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PLEA <sup>of</sup> Clarence  
Darrow, *in*  
*his own Defense to*  
*the Jury that exon-*  
*erated him of the*  
*charge of bribery*  
*at Los Angeles*  
*August - 1912*

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**PLEA OF CLARENCE DARROW  
IN HIS OWN DEFENSE *to the*  
JURY AT LOS ANGELES  
AUGUST, 1912**

Gift  
J. E. Adams  
1918

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# FOREWORD

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**T**HERE was no dry eye or unmoved heart in the crowded courtroom when, at noon on the 15th of August, 1912, Clarence Darrow gravely turned from his long address to the "jury of his peers" and quietly resumed his seat at the "bar of justice," where for three weary months the District Attorney of Los Angeles County, the National Erectors' Association and the Burns Agency, had exhausted every means to convict him of bribery.

On the morning of the 17th, as soon as the instructions of Judge Hutton had been delivered, the jury quickly, decisively voted "Not Guilty." The trial was based on the charge that on the 28th of November, 1911, the defendant had given Bert Franklin \$4,000 with which to go down on Main street and bribe a prospective juror (Lockwood) in the case of J. B. McNamara then on trial. Briefly, the state's evidence was that Lockwood and the District Attorney arranged to have the money passed while a number of detectives were watching. Also, that in January a representative of the National Erectors' Association, Special Federal Prosecutor Oscar Lawlor, and Mr. Darrow's former employe John R. Harrington, met at the Sherman House in Chicago and planned a dictagraph ambush which was later operated at Harrington's room in the Hayward Hotel at Los Angeles to which Mr. Darrow was unsuspectingly lured by Harrington on a pretext of friendly and confidential conversation. A great many collateral issues were introduced, the Court permitting the state the widest latitude, so that during the long trial, which began on May 15th and lasted till August 17th, the entire McNamara defense, its settlement, and the pleas of guilty were exhaustively rehearsed.

Clarence Darrow is like no other man. His position in

the nation and at the bar is unique—his life, his ideals, his “view of things” are his own. He is often silent; but when he speaks men listen. What he writes or says has a strength and character individual, distinctive, profound, and humane. In no wise is he an entertainer, but a man of thought and purpose. Those who seek rhetorical flourishes and flights of mere oratory need not search the following, or any pages, of the man Darrow. The former do, however, reveal to a considerable extent the method—and the “madness,” if you will—of one of the greatest publicists in America in the most critical hours of his career—a circumstance which gives these pages a value apart and an importance beyond the province of contemporary judgment. This, his latest and perhaps his greatest jury address which, by the direction and with the valued assistance of Mr. Fay Lewis, his life long friend, I have prepared for publication as carefully as the time at my disposal would permit and with regrettable but unavoidable scantiness of revision on the author’s part, was delivered entirely impromptu without even the assistance of notes. It was spoken rapidly, unhesitatingly, without a single pause, and its official transcription by the court reporters was by no means flawless. In a few instances, the purely technical discussion of obscure points has been omitted, but in the main, and practically, the plea stands as it fell from the lips of the accused man—fell on hearts and ears keen to lose no syllable of its awe-ful earnestness, its quick turns of humor, its wonderfully pleasing rhythm, its quiet boldness, its daring dignity and its subtle sympathy. It will not “read” as it “listened,” of course, for the personality that uttered it is not to be translated by type, but the cause of the weak which it voiced is not lost in the printed pages, nor is the warp of profound philosophy on which it is woven obscured.

LUKE NORTH.

Los Angeles, August, 1912.

**“EVERY STEP IN CIVILIZATION MEANS  
THE ELEVATION OF THE POOR, MEANS  
HELPING THE WEAK AND THE OPPRESSED”**



PLEA OF  
CLARENCE DARROW

*In His Own Defense to the Jury  
that Exonerated Him*

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Mr. Darrow began his address to the jury shortly after court convened on the afternoon of August 14th:

**G**ENTLEMEN of the jury, an experience like this never came to me before, and of course I cannot say how I will get along with it. I am quite sure there are very few men who are called upon by an experience of this kind, but I have felt, gentlemen, after the patience you have given this case for all these weeks, that you would be willing to listen to me, even though I might not argue it as well as I would some other case. I felt that at least I ought to say something to you twelve men besides what I have already said upon the witness stand.

In the first place I am a defendant charged with a serious crime. I have been looking into the penitentiary for six or seven months, and now I am waiting for you twelve men to say whether I shall go there or not. In the next place, I am a stranger in a strange land, 2,000 miles away from home and friends—although I am proud to say that here, so far away, there have gathered around me as good and loyal and faithful friends as any man could have upon the earth. Still I am unknown to you.

I think I can say that no one in my native town would have made to any jury any such statement as was made of me by the District Attorney in opening this case. I will venture to say he could not afterward

have found a companion except among detectives and crooks and sneaks in the city where I live if he had dared to open his mouth in the infamous way that he did in this case.

But here I am in his hands. Think of it! In a position where he can call me a coward—and in all my life I never saw or heard so cowardly, sneaky and brutal an act as Ford committed in this courtroom before this jury. Was any courage displayed by him? It was only brutal and low, and every man knows it.

I don't object to a lawyer arguing the facts in his case and the evidence in his case, and drawing such conclusions as he will, but every man with a sense of justice in his soul knows that this attack of Ford's was cowardly and malicious in the extreme. It was not worthy of a man and did not come from a man.

I am entitled to some rights until you, gentlemen, shall say differently, and I would be entitled to some even then, and so long as I have any, I shall assert them the best I can as I go through the world wherever I am.

What am I on trial for, gentlemen of the jury? You have been listening here for three months. What is it all about? If you don't know then you are not as intelligent as I believe. I am not on trial for having sought to bribe a man named Lockwood. There may be and doubtless are many people who think I did seek to bribe him, but I am not on trial for that, and I will prove it to you. No man is being tried on that charge. I am on trial because I have been a lover of the poor, a friend of the oppressed, because I have stood by Labor for all these years, and have brought down upon my head the wrath of the criminal interests in this country. Whether guilty or innocent of the crime charged in the indictment, that is the reason I am here, and that is the reason that I have been pursued by as cruel a gang as ever followed a man.

Now, let's see if I can prove this. If the District Attorney of this county thought a crime had been committed, well and good, let him go ahead and prosecute, but has he done this? Has he prosecuted any of the bribe takers and givers?

And who are these people back of him and back of the organization



of this county who have been hot on my trail and whose bark I can remember from long ago? Will you tell me, gentlemen of the jury, why the Erectors' Association and the Steel Trust are interested in this case way out here in Los Angeles? Will you tell me why the Erectors' Association of Indianapolis should have put up as vicious and as cruel a plot to catch me as was ever used against any American citizen? Gentlemen, if you don't know you are not fit to be jurors. Are these people interested in bribery? Why, almost every dollar of their ill-gotten gains has come from bribery. When did the Steel Trust—the Steel Trust, which owns the Erectors' Association and is the Erectors' Association—when did it become interested in prosecuting bribery? Was it when they unloaded a billion of dollars of watered stock upon the American people—stock that draws its life and interest from the brawn, the brain and the blood of the American working man? Are they interested in coming all the way out to this State and to Los Angeles to prosecute a man merely for bribery? There are a good many states between this city and New York City. There are a good many State's Attorney's in this broad land of ours. They can begin at home if they would, these men who have made bribery a profession and a fine art. Gentlemen of the jury, it is not that any of these men care about bribery, but it is that there never was a chance before since the world began to claim that bribery had been committed for the poor. Heretofore, bribery, like everything else, had been monopolized by the rich. But now they thought there was a chance to lay this crime to the poor and "to get" me. Is there any doubt about it? Suppose I am guilty of bribery, is that why I am prosecuted in this Court? Is that why by the most infamous methods known to the law and outside the law, these men, the real enemies of society, are trying to get me inside the penitentiary?

#### THE UNFORGIVABLE CRIME

No, that isn't it, and you twelve men know it. Your faces are unfamiliar to me. There may not be a man on this jury who believes as I believe upon these great questions between capital and labor. You may all be on the other side, but I have faced the other side over and over

again, and I am going to tell you the truth this afternoon. It may be the last chance that I shall ever get to speak to a jury.

These men are interested in getting me. They have concocted all sorts of schemes for the sake of getting me out of the way. Do you suppose they care what laws I might have broken? I have committed one crime, one crime which is like that against the Holy Ghost, which cannot be forgiven. I have stood for the weak and the poor. I have stood for the men who toil. And therefore I have stood against them, and now this is their chance. All right, gentlemen, I am in your hands, not in theirs, just yet.

In examining you before you were accepted as jurors, Mr. Fredericks asked you whether, if I should address you, you would be likely to be carried away by sympathy? You won't be if you wait for me to ask for sympathy. He has cautioned you against my argument. You will find I am a plain speaking man, who will try to talk to you as one man to another. I never have asked sympathy of anybody, and I am not going to ask it of you twelve. I would rather go to the penitentiary than ask for sympathy.

I have lived my life, and I have fought my battles, not against the weak and the poor—anybody can do that—but against power, against injustice, against oppression, and I have asked no odds from them, and I never shall.

I want you to take the facts of this case as they are, consider the evidence as it is, and then if you twelve men can find on your conscience and under your oath any reason to take away my liberty, well and good, the responsibility will be on you. I would rather be in my position than in yours in the years to come.

