Darrow to Ruby Hamerstrom, 20 June 1902; Darrow to Ruby Hamerstrom, n.d. ("Monday"). ALS, MnU-L, Darrow Papers ("There has only been the obstacle of which I told you, the *same* that is in *your* life—I shall try to make this right so I can come to you—I want you & can never be happy without you & can make no-one else happy. I must work this out the best I can to cause the least misery possible but I feel that it must be done & can be—and how anxious I am that it shall be soon").

85. Darrow to Ruby Hamerstrom, 20 November 1902; see also, e.g., Darrow to Ruby Hamerstrom, n.d. ("Friday"), ALS, MnU-L, Darrow Papers ("Really the loveliest picture I can conceive is to have a home & you there. I feel that I would be content."); Ruby Darrow to Irving Stone, 25 January 1941, DLC-MSS, Darrow Papers ("I was afraid for a long time to let him take another chance, for he had so wanted his freedom [in his first marriage], and had so reveled in it, and fully intended never to—again!").

86. "Their Marriage a Surprise to Friends," *Chicago Tribune*, 17 July 1903.



unknown. It might be that he did not want to hurt Jessie or Paul by the news. Or it might be that he simply wanted to keep his private life separate from the whirling public life that he was leading in late 1902 and early 1903—including the coal arbitration in Pennsylvania, his term in the state legislature in Springfield, and the mayoral campaign in Chicago. In fact, with respect to the latter, Darrow's friends probably did not know that his desire to marry Ruby and his hope of enjoying a long honeymoon with her in Europe (where he could write a novel) were probably significant factors in his decision to reject the call to run for mayor of Chicago. "Every day," Darrow wrote to Ruby, "I get some telegram about running for mayor & I am driven distracted by the bother. I think within a few days I will tell them that I will not—for all the time there comes before me a vision of six months at some quiet lake in the north of England or in Italy & with only you—and with it a chance to write a story—a long story—about you & me & every body."<sup>87</sup> After the mayoral election—that is, after Darrow had been "roasted and praised" (his words) for supporting Carter Harrison Jr. for mayor over his friend Daniel Cruice—he longed for his troubles to be over and for his honeymoon with Ruby to begin.<sup>88</sup>

As trying as their relationship might have been at times, surviving letters from later in their marriage show Darrow often longing for home and for Ruby. In addition to the letters published in this volume, here are some of the lonesome, amorous, and teasing statements that Darrow wrote to Ruby in letters:

- October 1906:* "I want you so I can hardly wait."
- November 1906:* "I really & truly am wild to see you."
- June 1908:* "I have been away so long I am anxious to get back. . . . Am getting buggser every minute."
- January 1909:* "You know how I hate to sleep alone away from you."
- May 1909:* "Am lonesome without you or any body. . . . K.Y.F.C.T. [i.e., Keep Your Feet Close Together?]."
- September 1909:* "What I would like would be a good long rest with you, say, from Friday night to Monday morning with the view & the brass bed & not much sleep."  
"I am crazy to see you & sleep with you."
- December 1909:* "Am playing one night stands & sleeping alone & will be glad to get back."
- March 1911:* "You certainly are a dear girl & I appreciate all you do although I am ashamed to tell you."
- April 1911:* "D—n it Rube you are a bully girl & I love you & miss you. . . . It is tough to sleep alone—I wake up in the night wanting you. Don't

87. Darrow to Ruby Hamerstrom, 28 January 1903.

88. Darrow to Ruby Hamerstrom, 7 April 1903.

- believe I will sleep any the first night after I get home. Do you get the thought?"
- May 1911: "I miss you like a house afire . . . I don't like to be away from home."
- July 1913: "Love until I see you & then—"
- January 1914: "Still I *wish you were here.*"
- October 1914: "It is just about bed time & I wish I was at home—or you were here. You know how I hate to sleep alone away from you."
- January 1915: "Any how will be glad to get back. Have lots of fun & keep your L[eg]'s crossed."
- August 1915: "Honestly Rube I *miss you & love you.*"
- November 1915: "Am ready to go to bed & wish you were here, or I was there. Nothing [x] happened this afternoon to write about except to tell you I love you & will be home on Thursday."
- March 1916: "I shall be glad to get home any how. Go to Mich. with me."