As I have told you, I am tried here because I have given a large part of my life and my services to the cause of the poor and the weak, and because I am in the way of the interests. These interests would stop my voice—and they have hired many vipers to help them do it. They would stop my voice—my voice, which from the time I was a prattling babe, my father and mother taught me to raise for justice and free-

dom, and in the cause of the weak and the poor. They would stop my voice with the penitentiary. Oh, you wild, insane members of the Steel Trust and Erectors' Association! Oh, you mad hounds of detectives who are willing to do your master's will! Oh, you District Attorneys! You know not what you do. Let me say to you, that if you send me to prison, within the gray, dim walls of San Quentin there will brood a silence more ominous and eloquent than any words that my poor lips could ever frame. And do you think that you could destroy the hopes of the poor and the oppressed if you did silence me? Don't you know that upon my persecution and destruction would arise ten thousand men abler than I have been, more devoted than I have been, and ready to give more than I have given in a righteous cause?

I have been, perhaps, interested in more cases for the weak and poor than any other lawyer in America, but I am pretty nearly done, anyhow. If they had taken me 20 years ago, it might have been worth their while, but there are younger men than I, and there are men who will not be awed by prison bars, by district attorneys, by detectives, who will do this work when I am done.

If you help the Erectors' Association put me into the penitentiary, gentlemen, and Mr. Ford stands outside the doors licking his picturesque chops in glee at my destruction, then what? Will the Labor Cause be dead? Will Ford's masters ride rough shod over the liberties of men? No! Others will come to take my place, and they will do the work better than I have done it in the past.

Gentlemen, I say this is not a case of bribery at all. You know the men who have been after me, and the interests that have been after me, and the means that have been used. What have they done? They say a bribery was seriously intended down here on Main Street, close to my office, which I will speak about later, but have they tried to get a bribe giver or a bribe taker? No, not one. Let us see what they have done. They have taken Bert Franklin and given him his liberty, without costing him a cent. They have taken White and let him go scot free. They have taken Mr. Bain and Mrs. Bain and have not even filed an informa-

tion against them. They have taken Harrington and Behm and brought them here and given them immunity. They have taken Cooney and Fitzpatrick and Mayer and let them go unwhipped of justice. More than that, gentlemen, they have said boldly to Franklin, if he told the truth, and the circumstances would show that he did—in this instance—they have said boldly to him, "If you know anything against anybody in Los Angeles, keep your mouth closed, but help us put Darrow inside the penitentiary." Is there any question that they have done all this? If I am guilty others associated with me are guilty, too. But the crimes of all the others are washed away in order "to get" me.

Gentlemen, suppose I did this bribery, suppose I did, then what? Is there any man in whose soul lurks a suspicion of integrity and fair dealing, is there any civilized man on earth who would convict me under circumstances like that? If there is, gentlemen, I would rather dwell among the savages with District Attorney Ford as a chief, much rather, because I might raise an insurrection against him and get some justice.

Will you tell me if anywhere there could be an American jury, or anywhere in the English-speaking world there could be found a jury that would for a moment lend itself to a conspiracy so obvious and foul as this? If there is, gentlemen, then send me to prison. Anyway, when I reach prison, they can do nothing more to me, and if I stay here, they will probably get me for murder after awhile. I do not mean the murder of Ford, he is not worth it; but they will put up a job and get me for something else. If any jury could possibly, in a case like this, find me guilty, the quicker it is done the better. Then I will be out of my trouble.

Gentlemen, if the State of California can afford to stand it, I can. If the State of California, and the fair city of Los Angeles, can lend itself to a crime like this, the victim will be ready when the time comes. But let me tell you, that, if under such testimony as you have heard here, and under the sort of conspiracy you have seen laid bare here, you should send me to prison, it would leave a stain upon the fair fame of your city and your state that would last while these hills endure, and so long as the Pacific waves should wash your sandy coast. Tell me that any American

jury would do it! Gentlemen, I could tell you that I did this bribery, and you would turn me loose. If I did not think so, I would not think you were Americans of spirit or heart, or sense of justice. Gentlemen, if within this courthouse, men could be bought and bribed with immunity, could be threatened and coached and browbeaten, and if the gold of the Erectors' Association could be used to destroy human life—if that could succeed, it would be better that these walls should crumble into dust.

I do not know you twelve men. I never saw you before, but you have heard my story on the stand, you have seen me here from day to day. You have seen the class of people who have come here to condemn me and befoul my name. You know the class of people who have come here to tell you what my reputation has been. You have seen the witnesses who have come forward to testify in this case, and you are not insane, and I tell you gentlemen, I do not want you to think I am worried about it now; but I have spent troubled days and sleepless nights over the misery that they have already caused me and those near and dear to me. But now I have no doubt about any jury under these circumstances, no more doubt than I had as a child when I laid my head on my mother's breast. Men cannot lose all their heart except by a surgical operation, and there are not here in Los Angeles twelve men without some heart. If there were they would have been in the employ of the District Attorney long ago.

Now, gentlemen, let's see what they have made by their conspiracy? These are strong-arm men. They have the Grand Jury, two of them; with one they can reach across the continent and get whom they want; and when they get him, they take him before the other body, and they say to him—what, gentlemen? They don't say "Your money or your life," but they say "Your liberty or your manhood; take your choice." And the kind of men they choose give up their manhood. How much credit can you give to the word of a man who finds his liberty held before him as a bait for his testimony? Gentlemen, I have tried a good many cases in my time! I have been 35 or 36 years in this profession, and did you send me to prison, why, I have practiced law long enough anyhow; I was going to have a vacation. Of course there are pleasanter places

to take vacations than the one where Ford wants to put me—but I have practiced law a good long time, and I tell you I never saw or heard of a case where any American jury convicted anybody, even the humblest, upon such testimony as that of Franklin and Harrington, and I don't expect to live long enough to find that sort of a jury. Let me say this, gentlemen, there are other things in the world besides bribery, there are other crimes that are worse. It is a fouler crime to bear false witness against your fellowman, whether you do it in a cowardly way in an address to a jury, or from a witness chair—ininitely fouler.

Now, let me put it to you as to men who value your own liberty—because you all value your own liberty, and I trust you value mine, and I have no doubt you do—suppose any infamous scoundrel taken in criminal conduct could know that he could turn on you or on me to save himself, would your liberty be safe? It would not be as safe as mine, for you might not go before as fair-minded a jury as I feel that I am before today. Suppose your hired man could be taken in some act of crime, and the District Attorney could say to him, "All right, here is the penitentiary, but I will let you out if you will fasten the crime on your employer." Gentlemen, would you be safe?

#### GOVERNMENT BY DETECTIVES

Suppose you thought that I was guilty, suppose you thought so—would you dare as honest men, protecting society, would you dare to say by your verdict that scoundrels like this should be saved from their own sins, by charging those sins to someone else? If so, gentlemen, when you go back to your homes, you had better kiss your wives a fond goodbye, and take your little children more tenderly in your arms than ever before, because, though today it is my turn, tomorrow it may be yours. This consideration, gentlemen, is more important to orderly government, to the preservation of human liberty, than "to get" any one man, no matter how hard they want "to get" him.

Now, gentlemen, I am going to be honest with you in this matter. The McNamara case was a hard fight. I will tell you the truth about it, then, if you want to send me to prison, go ahead, "it is up to you." It was a hard fight. Here was the District Attorney with his sleuths. Here was Burns with his hounds. Here was the Erectors' Association with its gold. A man could not stir out of his home or out of his office without being attacked by these men ready to commit all sorts of deeds. Besides, they had the Grand Jury, we didn't. They had the Police Force, we didn't. They had organized Government, we didn't. We had to work fast and

hard. We had to work the best we could, and I would like to compare notes with them. I wish, gentlemen of the jury, that some power had been given to us to call before this jury all the telegrams sent by the District Attorney's office and sent by Mr. Burns. I wish some Grand Jury could be impanelled to inquire into their misdeeds. But no, we cannot. They sent out their subpoenas and they got two or three hundred telegrams, public and private, that had been sent from our office. What did they get? Have they shown you anything? Do you think you could run a Sunday School without any more incriminating evidence than they got from those telegrams? I have never tried to run one, but I don't believe you could. What did they get? By the wonderful knowledge of Mr. Ford and by his marvelous genius, they found the key to our code. He forgot his bile and bitterness for one night and worked out a key—and then what? A telegram to Rappaport on the 29th, saying that we would give him a thousand dollars, and then a telegram on the first of December—"Better not spend the thousand."

They had detectives in our office. They had us surrounded by gumshoe and keyhole men at every step, and what did they secure? Nothing, nothing. I am surprised, gentlemen, that we were so peaceful in fighting the District Attorney and Burns. I scarcely know why we had a code, except that it looked better, and men in business generally use codes, and I knew they had one, for here and there a stray telegraph operator would send me their dispatches the same as the managers would give my dispatches to Burns. The poor would help me and the rich would help them, but the help of the rich was always of greater avail than the help of the poor, because they were the stronger.

What did they get, with all their grand juries and all their powers, gentlemen? They got conclusive evidence, it seems to me, that everything was regular, that nothing illegal was done, and with all the witnesses—we interviewed some hundreds—with all the time of twenty or thirty men day and night spent upon that cause, with all the money which we were obliged to spend—now let us look at the pitiful thing that they have brought to this jury to try to have you think badly of me. No matter if I had killed my grandmother, it would not prove that I had sought to bribe Lockwood; it might cause you to have a bad opinion of me, but you could not convict me of bribery on that opinion.

But what did they get? Why, it is shown here that before I left the City of Chicago in May, a Burns sleuth set a trap to catch me, and he was here and testified—Biddinger. Who is Biddinger? You saw him, you heard him testify. If there is any man on this jury who could see

Biddinger and would not take my word against his, then put me away, put me away. If there is any man on earth excepting Ford who would not take my word against Biddinger, then I wish somebody would shoot me if you cannot get rid of me in any other way.

What did he say? I will analyze his story for a minute—his story which anybody with any brains would know was a fabrication—except what he told on cross-examination, when he very nearly admitted the whole truth. Under the guise of proving to this jury that he was an important witness, Mr. Ford got him to tell of an alleged conversation with J. B. McNamara, which was probably never held; and then, when Ford came to argue his case, he willfully, maliciously, feloniously, criminally, cruelly, distorted the evidence from the purpose for which it was introduced, to show that J. B. McNamara mentioned me before I ever saw him. Therefore I must have been one of the people who inspired his deed! For God's sake, Ford, if you are ever made District Attorney of this county, if you are able to climb up the ladder of fame, higher and higher still, I would rather spend my days in the meanest prison pen than the wit and the malice of men can contrive than change places with you, infinitely rather. There are some things worse than prison. Ford introduced that statement, and then he told you it showed that I inspired McNamara's act. What do you twelve men think about a person who could make a statement like that?

Biddinger testified that he had a conversation with McNamara. He said he came to my office and told me about it, and told me about some trinkets that he had, that another detective came with him, one whom I had employed in other matters and that part was true. He admitted on cross examination that he did tell me that Burns had traitors in our camp with whom he was consulting, and that he offered to tell me about them. He told me that some of the members of the Executive Board of the organization I was defending were in the pay of Burns, and this, perhaps, was true; they had traitors of ours in their employ. These traitors infest every labor union in this country. The money of the employer is used to hire men to betray their comrades into the commission of crime. I know this. I have fought many of these cases, gentlemen, and I have fought them as squarely as I could possibly fight with such men.

One of the cheapest, meanest, littlest, one of the most contemptible lies that he uttered to this jury was when he discussed the testimony of Ex-Senator William E. Mason of Chicago, who testified to my reputation. Ford says, "You mean Mason, the seatmate of Lorimer?" Now, he did



not even know better, he did not know anything about Mason, he was willing to perpetrate any lie to take away my liberty. Mason left the Senate ten years before Lorimer ever entered it—and they were always bitter enemies. And yet because Lorimer had been expelled from the Senate, Ford thought if he made that lying, malicious statement, you twelve men would be more apt to send me to the penitentiary. Why, gentlemen, if I have to do one or the other, if I must choose, I will go down on Main Street and bribe jurors rather than bear false witness like Ford. Is there any comparison? There is some boldness, some courage, or at least some recklessness to the one; there is nothing but cowardice and infamy in the other.

#### PLAYED ACCORDING TO THE RULES

Well, Biddinger comes out here, and he telephones me to meet him at the Alexandria hotel, and I go, and I write on an envelope the number of my telephone. Wonderful discovery! Sherlock Holmes! Burns! Ford! Wonderful! Here is an envelope that has various figures on it "Home 6745-10"—whatever you are a mind to call it. Crime in August, heard of for the first time a year later! The testimony of Biddinger, prompted by Ford—not by the mind of Ford, but by the jaw of Ford. Crime! He met me at the hotel, he told me he was ready to give me information about spies; that he was going to San Francisco in a few days and could put me in touch with somebody who had betrayed us up there. I was not sure of him. Nobody is sure of a double-crosser. Sometimes he is your fellow, and sometimes the other man's. You are taking your chances. I had others besides Biddinger—some who kept their money and rendered me service, and gave me back reports of their detectives in my office.

Biddinger sent me a telegram, as I testified, and here comes Ford and says, "Did you send this mysterious telegram to Biddinger, saying that you would be in San Francisco?" I said, "Yes, I sent a telegram, I don't remember the wording." "Is it in your handwriting?" "No." "Whose is it?" "I don't know." "Is it your wife's?" How much would you take to have a mind like Ford's? I will tell you what you would take if you had a mind like Ford, you would take arsenic. What difference who wrote the dispatch, if I said I sent it?

He picks out a little piece of paper on which is written "6097," which he says was the number of the room I occupied in the Palace Hotel, and asks me who wrote those numbers—asks me!—Ford, Ford—Ford asks me! I cannot help it. I am here. I may die. "To every man on this

earth death cometh soon or late." I do not mind death. It is rather galling though to be eaten alive by ants. That is all that worries me over this transaction. He asked me whether I wrote that. I did not think so. Probably Biddinger wrote it, I might have. I don't care, and I said so. Then he asked me to write those figures. Then what did he do? He! Why, he tells this jury I disguised my hand when I wrote those figures. Did I? Do you know whether I did or not? Did you see the figures I wrote? Did anybody testify as to whether it was my natural handwriting or not? Did he introduce them? Did he show them to the jury? Why, no, nothing of the sort. But he told this jury that I tried to disguise my hand in writing a set of figures, which I testified might have been the number of my room.

And I went to San Francisco and saw Biddinger, and he told me he would take me where I could see a meeting between Burns and one member of our Executive Board, and I gave him \$200 after giving him \$500 for the same purpose, and of course Biddinger did not keep his faith.

And here comes in another little miserable bit of perjury to help strengthen their case, a miserable little bit of perjury that is as plain as sunrise. No man, gentlemen, honestly believes that I had anything to do with bribing or attempting to bribe Lockwood down at the corner of Third and Los Angeles Streets. Of course, there may be men who think I would do it. Ford thinks so, I guess. He would think anything to send a man to the penitentiary. But could anybody else on earth think that? I am not talking about my goodness, gentlemen. I have not too much goodness, but I always had all that I could carry around; sometimes more than I ought to have carried around; and I have played according to the rules of the game, and have taken a little hand in this trial, and you can compare my work, as to whether it is according to the rules of the game, with any of the other lawyers in the case; and I have played it that way for 35 years, and I have never done anything of this kind nor had to do anything of this kind. But that is not what I am discussing.

If you twelve men think that I, with 35 years of experience, general attorney of a railroad company of the City of Chicago, attorney for the Elevated Railroad Company, with all kinds of clients and important cases—if you think that I would pick out a place half a block from my office and send a man with money in his hand in broad daylight to go down on the street corner to pass \$4,000, and then skip over to another street corner and pass \$500—two of the most prominent streets in the City of Los Angeles; if you think I did that, gentlemen, why find me guilty. I certainly belong in some State Institution. Whether you

select the right one or not is another question, but I certainly belong in some one of them, and I will probably get treated in one the same as in the other. I say, nobody in their senses could believe that story, and Ford knew it, and to bolster it up by a contemptible liar, he has Biddinger say that I passed \$500 in the elevator, and that Biddinger then told me that it was a careless way to do business. I know who told him to say that. I know who inspired that perjury. Of course, I did not pass \$500 in the elevator, but if I had, I had just as much right to give that \$500 for that purpose as I would have to buy \$500 worth of hogs, just exactly. I was doing exactly what they were doing, what Burns admitted he was doing, what was done in all their cases, what Sam Browne says they did, when he testified that they filled our office with detectives. And here comes this wonderful man, so honest, so pure, so high, so mighty, Ford, who says the State has a right to do that, who says the State has a right to put spies in the camp of the "criminal," but the "criminal" hasn't the right to put spies in their camp. Isn't that wonderful, gentlemen? Here is a contest between two parties in litigation; the prosecution has a right to load us up with spies and detectives and informers, and we cannot put anyone in their office. Now, what do you think of that? Do any of you believe it?

Let me clear up more of this drift-wood that has been thrown around the case for the purpose of poisoning the minds of this jury against me—who have spent a lifetime, not all good—I wish it were, I wish it were. I have been human. I have done both good and evil, but I hope when the last reckoning is made the good will overbalance the evil, and if it does, then I have done well. I hope it will so overbalance it that you jurors will believe it is not to the interest of the State to have me spend the rest of my life in prison—though I could find some useful work even there.

The next thing they accused me of was the flight from the state of Flora Caplan, wife of David Caplan, a defendant with the McNamaras. It is too absurd to talk about—a woman who could not be a witness, who could only be hounded and spied upon by detectives and crooks; who could only be driven from her employment into starvation by District Attorneys and their accomplices, a woman whom I knew could never appear in the case, and whom I had no more to do with than the man in the moon. Let me tell you this, and you can make the most of it: If she had been the most important witness that the State had, I would have said to her, "Go, get away from these hounds before they murder you. When the time comes that they want you, you can come back." Nobody

can subpoena a witness and hold him in the State for more than six months. Witnesses have a right to go and come on the face of the earth as they wish, reporting for duty when the time comes. And this was the first day of August and she would not have been needed until the first of January at the nearest. And yet they have brought it up here as a reason why I shall be convicted in another matter. You heard the story. You heard how she went, and why she went. Is there any evidence that I knew a single thing about it? What object would I have had? What would any one of you have done? If you had any red blood in your veins, you would have clubbed somebody or sent her away; you would probably have sent her away. You ought to have done both.

### PROSECUTION BY CRIME AND INFAMY

Now let me show you more of the villainy and the infamy of this prosecution which reeks from beginning to end with crime and corruption, and with bloodlessness and heartlessness to the last degree. Mr. Ford stood before this court and this jury, and said that I bribed the witness Behm to commit perjury. The next day his chief said it was not true, but in his argument he has stated it again, among the infamous lies that have fallen from his lips. Bribe Behm! The evidence in this case shows that every dollar he ever got from me was for his expenses, pay for his time and for the man on his farm—\$412 altogether. But Ford says I bribed him to commit perjury. Gentlemen, is there safety for any one, when men like Ford are running at large? Bribe Behm! What is the evidence that they produce? Is it that LeCompte Davis and I had Behm together in Davis' office all evening? Then Ford gets Behm to swear that he came to my office the next morning, so I could be alone with him, but Davis' testimony and my testimony is that Behm never was in my office at that time.