No one can say with much certainty how close or how happy Darrow and Ruby were over the many years of their marriage, especially without detailed diaries or frequent and intimate correspondence or some similar materials to review. But it is probably fair to say that the relationship was complicated by Ruby's personality, which, especially at an older age, is amply reflected in her own correspondence.

Among the papers of some of Darrow's friends and acquaintances, one can find some unflattering statements about Ruby. Brand Whitlock, for example, as Farrell reveals, once referred to her as "wholly uninteresting, crude . . . with no redeeming wit."<sup>89</sup> Perhaps the most sympathetic picture of her complex personality comes from one of her nephews, Frederick Hamerstrom, and his wife, Frances, both of whom knew Ruby well, including while Darrow was still alive. They described Ruby as eccentric and unconventional in a letter to a new physician for Ruby near the end of her life:

She has always been eccentric, unconventional and intolerant of the commonplace. She used to love the fun of living in a world of books, ideas, excitement and people and sharing those with her husband. She detests sweet domesticity. She cares what the world thinks about her, but doesn't give a hoot about the neighbors' opinions. She likes good clothes, but looks down on mere fashion. She was a delightful hostess, good at setting the atmosphere and generously giving the spotlight to others, especially to her husband. She is courageous and independent. She prides herself on economy and on being practical and managed practical matters for her husband. She strongly dislikes some people and some types and seems to think keeping up with the Joneses a cardinal sin. She takes pride in

89. Farrell, *Clarence Darrow*, 440; see also, e.g., *ibid.*, 124 ("The near-universal opinion of Darrow's pals [was] . . . that his new wife was his intellectual inferior"; they "talk[ed] of her henpecking, of her 'twittering,' and of her insecurity and possessiveness").

doing some things well, but not the sort of things most people feel strongly about. She would rather accept a challenge than submit to discipline. | She has tremendous spirit. Prides herself on being able to submit to the inevitable. We have never known her to melancholy; she'll fume or cuss or somehow keep going; it does not occur to her to give in to any weakness. | She used to be very witty, but I don't think she ever had much of a sense of humor.<sup>90</sup>

How many of these traits Ruby exhibited as a younger woman, during her marriage with Darrow, is unclear. But some information supporting the description above can be seen in Ruby's own letters throughout her marriage and later, after Darrow's death.

. . .

On the topic of Darrow and Ruby's intimacy and any discontent in their marriage, the settlement worker and journalist Mary Field Parton will always loom large. Darrow and Parton met sometime in "1907 or 1908" (according to Parton's daughter, many years later, who said that her mother "could never remember the exact date").<sup>91</sup> They were introduced to each other by the suffragist and activist Helen Todd at a "protest meeting [in Chicago] ('Somebody was jailed or somebody was striking or somebody wanted higher wages')." <sup>92</sup> When they met, Parton was unmarried and she was working either as a settlement worker or for the Immigrants' Protective Association in Chicago (she switched from the former to the latter in approximately 1908). Darrow might have had a sexual affair with Parton sometime during this early part of their relationship; their relationship certainly could have developed into a sexual one at some point. A few of Darrow's letters to Parton suggest that type of intimacy: "I miss you all the time. No one is so bright & clever & sympathetic to say nothing of sweet and dear & I wonder how you are & what you are doing in the big city."<sup>93</sup> "I am up here [Montevideo, Minnesota] making a couple of speeches & as lonesome as hell. Little Jay towns & Jay people who never heard of Nietzsche or any one else excepting Jesus. What is the use? The radicals are fools. You never can do any thing with the people except to let them wiggle along through the ages. It isn't worth while to butt your head against a stone wall—but still I am blue & lonesome to night & I wish I could see you so I would be bluer & not so lonesome."<sup>94</sup> Other documents and letters also hint at the possibility, including several letters by Mary's sister, Sara, and Charles Erskine Scott Wood that suggest a sexual relationship between Darrow and

90. Frederick and Frances Hamerstrom to Dr. A.H. Wolff, 18 February 1955, TLC, private collection of Elva Paulson (copy in editor's files).