What else about Behm? They begin their testimony back in Chicago where they say I got Behm to come out here for an illegal purpose. Did I? You heard his testimony. Mr. Ford says that I had no right to send a man into jail to interview his wonderful witness McManigal, and he says I committed a crime in bringing Mrs. McManigal here. What is the evidence on that? Mrs. McManigal has not become a traitor. It is a wonder that Ford does not indict her so that she can be a traitor. Ford likes traitors and informers and crooks and detectives and heartless knaves. Everybody is a liar in this case but Franklin. Everybody is a crook in this case but the whitewinged Harrington. All crooks. Davis is a liar; Job Harriman is a liar; Wolff is a liar; Older is a liar. These

newspapermen are liars; all are liars, and the only simon pure man, the only man who stands here as a credit to the beauty of your Los Angeles climate, and the glory of your Los Angeles mountains, is Franklin. Gentlemen, you ought to advertise him for the tourists.

Of course, Behm says that I told him to lie. First, I began in Chicago, where I asked him to come out here with Mrs. McManigal. Who else asked her to come? Why, Burns. He offered her money to come. His men met her at the train when she did come. They wanted her, and she had as much right to come at my solicitation as at that of Burns. The evidence is that she came to me. She said she didn't believe that her husband had made these confessions, and she wanted to come, and I gave her money out of the defense fund to come and see her husband. And suppose she did come to get an interview with Ortie McManigal? Why do you suppose his name was put on the back of the indictment? Names of the witnesses are put on the back of indictments for the very purpose of permitting them to be interviewed by the defendant and his counsel. Now, there was no chance for me to go and see Ortie McManigal, but his wife might see him, and his uncle, Behm, might see him. In that way, I might prepare my case. I had as much right to do that, gentlemen, as one of you has to consult a lawyer or a doctor. Just the same right, and they know it; and yet, for doing what every lawyer does I am put down as a criminal in Southern California, the land of free men and free women. All right, gentlemen, Ford thinks that would be California hospitality, no doubt.

Well, Behm went before the Grand Jury and gave his testimony, and he says that he swore falsely, and that Davis and I drilled him. I know he did swear falsely in some respects, for he swore that I did not give him any money, and I did. I paid it to him by check on a Los Angeles bank, where, of course, the detectives would know of it the next day. Davis and I both testified that he came to us and that we told him after the first conference, to answer all questions excepting such as we thought were incompetent, irrelevant and immaterial and to these he was to reply, "That don't concern the case."

### FREDERICK'S JUDGMENT SEAT

Let us next look at Dickelman. Here is more of the wonderful fairness of this wonderful District Attorney that holds your life and your destiny in the hollow of his hand. What about Dickelman? What is the evidence? Dickelman was with a Burns detective in Albuquerque. We had as much right to take him to Chicago as they had to take him to

Albuquerque, and Dickelman himself swears that he was given \$100 to return to Los Angeles when he should be wanted. Talk about fairness! They talk about Hammerstrom because he is Mrs. Darrow's brother. It is not malice against Mrs. Darrow, it is not malice against Hammerstrom, it is malice against me. They would take that boy and indict and prosecute him, and let Franklin, Harrington, Behm, Bain, White, Krueger, everybody else go, because he is one near to me. But what about Dickelman? What is the evidence? Maybe my word is not good any more. It used to be; even my note was good once; my neighbors and my friends and lawyers used to take my word—they used to take it in place of a stipulation in court. They used to take any statement I made in court or out. Maybe their confidence will be withdrawn after Ford's onslaughts.

Davis testifies that he came into my office when a man was present who said he was a detective, and who told us that Burns' men had Dickelman in Albuquerque, hiding out, and that he (Davis) and I together asked this young man and his companion to go and see him, and if they thought we could make use of him, to take him away from the Burns' detective. Was there anything wrong about that? Does anybody claim that was illegal? Does Dickelman deny that testimony? Does anyone deny it? And yet I am denounced as a crook, a man fit for the penitentiary. And they undertake to prove by their precious man Franklin that Davis advised him to commit perjury, and told him to make up his story and take it to Ford, but there is no prosecution for that. "Darrow is the man we are after, if you know anything about anybody else, keep your mouth shut, but help us get Darrow."

Gentlemen, some of you have lived quite a while in the world, did any of you ever hear of a thing like this since you were born? Aren't you ashamed of your people, your officials and your State? If I am guilty, which I have told you in every way, under oath and not under oath, that I am not—and I have proven, I believe, fortunately by a greater array of honest men and women than are often gathered by a man accused of crime—if I am guilty, is there one man in this jury box, one man, upon your oath, your conscience—is there one man here who loves justice and fair play, who will say that I should be singled out from among this mess, and every crook and thief and spy and informer and traitor in this case get immunity? Who are these wonderful men who hold the destiny of their fellowmen in the hollow of their hands? Who are they?—given the infinite power of forgiving sin—given the power of life and death, and the power of punishment? They say to every thug and crook that comes across their path, "Come to Los Angeles; come to the judgment

seat of Fredericks, and 'though your sins be as scarlet, I will wash them white as snow.' Gentlemen, under circumstances like this, I could afford to go to prison, but let me tell you that while a verdict of guilty would place a blot upon my name, it would place one infinitely darker upon the name of every person connected with an outrage like this.

Now, let's get to the rest of the case. There are a few little things to clear up, just a few little things, sort of specks on the moon. They say that Franklin went to—how many fellows? Smith, Young, Krueger, Yonkin, Underwood? I am not going to spend much time about this, because I want to get where I can discuss this Lockwood case before I go to the penitentiary.

Did I have anything to do with soliciting Yonkin, Smith and Underwood? I sometimes think I did. I'll tell you why—because Franklin says I did not. Franklin says I did not know anything about these solicitations, that he never even told me. Now, that means something; of course he didn't tell me. I never heard of it, any more than any one of you twelve men. Franklin says I didn't. As long as Franklin says I didn't, I suppose even Ford would believe it. But how comes it that this man was going around offering bribes to jurors that I didn't know of? Suppose I had given him omnibus authority, and he had gone to four men who had turned him down, don't you suppose he would have told me? Do you suppose I wouldn't have known it? Think of it, here is a man who goes to four men, without any solicitation from anybody, least of all from me; he never tells me a single word about it. If he went to these four without my knowledge or direction, what about the others? Somebody knew of these attempts, somebody besides me, and I think I can hear Mr. Fredericks saying tomorrow, after my last words have been spoken, "How could all of these things have gone on and the defendant not know of them?" How could it? Of all the people connected with this case, I would have been the last person to know. I was a total stranger in this county. Every other lawyer connected with this case was known throughout the length and breadth of this county. If somebody had been approached at the instigation of counsel, any of the other counsel would have known about it a hundred times more readily than I. Of all the people connected with this case who could possibly have known or heard it in any way, I was the last person and the one most unlikely to have known or heard of it in any way. Ford speaks of me as though I were a cheap jury briber, ready to give a bribe to anybody who happened along. It is a wonder that I didn't try to bribe Ford. You do not know me. Counsel would not let you read my books. If you turn me loose, I hope

some time you will have a chance to read my books, so you will see if you have made a mistake. Now I am as fitted for jury bribing as a Methodist preacher for tending bar. By all my training, inclination, and habit, I am about the last person in all this world who could possibly have undertaken such a thing. I do not intimate for a moment that anybody else would, but in all this situation, mine was the position which needed to be guarded the most carefully, as these events have shown.

This is the most wonderful case in criminology that I have ever encountered in my profession. You will notice that Franklin had a great penchant for bribing people we couldn't possibly have used as jurors. The more honest the man, the quicker he would offer him something, try to "slip him a little money."

#### LOCKWOOD'S "STRICT INTEGRITY"

There was George Lockwood, a man of "the strictest integrity." Maybe he is—I don't know him. I wouldn't think so from his having been a friend of Franklin so long. Guy Yonkin was an honest man, and John Underwood was honest, and Smith was honest; every one of them honest men, every last one, and Franklin goes and visits with their wives, and asks them whether they will take a bribe in the McMamara case.

Now, gentlemen, we have got to use a little common sense in this matter. If I am going to the penitentiary, it will be a great solace to me in the long days of my confinement, to think you used a little common sense in this case, and were not carried away by Ford. Does it look like a case of jury bribing? Or does it look like something that was framed up? Out of all these men whose names Franklin mentioned he swears that he believes that Yonkin, Smith, Underwood, and the man Lockwood, captain of the chain gang, were honest and incorruptable—and he goes forth to bribe them. But Krueger was not honest—something else was the matter with him. Krueger had been in trouble with the District Attorney and Franklin says he knew the District Attorney would not take him, and he testified that he told me so. So he tried to force money on to Krueger, when he knew that Krueger could not possibly have been a juror; and it took two men to get this fellow whom the District Attorney would not possibly have accepted as a juror.

Gentlemen, am I dreaming? Is this a real case and have I been practicing law for 35 years and built up some position in the community where I live and where I don't live, and now am I brought to the door of the penitentiary charged with a crime like this?

Gentlemen, don't ever think that your own life or liberty is safe;



that your own family is secure; don't ever think that any human being is safe, when under evidence like this and circumstances like these, I, with some influence, and some respect, and some money am brought here and placed in the shadow of the penitentiary for six long months. Am I dreaming? And will I awaken and find it all a horrible nightmare, and that no such thing has happened?

Now, what about Bain? I think you gentlemen must know that every word said about these other four shows that I had no connection with this Bain matter. Franklin, himself, said that I knew nothing whatever about three. He said that two men were sent after Krueger, and that I was informed he could not possibly qualify. These tales are brought up here against me, and yet if I was not connected with these cases, is it not pretty safe to say that I was not connected with the other two? The same brain and the same hand were back of it all, and the same money was back of it all, or the same job was back of it all, whichever way you put it, and I take it there is not a sane person who could think for a moment that I had any knowledge of, or any connection with these four bribery charges.