91. Margaret Parton, "Mary Field" (unnumbered pages of a typewritten manuscript of a partial draft, unpublished biography of Parton) [1974], OrU, Margaret Parton Papers, Box 38, Folder 7.

92. Ibid.

93. Darrow to Mary Field, 15 March 1910.

94. Darrow to Mary Field Parton, 4 July 1913, ALS, ICN, Darrow-Parton Papers.

Parton.<sup>95</sup> But determining for certain if and when two people had a sexual relationship one hundred years after the fact is not always easy. When any affair began, how long it lasted, whether and when it was revived from time to time, what was said by each of them to the other about their feelings for each other, and a whole host of other questions of this sort are largely unanswered by the record, despite efforts by some biographers to read into the sparse record a great deal about the relationship.<sup>96</sup>

There was apparently no love lost between Ruby and Parton as the years developed—they each said unkind things about the other in papers that survive.<sup>97</sup> Ruby surely knew about the affection and admiration that her husband and Parton had for each other, but if she knew about any sexual affair between them, there is no definite record of it. In fact, after her husband's death, Ruby denied (or rather seems to have tried to forget) that there was ever any discussion between them about "other women." In a letter to a nephew and his wife—after she heard that Stone's biography of her husband said that Ruby had made life "intolerable" for him with respect to "'other women' so that at times he went on trips to get away from [her]" (Stone did not say this)—Ruby defended herself saying: "In all our years together never, never was there a word about 'other women,' and so there could not have been any absences from me for that reason. I was not beautiful enough to be that dumb!"<sup>98</sup>

Other than the record (such as it is) regarding his relationship with Mary Field Parton, there is, in fact, no reliable evidence of another extramarital affair by Darrow—either during his marriage to Jessie or his longer marriage to Ruby. But there is evidence (of varying reliability) of flirtations with and perhaps propositions to other women. Kevin Boyle, for example, in his history of the Sweet trials in Michigan in 1925 and 1926, brought to light the diary entries of a civil rights activist (Josephine Gomon) who

95. See, e.g., Margaret Parton, "Mary Field" (in the draft of Margaret's book about her mother): "According to Irving Stone, Darrow's biographer, the famous lawyer had many affairs at this period when Free Love had become a cult among radicals; for years I wondered whether my mother had been one of them. It was not exactly a question which any daughter with a sense of delicacy could ask directly, but once during the tape-recording sessions I edged up to it. 'Mother,' I said, 'you went to all those meetings with Darrow and you shared a hundred dinners and sometimes he would walk home with you to your flat. Tell me, didn't you ever talk about anything except politics and suffering humanity? Didn't you ever . . . well, hold hands?' She understood what I was asking, but she was not to be trapped. 'I think if I had been born a Catholic, I would have been a nun,' she answered. This remark left me speechless, which I guess is what she intended. . . . Ruby evidently had reason to be jealous, but whether she had reason to be jealous of Mary I'm not entirely sure, for there are some mysteries in every life which I suppose even the most diligent sleuthing cannot penetrate, and probably should not." See also Farrell, *Clarence Darrow*, 226, 242, quoting letters from Charles Erskine Scott Wood to Sara Bard Field from which details of a sexual affair between Darrow and Parton are inferred; and Cowan, *The People v. Clarence Darrow*, 204 (same).

96. See, e.g., Donald McRae, *The Last Trials of Clarence Darrow* (New York: William Morrow, 2009), 15 (maintaining that Darrow and Parton briefly resumed a sexual relationship in 1924).

97. See, e.g., Ruby Darrow to Irving Stone, undated, TLS, DLC-MSS, Darrow Papers ("Dear Irving Stone:— | You see I did send you . . .") (describing Parton as having "no fine sides"); Weinberg and Weinberg, *Clarence Darrow*, 156–57 ("Against the collective woman Darrow rages as he would like to against the little piss ant wife whose pettiness and jealousies have galled him for years") (quoting Parton's diary entries as quoted by Parton's daughter in her unfinished biography of her mother).

98. Ruby Darrow to Frederick Hamerstrom Jr. and Frances Hamerstrom, undated, TLS, private collection of Elva Paulson (copy in editor's files).

attended the trials and recorded a few of Darrow's amorous overtures to her.<sup>99</sup> Geoffrey Cowan, as another example, writes in his book about a few letters that Sara Bard Field (Mary's sister) wrote to C. E. S. Wood, in which Sara described what can be interpreted as unwanted sexual advances or propositions to her by Darrow during the McNamara trial in 1911 and later in Chicago.<sup>100</sup> Sara Bard Field gave an oral history in her late seventies and early eighties in which she spoke sympathetically of Darrow and mentioned in passing that Darrow had "many affairs" with other women—"always" with "intellectual women."<sup>101</sup> Although she might have been thinking of her sister when she said this, how she knew of "many affairs"—living as far away as she did and with relatively little contact with Darrow—she did not say, nor did she identify any of the women or when the affairs took place. Farrell, in his book, quotes a comment from a pastor (Preston Bradley) in Chicago who knew Darrow to some (unknown) extent, saying that Darrow was "very highly sexed" and that he thought there were many women in Darrow's life "because Darrow did enjoy feminine company, and he looked at it as a conquest."<sup>102</sup> In Farrell's view, Darrow was a "notorious rake." Whether this is accurate is hard to say. The label "notorious" is difficult to support; the record of his extramarital pursuits does not get much wider or deeper than what is described above. Irving Stone may have been the starting point among biographers for generalizations and vagueness on the subject of Darrow's sexual life. When Darrow's friend and former law partner William Holly reviewed Irving Stone's biography of Darrow, he noted that Stone "intimated some things about Darrow's relationship with women that are based on mere gossip" and that "there is always much gossip about an outstanding person such as Darrow was."<sup>103</sup> But one thing is for sure: Darrow's record on women—not just in how he might have treated them in his personal life but also in his public pronouncements—is part of his mixed legacy.

. . .

In the first half of Darrow's long career he was an ardent promoter of women's rights, including, in particular, the right to vote. He wrote essays and gave many speeches on the subject. In one talk in 1891, at the Universalist church in Englewood, Illinois, he told his audience that society covered up the subjugation of women by chivalry and gallantry, "fine phrases," and talk of "holy relations." He blamed the treatment of women, in part, on the way parents raised their daughters: "The parent . . . who fails

99. Kevin Boyle, *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age* (New York: Henry Holt, 2004), 281, 296.

100. See, e.g., Cowan, *People v. Clarence Darrow*, 174–75; see also Farrell, *Clarence Darrow*, 225 (noting that "Sara had a way of tweaking her lover's jealousy with tales about men who sought to bed her and it is possible that she embellished her encounters with Darrow"), 269, 302.

101. Transcript, Sara Bard Field: Poet and Suffragist, Oral History Interview conducted by Amelia R. Fry (Regional Oral History Project, University of California at Berkeley, 1959–63), 273.

102. Farrell, *Clarence Darrow*, 89.

103. Holly, review of Irving Stone's *Clarence Darrow for the Defense*, 140–42.

to give his daughter an independent calling is doing his part toward making her a slave . . .” But the real problem, he said, was the perpetuation of the idea that the “true destiny” of a woman was to get married.<sup>104</sup> Many years later, in 1915, Darrow made headlines when he became co-counsel in a murder case with a woman lawyer in Chicago, which the *Chicago Tribune* said was “one of the first where a woman [lawyer] has appeared.”<sup>105</sup> This may not have seemed like such a notable fact to Darrow, who for many years had employed Nellie Carlin, a graduate of the Chicago College of Law, as a lawyer in his law office.