I am still under indictment for having offered a bribe to Robert Bain. Of all the silly things in this case, the Bain matter is about the silliest. It was saved by the prosecution as a delectable morsel for the end of this trial, because Mrs. Bain was a woman somewhat advanced in years, and Robert Bain was a veteran of the Civil War. I do not know what that had to do with it, but Mr. Ford evidently thought it had something to do with it, and so it was brought in here at the last, this Bain case. Now, let me just give you a brief recital of some of the evidence in the Bain case, and if I misquote the evidence, any of the jurors or the lawyers are at liberty to correct me. I may sometimes misquote because I cannot carry it in my mind—and I cannot have much of a mind anyway or I would not have sent down to the corner of Third and Main Streets to bribe Lockwood and then have gone down to see the job done. Think of it! The court may sentence me. If he does, I hope he will send me to the right place.

Not content with sending these fellows down to the corner of Main and Third and then over to Third and Los Angeles streets, I would have run down there on the street myself! Lord! And here are twelve jurors to pass on that—to pass on that! This court ought to adjourn until Monday morning and try this case with the insanity cases.

But to come back to Bain. These people connected with the District Attorney's office discovered that Franklin made a deposit of \$1,000 on

October 6th, and of course, thinking that Franklin could not carry around \$1,000 in his pocket very long, they concluded that I had given him a check on October 6th. Fine logic. And on this theory Franklin swore to it, that he came to my office and got a check and hustled off to the bank on October 6th—which was the first day, he said, that I ever spoke to him about Robert Bain, and the day that he saw Bain's wife the first time. He says the first time I ever talked to him about jury bribing was October 5th, the day before he hustled down to see Bain's wife. Remember the first time I spoke to him about jury bribing was October 5th, and that on the 6th I gave him a check for \$1,000—I, a stranger in Los Angeles, a check on a Los Angeles bank to bribe a juror. Another case for the insanity court. Another lie. And at the same time, according to the only other truthful man in this case, besides Franklin, Harrington states that I had \$10,000 in my pocket—at least I had it there the week before, and had been carrying it for a month. Why, I would not want to trust myself even with this jury with that \$10,000 in my pocket, not in Los Angeles, unless I had the District Attorney with me, which I didn't have. Ten thousand dollars in my pocket! The evidence in this case shows that I never had a safety deposit vault in Los Angeles, and did not have the key to the vault, so I had to carry it in my pocket, and I carried it there for 20 days at least, possibly 30, until I showed it to John Harrington.

Now, if I am smart as Ford says I am—which I am not—he has got to lie one way or the other, so he made it too smart—but if I am anything near as smart as Ford says I am, and I had this ten thousand dollars in my pocket—suppose it had been one of you, gentlemen? Of course, you wouldn't do it, but suppose you would, then would you give him a check? Suppose you had gone to Chicago where you didn't know anybody, and had embarked in jury bribing and you had ten thousand dollars in your pocket to give to two jurors, would you have drawn a check for one? And yet this miserable mass of perjury is brought up here to this jury to take away the liberty of a man!

#### FORD REFUTED BY DATE ON CHECK

And what more, lo! and behold, when the check turns up, it was not given on October 6th, but on October 4th! Now what does Ford say? Ford could not possibly think anything was innocent to save his life. He has been connected with the District Attorney's office so long that I don't believe he could think his own mother was honest. He says I probably misdated that check purposely. Probably misdated it purposely! Where is the evidence? Does it come out of thin air, conjured by the

malice of his brain? Where is the evidence? Does Ford think you are children? Does he think in some mysterious way he has drawn together here from the county twelve children and placed them in charge of my liberty? He must. Misdated it purposely! Why should I have given any check at all? If I had taken thought to misdate it I would have given him cash, wouldn't I? Why, any child knows better. Ah, he says, you may have misdated it by accident. Yes, I may. A great many things may be in this world. Ford might tell the truth by accident. He might. But I wouldn't convict him of telling the truth on any evidence so uncertain as that.

What else does Franklin do? He goes to the bank and he draws \$500. The bank cashier swears positively that he gave the money to him in fifties and hundreds. The bank cashier swore that he gave him fifty and hundred dollar bills, and yet, Franklin gave only twenty dollar bills to the Bains—every dollar he left there was in twenties. Now, gentlemen, this does not rest on the bank cashier's testimony alone. There comes out of their own mouths a bit of corroboration, which shows perfectly that the bank cashier was right. Mr. Franklin puts \$500 in his pocket and rushes off to see—not Mrs. Bain—she was out, so he runs over to see one of the neighbor's wives and leaves his card. Here is a detective for your life! Why, he has got Sherlock Holmes faded. He has got Burns beaten forty ways. He is going to bribe a juror, and he goes over and sees this juror's neighbor's wife, and asks her to tell Bain to call him up at his office. No wonder he used Main Street for his field of operation. And you, gentlemen, are expected to stand for it. No, I am to stand for it. All you do is to return the verdict; I stand for it. Ford tells you that you do not have to do anything but return a verdict. Now, what do you suppose he said that for? Did he want to take from the minds of this jury the responsibility involved in their verdict? Gentlemen, I don't ask for any mercy at your hands. I want a fair deal. I am going to get it. But no man has a right to take from any jurors the responsibility that they bear to the case they are judging, and tell them that they are to hold a man's life in their keeping without thought. If you think I deserve conviction, then convict me, but do it with your own eyes open and your minds clear.

Now, here is a fellow that goes down to bribe Bain, and he doesn't talk with Mr. Bain, but goes to a neighbor. And later he goes back to the house and does not find Bob at home, so he talks with Bob's wife. If Bob's wife had not been at home, he would have talked with the dog. If the dog had not been there, he would have talked with the cat. He

was out after jurors, it is a wonder he didn't send a letter. So he goes back to Mrs. Bain. Mrs. Bain asked him to subscribe for the Examiner so she could get a premium, and Franklin subscribed. He wrote his name, and Mrs. Bain said, "Is that all?" Franklin said, "No, you want the money, don't you?" And then he said, "Can you change a fifty or a hundred?" That is what Mrs. Bain said, and it is no doubt true. Franklin said to her, "Can you change a fifty or can you change a hundred?"—one or the other. He had come right straight from the bank where the teller swears he gave him five hundred dollars in one hundreds and fifties, and Mrs. Bain said that he asked her to change a fifty or a hundred. So if the bank teller needs any corroboration, here it comes from the mouth of Mrs. Bain, that he did get fifties and hundreds. If he had gotten one twenty dollar bill in the bunch, wouldn't he have asked her to change a twenty? He finally pulled out his wallet and managed to find some small change, Mrs. Bain says. And he went back that night and saw Robert Bain and gave him \$400, every penny in twenty dollar bills.

Now, gentlemen, there it is. A man is presumed to be honest and not a criminal, and a jury presumed to be sensible and fair, and to understand the responsibility involved in passing on the liberty of a fellowman. Now tell me, did he get these twenties from me or through any check of mine? The bank teller says no, and Mrs. Bain says no. Where did he get these twenties? I cannot tell. That money did not come from the bank on my check, and there is no way on earth to figure that it did, and if I didn't furnish the money, where did it come from? Whose hand working out here in the darkness, unknown to me and unknown to the other attorneys—whose hand was it that stretched out in the night and was working my ruin? Of all the cases upon which a grand jury ever acted, the Bain case is the silliest. Gentlemen, there isn't a chance in ten thousand that I could have been guilty in the Bain case. Not a chance in ten thousand. Here comes Robert Bain on the witness stand, he has immunity, and we will assume that he tells the truth. I will tell you why I took him on the jury:

### AGE BRINGS KINDLIER JUDGMENTS

Bain told us he had belonged to the first Labor Union ever organized in Los Angeles. His hair was white, and somehow, as we get along in years, we think more of the few years that are left than do the young. So, especially in a murder case, when I find a man with white hair, I know he will be as tender and kind and careful of his brother's life as he is of his own. We know as we grow in age and experience—we understand more

and more what great influence circumstances have upon our lives, and how near alike are all men after all is said and done; and we grow kindlier in our judgments, more charitable to our fellow man than we were when filled with hot blood and the intemperate passions of youth. So Bain was taken on the jury. Franklin said he was a good man for the jury.

Franklin was consulted in the case of every juror, as Davis and I testified, and as naturally would be the case. And what did Bain tell Franklin? You remember the story. He says that when Franklin gave him the money, he told Franklin that if he found the evidence against McNamara convincing, he would render a verdict of guilty, didn't he? He told Franklin that if the evidence convinced him he would vote guilty. He said he would not have voted guilty anyhow unless the evidence was convincing. Now, here is the man himself to whom they have given immunity, and who is here in some mysterious way to testify against me, and he says that he told Franklin then that if the evidence was convincing he would find my client guilty, and yet Franklin thrust \$400 onto him, when he swears he got from me and told me about it. Gentlemen, do you believe it? Isn't it the stuff that dreams are made of? Do you believe it? Bribe this man with \$400 when he was not bribed at all, when he told Franklin that if the evidence was convincing he would find my client guilty!

And that is not all, after he got into the jury room and stayed there with his fellows day after day—of course, you know the jury is instructed that they must not talk with their fellows about the case, must not form any opinion—of course, you know they do not. I know they do. I have lived in courts for 35 years. Well, Bain told a juror in that jury room that if he stayed on the jury the ——— ——— would get what was coming to them; that is the evidence of witness Webb. Fredericks spent longer in cross examining Webb than he did any other witness but could not stir him. Webb's evidence remained unshaken.

Gentlemen, it is simply insanity to talk about the Bain case. First the check was given before the bribery was ever spoken of. Second, Franklin got no money from that check to give to Bain. Third, Franklin went to the neighbor's wife, and to Bain's wife and they called at his office. Fourth, Bain was not bribed at all, and fifth, Bain says himself that he would have found my client guilty after he got in the jury room. And yet, after all this, I am guilty of bribing Bain!

I have told you my story. I have told you of all these matters as simply and as plainly as I could. Ford said that I lied, that I quibbled, that I hesitated. Now, I do not blame anybody for making any argument

that is fair and useful to his end. I will just touch on the matter for a moment, and you do the rest. Ford went on the stand. Who quibbled the most, he or I? Do you remember? Why, he is so shifty that he could not admit to this jury that he knew Oscar Lawler was the prosecutor specially retained by the United States Government. He quibbled and lied and hedged upon the simplest question until this Court said, "The Court will take judicial notice of that fact." Ford tells you that I quibbled and hesitated and lied and had my attorneys make objections. He has a right to argue that I lied, because I contradicted Franklin, and I would not question his right to argue that for a minute, but did I quibble or hesitate? He asked me questions for four long days, gentlemen. Did they bother me? Did I hesitate? Did I quibble? I took pains to understand his questions. I was not going to let him trick me into the penitentiary by not understanding the devious workings of his devious head. I was going to say "mind," but I changed it for "head." I threw myself open to him and there was not a question that I did not answer the best I could. Perhaps every answer I made was not correct, but I thought it was. Now, I will take one of you men—and I am not as smart as Ford, as I can prove by Ford—I can take any one of you men and cross examine you four days and I will catch you somewhere, I think. But anyhow I threw myself open and they questioned me to their heart's content. I leave it to you whether my answers were frank and honest and fair and prompt or whether they were not.

#### NINE DETECTIVES AND NINE INFORMERS

Now, gentlemen, having cleared away these other matters, let us see what there is in the Lockwood case. Lockwood! I am to go to the penitentiary because Franklin gave White \$4,000 at the corner of Main and Third streets to be held for Lockwood. White transferred it on the corner of Los Angeles and Third about nine o'clock in the morning of the 28th day of November. These other things we have considered were thrown in here to prove it, so as to help out in some way the two witnesses whom Mr. Rogers has so well pointed out as the only witnesses against me. They thought that by giving you quantity you might forget the quality of their testimony.

Now, they have marshalled here to condemn me nine detectives and nine informers; and nobody's liberty in any English-speaking country was ever taken away on evidence like that. These men clothed with the power of the law, with the opportunity to reach out their processes through the length and the breadth of the land, have said to John Har-

rington, "Unless you bear testimony against Darrow you must go to the penitentiary yourself." These men hold Franklin by the throat and tell him that he will go to the penitentiary unless he testifies. He needn't testify against any Los Angeles man; it is only Darrow they want. These men reach out to Cooney, to Fitzpatrick, to Behm, to Bain, to Mrs. Bain, to anybody whom they can intimidate and frighten, to whom the doors of the penitentiary look grimmer and harder than they do to me.

Why, gentlemen, I don't want to go, but when Harrington told me, as he admits he did, that all would be forgiven if I told him where Schmidt or Caplan was—do you suppose I would purchase my life at the expense of the life of my fellowman, no matter if that fellowman was a criminal? I am not his judge. Only the infinite God can judge the human heart, and I never tried to judge. I never would do it, and hope I never shall, and when Harrington told me that if I would furnish evidence against Sam Gompers in their wild crusade to destroy the trades unions, so that men and women might toil longer for less reward, do you suppose I thought or hesitated or waited to draw my breath for a single moment? I had no information to give, but I had as much as Franklin or Harrington had. I could have told them any story that I saw fit. I could have purchased my liberty at the price of my honor, and then Ford would have said that I was a noble man, and that the fellow I was betraying was a Judas Iscariot. Lord! what a mind he has, and what a heart he has, and what a conscience he has! Would a man hesitate? No, and because I did not I am pilloried here before this jury and before the world as a criminal.

Gentlemen, there is one thing I can say in favor of Franklin; by comparison, Harrington has made a gentleman out of him. Anybody is a gentleman compared with Harrington. Perhaps you think I am especially bitter against Harrington, but I don't believe in bitterness—as some of you may have suspicioned this afternoon. I have always tried to curb it, all my life. I don't blame Harrington, and I don't blame Ford. Nobody is responsible for the shape of his brain; it conforms to the skull, which is made of bone, and no one can help the shape of his head. You may not believe it, but there is not a man on this jury that cannot go back through the years and see how the smallest circumstances have affected the whole course of his life, circumstances entirely beyond him and outside his control. And a circumstance that might affect you might not affect me. Some have a large brain, some have a small one, some have a symmetrical brain, and some an unsymmetrical brain. We are no more responsible for the shape of our brains than we are for the shape of our faces. I know this as a matter of philosophy. I know Harrington is not to blame for

being a coward. I know God made him a coward, and he cannot help it, and I have spoken of him with this view in my mind all the way along. I would not harm him. Talk to this jury about my moral responsibility for crime! I defy any living man to say where, either by speech or word of pen I have advised anything cruel in my life.

I would have walked from Chicago across the Rocky Mountains and over the long dreary desert to lay my hand upon the shoulder of J. B. McNamara and tell him not to place dynamite in the Times building. All my life I have counselled gentleness, kindness and forgiveness to every human being, and, gentlemen, at the same time, even speaking for my own liberty, I do not retreat one inch or one iota from what I really believe as to this. You were told about the horrors of the Times explosion by Mr. Ford. Why? So that some of the horrors of that terrible accident might be reflected upon me to get me into the penitentiary.

Now, gentlemen, let me tell you honestly what I think about that. It hasn't anything to do with this case, excepting as they dragged it in here to prejudice the minds of this jury and to argue that this man should not have been defended by me. Do you suppose I am going to judge J. B. McNamara? I know him. Do you know anything about criminals? Did you ever see a man who committed a crime? I take back nothing of what I have ever said or written or known upon that subject. Men who are called criminals are like you and like me, and like all other men. They may do this thing wrong and they may do ten thousand things right. I never saw a case where a wife or a mother or a father or a brother or a sister or a husband or a friend didn't plead for the "criminal" that he or she knew, and point out to the Governor and those charged with mercy ten thousand good things in his life and in his character that would commend him to mercy, while his enemies were telling only the wrongs he had done. I know that the same feelings lurk in the brain and heart of every man. I am not responsible for J. B. McNamara's brain; I am not responsible for his devotion to a cause, even though it carries him too far.

Let me tell you something, gentlemen, which I know District Attorney Fredericks will use in his argument against me, and which I have no reason to feel will meet with favor in the minds of you twelve men, but it is what I believe. I will just take a chance.

#### SOCIAL CRIMES—THEIR CAUSE AND REMEDY

Did you ever think of the other side of this question? Lincoln Steffens was right in saying that this was a social crime. That does not mean that it should have been committed, but it means this, that it grew



out of a condition of society for which McNamara was in no wise responsible. There was a fierce conflict in this city, exciting the minds of thousands of people, some poor, some weak, some irresponsible, some doing wrong on the side of the powerful as well as upon the side of the poor. It inflamed their minds—and this thing happened. Let me tell you, gentlemen, and I will tell you the truth, you may hang these men to the highest tree, you may hang everybody suspected, you may send me to the penitentiary if you will, you may convict the fifty-four men indicted in Indianapolis; but until you go down to fundamental causes, these things will happen over and over again. They will come as the earthquake comes. They will come as the hurricane that uproots the trees. They will come as the lightning comes to destroy the poisonous miasmas that fill the air. We as a people are responsible for these conditions, and we must look results squarely in the face.

And I want to say to you another thing in justice to that young man who was my client, and whom I risked my life, my liberty, and my reputation to save. He had nothing on earth to gain; his act was not inspired by love of money; he couldn't even get fame, for if he had succeeded he could never have told any human being as long as he lived. He had nothing to gain. He believed in a cause, and he risked his life in that cause. Whether rightly or wrongly, it makes no difference with the motives of the man. I would not have done it. You would not have done it, but judged in the light of his motives, which is the only way that man can be judged—and for that reason only the infinite God can judge a human being—judged in the light of his motives I cannot condemn the man, and I will not.

### THE KINSHIP OF ALL MEN

I want to say more, when you know the man, no matter whom—I have known men charged with crime in all walks of life, burglars, bankers, murderers—when you come to touch them and meet them and know them, you feel the kinship between them and you. You feel that they are human; they love their mothers, their wives, their children; they love their fellow man. Why they did this thing or that thing remains the dark mystery of a clouded mind, which all the science of all the world has never yet been wise enough to solve. But this act of McNamara has again been brought before this jury that it may work upon your passions against me—for nothing else. None of the perpetrators of this deed was ever morally guilty of murder. Never. No one knows it better than the people who were prosecuting them. Sixteen sticks of dynamite were placed under a

corner of the Times building to damage the building, but not to destroy life, to intimidate, to injure property, and for no other reason. It was placed there wrongfully, criminally, if you will, but with no thought of harming human life. The explosion itself scarcely stopped the printing presses. Unfortunately, there was an accumulation of gas and other inflammable substances in the building which ignited, and the fire resulting destroyed these human lives.