During or after his trials in Los Angeles for jury bribery, Darrow began reading the writings of Arthur Schopenhauer and Friedrich Nietzsche, and he became enamored with them.<sup>106</sup> In the summer of 1916, he wrote an article on Nietzsche in which he described the philosopher as “old-fashioned” on “modern ideas of feminism.”<sup>107</sup> He said that Nietzsche regarded both men and women “in the light of biology and that is all there is to it. . . . Nature has provided certain functions—and with that goes certain tendencies, certain conduct, which does not place woman inferior to man, intellectually, or in any other way.” As for himself, Darrow said that he had “no patience” with the notion that women were inferior.<sup>108</sup>

But shortly after this article was published, Darrow seemed to show patience for the idea after all. In a dinner speech for the Chicago Woman’s Law League, Darrow told his audience that women did not have “a high grade of intellect” and could never make a living at law unless they became divorce lawyers or defended criminals.<sup>109</sup> This was a demeaning statement, of course, but it did not so much signal a change of heart for Darrow as it did prove his tendency to take a poke at his audience. Still, Darrow seemed to take an increasingly sarcastic attitude toward women in his writings and speeches. This might have been fueled in part by what Darrow saw as wrong-headed opposition to the war by many women leaders and by his belief that too many women were joining with ministers, settlement workers, and other reformers to curtail people’s freedoms and liberties.<sup>110</sup> Darrow’s fundamental political ideas remained constant most of his life: he believed in free trade, states’ rights, individual freedom, and

104. “Woman’s Place in Nature,” (*Englewood*) *Daily Evening Call*, 24 January 1891; see also “The Rights of Women,” *Rockford (Illinois) Register-Gazette*, 8 September 1891 (reporting on a similar speech by Darrow at the Christian Union Church in Rockford).

105. “Woman Lawyer to Defend Pethick,” *Chicago Tribune*, 25 August 1915 (observing that Darrow’s co-counsel relationship with Alice Thompson was “one of the first where a woman has appeared in a criminal case”).

106. Darrow to Charles Erskine Scott Wood, 19 May 1913.

107. Darrow, “Nietzsche,” *The Athena* 1 (June–July 1916), 6–16; see also Darrow, “Schopenhauer,” *The Liberal Review* 2 (March 1917): 9–23.

108. Darrow, “Nietzsche,” 10–11.

109. “Nothing in Law, Darrow Asserts,” *Chicago Tribune*, 17 December 1916.

110. See also, e.g., Darrow, “Attorney for the Defense,” *Esquire* 5 (May 1936): 36–37, 211–13 (making harsh statements about women serving on juries); Darrow, “Women and Justice: Are Women Fit to Judge Guilt,” *McCall’s* (June 1928): 15, 65–66.

limited government. He seemed to view the rise of women, as a political force, as a threat to the latter three.

Darrow's distrust of the "good" people—which included women reformers—runs throughout his later letters and other writings. "All you say about prohibitionists is true," he told Mary Field Parton. "All reformers are cold blooded & cruel to the last degree. They have no imagination & no emotion, else they would not be good."<sup>111</sup> In 1927, Darrow told a reporter, "I'm against whatever the reformers are for."<sup>112</sup> But he was not opposed to all regulation of human behavior: when Mary was going to Albany, New York, in 1910 to protest a law requiring every woman convicted of prostitution to undergo a physical examination for venereal diseases, Darrow, although he had some reservations, told her that he believed a law like that was necessary: "It may not be that the proposed law is any good, probably it is not if the reformers framed it. Still something along that line is necessary & it must not be assumed that it is bad simply because it interferes with the personal liberty of the vendors, or rather the victims. Better think it over & be sure you are right. If there is a big delegation going to Albany probably they are wrong. If there are preachers & settlement workers it is almost surely wrong."<sup>113</sup>