Gentlemen, do you think my heart is less kind than Ford's? Do you think he would care more than I for the suffering of his fellowmen? Do you think for a moment that I did not feel sorry at the destruction of those lives, and for the wives and the children and the friends that were left behind? Wouldn't I feel it as much as he? And yet, gentlemen, this Times matter is paraded before this jury, in the hope that in some way it may awaken a prejudice in your hearts against me. Gentlemen, I wish in no way to modify anything I have ever said or thought upon this subject. There never was a man charged with crime that I was not sorry for; sorry for him and sorry for his crime; that I could not imagine the motives that moved his poor weak brain; and I tell you today as Mr. Steffens told you from the witness stand, there will come a time when crime will disappear, but that time will never come or be hastened by the building of jails and penitentiaries and scaffolds. It will only come by changing the conditions of life under which men live and suffer and die.

At 5 o'clock court adjourned for the day.

On the following morning, August 15th, Mr. Darrow resumed his argument to the jury:

**G**ENTLEMEN of the jury, you cannot have listened here for three months and not have understood this case. No intelligent person could, and I know you do understand it. For the balance of my argument I shall confine my talk almost entirely to the main charge brought against me, and say no more about these outside issues, which mean nothing except an effort on the part of the State, cruel, unjust and unlawful, to prejudice you against me. The question which you are to decide here is this: Did I give Franklin four thousand dollars on the morning of the 28th of November to seek to bribe Lockwood? That is all there is to it. Now is Franklin's story true or is it a lie? If I am to be convicted it must be upon the story which Franklin tells and the evidence which he presents. It must be upon the story that on Monday morning, the 28th, he met me in my office, that I called up Job Harriman, who came there, and handed me the four thousand dollars, which I then gave to Franklin, and told him to go down on the streets and bribe a juror. That is all there is of it. Now, what is the evidence on that? Job Harriman comes on the witness stand and swears there is not a single word of truth in it. Are you going to say that he is a perjurer? Mr. Ford says that he believes it. But where in this record is there any evidence, or any indication that Job Harriman committed perjury and was guilty of bribery?

Next, Frank Wolfe testifies that I came down with him on the street car that morning, that he went with me to my office, that we discussed the political campaign and other matters, until I was called up on the phone and said that I was going to Job Harriman's political headquarters, and that I went out with him. Who is Frank Wolfe? A man who was managing editor of the Herald for years. A man who has held important newspaper positions for twenty years, and who is now one of the editors of the

Municipal paper in this city—a man upon whose countenance truth is stamped as plainly as upon any man who lives. Is he a liar? A perjurer? For what? He is not charged with bribery, and he is not interested in this case. Are you likely to throw away the evidence of Frank Wolfe, and replace it with the lies of Franklin? I will guarantee, gentlemen, that your observation would lead you to trust me before you would trust Franklin, if my word stood alone. I believe you would take my word if it stood alone against every one of these informers and crooks and immunity hunters.

Maybe, we are all liars, gentlemen, perhaps everybody in this case lied but Franklin, as Ford said. Perhaps Wolfe lied. Perhaps with their two grand juries and their Burns outfit and their Erectors' Association they have raked and scraped this fair county and this fair city; perhaps they have gone out into the broad world from here to New York and found only two honest men, Franklin and Harrington, and all the rest of us are liars, but I don't think you will believe it.

Franklin, you remember, first tried to fasten his crime upon Lockwood. Then within a week we find him telling Joe Musgrave that he would "slip it to someone else." He might not have thought then whom but he found out later—when Ford told him "We want Darrow." Next, within another week, Franklin had a hearing before a Justice of the Peace, and he tells four newspaper men, White, Bernard, Willard and Jones, all of whom appeared here; he tells them not simply that Lockwood lied when he said my name was mentioned, but that I was an innocent man, and that he would not stand still and keep his lips sealed and see an innocent man accused. Ford says that Franklin admits these statements. He did not. Ford knows he did not. Franklin said on the stand here he never made those statements. Why did Ford misquote the evidence? Lord, how short the memory of a bloodhound is when he scents human blood!

#### FRANKLIN'S TESTIMONY REFUTED

Let me call your attention to the testimony. There is my friend Willard who came to the witness stand. He represents the Associated

Press. Mr. Ford asked him, "Did you write what Franklin told you in your story?" Willard answered, "I think I did." "Are you sure?" "I think so, but it was a long time ago." Then Ford said, "You go back and find your story, and I will recall you for cross-examination"—and he never recalled him; never.

And here was Jones, who represents the Tribune. Did Franklin admit that he told Jones what Jones testified to? He denied it, and he lied about it. And what did Ford say? Why, you remember Harry Jones on the stand. Ford asked him, "Did you publish that statement in your paper?" "I think so, I think I wrote it, but it might have been cut out; I don't know whether it was published." Ford asks, "Are you sure?" "Yes." "Bring your paper into Court, and let's see." And Jones came in with his report and read it to this jury, after Franklin had sworn that he had never said such a thing in the world. He told it to White, he told it to Bernard, both newspaper men. He told it to Nicholson who sat here day after day writing for the Examiner. Five of them, everyone and everyone are liars.

What next? This is a talkative man, this man Franklin, especially when you get him around the Waldorf saloon. He met Frank Dominguez and George Drain along in the latter part of December or the first of January, and he told them unqualifiedly and without equivocation that I never gave him a dishonest dollar in my life; and then he came on the witness stand and denied it, saying that he had no such conversation. Again on the third day of February, two weeks after he had gone before the Grand Jury, and more than a week after he had made this statement to Oscar Lawler, he again met Frank Dominguez, and he reiterated the statement which he made after this confession that I had given him no money for bribery. And he met his friend George Hood, the lodge member who asked him, "Why didn't you take that money and put it in your pocket?" and "Did Darrow give it to you?" He told Hood that Darrow did not give it to him, and that the reason he did not put it in his pocket was because the man who gave it to him was watching him when he passed it, and that man was a stranger to him, and did not live in this city. That

is the reason he did not steal the four thousand dollars; that is the way he excused himself to his friend Hood for not being a thief. That is an excuse that men often make, that something is nailed down and they cannot steal it. That prevents a lot of stealing in this world.

Then along about the 12th of January, Franklin went to Attorney Tom Johnston, whom he supposed was close to the District Attorney. What did he say to Johnston?

Gentlemen, I do not know whether you have had much to do with lawyers or not. You probably have more money if you have not; I am not saying anything about that; but if any of you get into trouble, you generally tell your lawyer the truth. And good men do get into trouble now and then, and bad men stay out of trouble now and then. You can't tell whether a man is good or bad because he gets into trouble or stays out. But if you do get into trouble, you tell your lawyer the truth, just as you tell your doctor the truth.

What did Franklin tell Johnston of the 12th day of January? He told him that I had never given him a cent of money for bribery, never. He told him that the bribe money was given to him by someone else, and he told him that I never knew anything about it. Now are you going to convict me on Franklin's word, when that is the statement which he made to his lawyer in confidence? It is unthinkable. Johnston may be a liar—may be, but you don't believe it. And Johnston goes to Mr. Ford and he comes back to Franklin and reports: "That won't do, nothing will do but to make a statement against Darrow." And what does Franklin reply? He says to Johnston, "If I made a statement against Darrow I would be a God damn liar." Now, Franklin said in January that if he made a statement against me he would be a blankety blank liar. In May he makes that statement. What is he? What is he? I will not characterize him, he has characterized himself, and I hope the wonderful District Attorney's office got its money's worth when it bribed him with liberty to make his statement against me. Then Franklin meets Davis and me, Davis having called me to his office on the 14th, two days later, and according to Davis and me, Franklin told us then together that Johnston had

come to him, reporting that he had been to the District Attorney's office and telling him if he would turn up evidence against me he need not say a word about anybody in Los Angeles, that I was the one they were after; and Franklin replied, "I could not do it, I have no evidence against you, I could not do it," Maybe Davis and I are liars. Ford says I have corrupted Davis. Maybe I have. Maybe I have corrupted everybody I have met, excepting Ford. But it takes some evidence to show that, doesn't it? Davis, a man of standing and high character in the city where he has lived and practiced law. He is a liar, and Franklin is telling the truth!

Suppose we took a change of venue and tried this case before twelve Bushmen in Africa, do you suppose they would stick me? Do you suppose that you could find a man who would take a club and knock me on the head if a jury did find me guilty on the evidence of Franklin?

Well, Franklin is still talking. A man named Warner came to him to get employment in August or September, and he patted his jury list which was lying on his desk and said, "I am going to win this case right here; there is an angle to this case that the lawyers know nothing about." Is the witness Warner a liar? How do you know it? Franklin swears he is. He swears everybody lies excepting himself, and that he is a liar too, not only a liar, but a blankety blank liar, that is what Franklin says, not what I say. But he is an emphatic man and he describes himself stronger than I would care to describe him.

But he kept on talking, and he went down to the beach, to Venice, and saw a policeman, Peter Pirotte. He asks if Pirotte would like to go in business with him at Venice and open a detective office. Pirotte says, "You have been in trouble, and I don't think it would be a good idea." Franklin replies, "Oh, I will get out of that all right in a few days; they don't want me, they want Darrow." And Pirotte reports this conversation to my friend William Cavanaugh, and then Ford says, "Why didn't you put Cavanaugh on the stand?" Is he my friend? Have you any doubt what he would have said if he had been on the witness stand? The reason I didn't ask Cavanaugh to be a witness was because I knew they would

claim he was testifying for me on account of our close friendship, and the District Attorney knows that is the reason.