In Darrow's view, biology determined that women would be more conservative than men. He told the writer Alice Beal Parsons that women are simply trying to preserve the species: "I do not like to be too dogmatical about feminists, but I suppose you know what my general view is. I am inclined to think that nature has provided means of perpetuating the fool human species and in that provision, women are much more conservative. Otherwise brats would die young. I think it is biological. Perhaps I am mistaken. If you know anything new on this, I would be glad to see it, for I have no prejudice on the matter."<sup>114</sup> In Darrow's view, this natural conservatism in women, when combined with their new power to vote, led to such legislative evils as Sunday closing laws and Prohibition—the latter of which Darrow saw as "an unmitigated evil and an abominable violation of personal rights."<sup>115</sup> Radical women who advocated for suffrage were apparently not the problem; they were not in favor of these legislative evils. But as he explained to Mary Field Parton, by gaining the right to vote they had unleashed a much more conservative mass of women who supported these measures:

I see that a campaign has been started to bring back the New England Sunday laws to stop every thing that people want to do. I have been thinking of the woman's party made of Radical women who wanted the ballot. Now they have it and the great mass of conservative women are used by the preachers to suppress life. It would be different if the Y.W.C.A. had

111. Darrow to Mary Field Parton, 26 September 1914, ALS, ICN, Darrow Papers. See also, e.g., *Story*, 106.

112. *Philadelphia Daily Record*, 17 May 1927.

113. Darrow to Mary Field, 27 September 1910.

114. Darrow to Alice Beal Parsons, 13 March 1926.

115. Darrow to H. L. Mencken, 2 May 1924.

done it; but the radical women did it and now they will get theirs; the only pleasure I have out of it is that I told them so.<sup>116</sup>

. . .

In the end, no simple characterizations of Darrow can be made. But his letters are a good starting place for an examination of him. A careful reader will likely find new insights into his character and some of the events of his life. On the admirable side, Darrow's letters show a lawyer deeply interested and involved in the causes and events of his day, whether they were developments in science, or literature, or politics. They show a sense of humor and wit. They show an almost-always even temper, sympathy for the poor and the underdog, and a commitment to helping clients who could not pay for his services. They show his great ambition as a lawyer and a hint of how shrewd he could be. And they show a basic tolerance, most of the time, for people with opinions and beliefs that differed from his own. They show a lifelong interest in books, which fed his curiosity about a wide variety of subjects. And they also show some trivial but interesting points about Darrow's life, like the fact that Darrow subsidized the first printing in the United States of Oscar Wilde's *The Ballad of Reading Gaol*. They help show, in short, why Darrow is the most celebrated lawyer in American history.

But regardless of what we can learn about Darrow's life through his letters and other research, a conclusive answer to the question to which the *New York World* believed it knew the answer in 1907 will probably always remain elusive: Was Darrow the type of lawyer we should admire? I believe so (with some qualifications, a few of which I allude to above), and I think his letters help to support this conclusion. But a sometimes sketchy historical record will never allow us to answer that question to everyone's satisfaction. One biographer of Darrow (Irving Stone) reportedly said that "everything is findable."<sup>117</sup> This is an indefensible claim. Everything about another person's life is definitely not findable. Janet Malcolm, in her study of Gertrude Stein and Alice B. Toklas, said that biographers have an "arrogant desire to impose a narrative on the stray bits and pieces of life that wash up on the shores of biographical research."<sup>118</sup> Malcolm was probably right. But collections of letters can avoid that charge more easily than biographies. So with no grander ambition (except as displayed above), I offer the reader some stray bits and pieces of Darrow's life.

116. Darrow to Mary Field Parton, 25 November 1920.

117. Cowan, *People v. Clarence Darrow*, xiv (quoting a conversation with Irving Stone).

118. Janet Malcolm, *Two Lives: Gertrude and Alice* (New Haven: Yale University Press, 2007), 56.