### TO REACH GOMPERS THROUGH DARROW

And Pirotte sees Franklin again after the plea of guilty. He sees him with Watt. The meeting is purely accidental, as both Watt and Pirotte testified, I having no more knowledge of it than the man in the moon. Watt, however, is my friend, and as honorable a man as any who has come before you in all the weary weeks you have sat listening to this case. You cannot look at Watt's face and doubt it, not for a moment—a man who for six years has been City Clerk for the town of Venice, a man of character and standing. Franklin met them and took lunch with them. There was a political campaign at Venice. Franklin was talking freely because he wanted to get this agency down at the beach, and when Watt told him that he had heard of his trouble, Franklin said, "That is all right, it is over now. I pleaded guilty in the Bain case, and they are holding the Lockwood case over my head to make me come through against Darrow." To make him come through against me! And they talked more about it, and Franklin said I had never given him dishonest money.

Now, Ford asks, "How could Franklin say that after he pleaded guilty?" Why he was saying only what he had said all the while. He might have said it from force of habit. He might have said it because he was drinking and didn't think to lie. He might have said it because even in Franklin the truth naturally comes to one's lips first, and afterward he caught himself up and said, "Oh, I must not talk about this case." Then Watt came and told me of this interview as he testified here. And he sought another meeting with Franklin, this time in company with Steineman. Steineman is a man I have never seen in my life, as he testified, except that I had been once introduced to him. Steineman owns the Decatur Hotel and was a director of a bank. He is a man of standing and character. How does he compare with Franklin? And Franklin told Watt and Steineman together that the money to bribe Lockwood came from someone else, from outside parties, and that I never knew a single thing



about it. He added that I would not be tried anyway because I was pining away and would die pretty quick. Well, I will, and I thought some of the time as this trial dragged out its weary way with fool questions and immaterial issues, I thought I would perhaps die before we got through, but I am here still and hope to be here some little time after this jury pronounces its judgment on me.

Now at this meeting Franklin told Watt and Steineman that the reason they wanted to get me was because I knew something about Gompers, and that if I would say something against Gompers, they would let me go as they had let him go. Wonderful! Isn't it? Did he say it? Are Steineman and Watt liars? Are you satisfied that they are liars and that Franklin tells the truth—when he has admitted that he is a blankety blank liar himself? Now, gentlemen, if you would not be satisfied by this, you would not be satisfied though one should rise from the dead. You would not be satisfied if an angel with a flaming sword should appear and testify that it so happened. I would be absolutely helpless in the hands of my enemies if an array of testimony like this could not satisfy twelve impartial men—you whom I know are not yearning for my blood, you whom I know I have never harmed in this world—and I hope that I have harmed very few.

Now, think of the impudence, gentlemen, to ask you to believe a man as weak as he is, and impeached as he is, and upon such testimony to send a man to the penitentiary. But that is not all. Franklin swears that he came up to my office on the morning of the 28th of November and told me that he was going down to Third and Main to bribe Lockwood. He says Job Harriman came up with an overcoat on his arm after I had telephoned to him, though Job swears he came direct from his house that morning, and I could not have telephoned him. But what is the use? Job is a liar. I would need Franklin to prove anything in this case, and I cannot get him because I do not happen right now to have the key to the penitentiary; if I did I could have him. The District Attorney's office has the key.

Franklin says Harriman came up there and I stepped into another room and got a roll of bills containing four thousand dollars from him, and then I handed the money to Franklin, and I said in effect, "Now, little boy,

take this roll in your hand and trot down to the corner of Third and Main, as near my office as you can; trot down to Third and Main and buy a juror at 9 o'clock in the morning." It is as if one of you would give your boy a penny and would say, "Go down to the grocery and buy some candy." And he takes it in his hand. Of course when he took that Bain five hundred in his hand there was a hundred got away between the bank and Bain. He says he doesn't know where it went. Maybe the Waldorf saloon could give some information. I don't know. But anyway, he held this four thousand dollars in his hand so that none of it could get away, and he trotted down the hall, down the elevator, and down the street, holding it in his hand, to bribe a juror on a Monday morning, on a busy street corner. And the cautious White says, "I don't know whether it is wise to pass this on the corner; shouldn't we go into the saloon?" And they went into the saloon, and then probably White had lost his caution, and went over to Third and Los Angeles, and passed over five hundred dollars of the four thousand. He must have taken some bitters that robbed him of his caution. And Franklin goes down with him, not on one street, but two streets.

Franklin leaves me, he says, about 20 minutes before 9. He was trotting down, going rapidly, so quickly that he did not stop to put the money in his pocket. I stayed in my office for about twenty minutes, and lo! and behold, I appeared down at the corner of Main and Third Streets within half a block of my office. Now, Ford tells this jury what he knows is not true, and what he does not believe, that I went down to watch Franklin pass the money. What about it, gentlemen, are you all crazy or am I dreaming? I did not suppose this panel was served in a lunatic asylum. Did I go down to watch him pass the money? He said I waited twenty minutes and was not there until it was all over, but why go at all? Gentlemen, there is none of you can imagine that you would commit any crime or wrongful act, but suppose you could imagine it? Supposing I had known that Franklin was going to pass four thousand dollars to a prospective juror on the corner of Main and Third Streets, do you think I would have been within ten blocks of that place at that time?

## FRANKLIN'S EXPLANATION

Why, the fact that I was there proves as conclusively as human reason could prove anything that I had absolutely no knowledge of the plot. Ford says I am smart, whatever that means. At least I have never been adjudged insane, and I have never yet been in a home for the feeble minded. I do not need to be very smart. Do you suppose any man who knows enough to come in out of the rain, let alone a man who has practiced law for thirty-five years with fair success, would have gone down there at that time if there were any other highway anywhere else in Los Angeles county? They know it, and for some mysterious reason, they have sidetracked Franklin's explanation of my appearance there, which was better than theirs. Why does Franklin say I was there? He tells Watt and Steineman that I must have got word from Brown, their detective, and went there to help Franklin. He said that if I hadn't happened to appear at that inopportune moment, he would have had Lockwood arrested. He admitted that on the stand. He wasn't looking for me. He knew I wouldn't be there. His theory was that Sam Brown or someone in the District Attorney's office had given this thing away to me, and that I had gone down there to save him. What does he testify? Why, that I walked up toward him and said something to him. Ford asked him, "What?" He replied: "I am not sure what Darrow said, I think he said 'they are onto you.'"

Is there any single syllable of evidence in this case that anybody ever gave me a warning, or that I knew anything about the matter? According to the theory of the State, nobody knew anything about it but Fredericks and a few detectives. And God knows you can trust detectives—you have got to, because you must take away people's liberty on the evidence of detectives.

And then they called three wonderful witnesses here to impeach Hawley, the witness who testified that he telephoned to me on that morning to meet him at Job Harriman's headquarters. Look at this "impeachment" of Hawley. Even if he were a dishonest man he might call me on the telephone, I take it, because the telephone companies are not particular, and are willing to rent their service to liars as well as to honest people

—even Franklin used the telephone. But they sought to impeach Hawley, and they brought three witnesses, one of them a man who held a political office with him and who had trouble with him; another who wasn't satisfied because he didn't get his commission in a real estate trade and had sued and pursued him; a third who had another business transaction with him, and didn't get his money—and there you are.

Gentlemen, I have practiced law a good many years, and this is the first time in my life that I have ever known of a lawyer seeking to impeach the integrity of a man by men who have had personal difficulties with him. Did any of you ever have any trouble with anybody? Can there be a man on this jury who has not had difficulty with three or four men who would be willing to speak ill of him and injure him if it came their way? If you haven't made three or four enemies, gentlemen, you have lived a very weak and useless life. A man who can go through life as far as you twelve men have gone, and not make three or four enemies, is not worth while. You had better begin on me, so you will have something to your credit before you get through.

#### TIME NOT MEASURED BY THE CLOCK

To halt a minute for fear I might forget something. Mr. Ford figured on five minutes here and five minutes there, two minutes there and two minutes here, so that Hawley could not have telephoned to me. Does a man need to waste his breath on talk like that where human liberty is involved—whether he walked a block and a half in five minutes, or in three minutes or four minutes? Does any man know? Does Ford know? And yet he would figure it up and roll it under his tongue as if the destiny of the universe were hanging on a minute or a minute and a half. Does he think we have twelve fools here? I wonder what he thinks. Whether Hawley waited fifteen minutes or five minutes is of no account. I have waited for a man three minutes when I was in a hurry and it seemed an hour. But I have lingered in some places an hour and it seemed a few minutes. There is nothing so deceptive as time; it depends on how you feel. I think I have lived a thousand years in the last year. It seems

as if it is longer than all the rest of my lifetime put together, with the weight that has been on me. No, you can't measure time that way, the measure of time depends upon something else, it depends on the emotions, whether they are pleasant, or unpleasant, whether they are serious, whether you are in haste—upon a thousand things. It does not depend on the hands of the clock. It is childish to tell this jury that Hawley lies, and that I am a briber on the turn of the second hand of the clock. Away with it! You gentlemen are not bribed to send me to the penitentiary or to keep me out. If you are bribed to send me take a big one, and don't send me on such flyspecks as that.

And then I come up to the street and meet Sam Browne of the District Attorney's office, my mind full of the settlement in the McNamara case, with the weight of these men's lives on my shoulders, wondering what all the trouble down on Main street was about, and I asked Browne what it was about. Was it an honest question and an honest exclamation, when I said, "It was horrible, I would not have had it happen for anything in the world?" Did it sound like guilt, or sound like innocence? I will tell you. It depended on the ears that heard it. To a man looking for guilt, and with a pair of ears for that purpose; to a man not believing in his fellowman, it sounded like guilt; to a man not suspicious, it would sound like innocence—that is all. Some men are suspicious and cruel in their judgment, other men are broad and trusting, and kind and charitable to all who live. When you judge the acts of other men, you tell about yourself, that is all there is to it. When I tell you what kind of a man I think some person is, you get an index of my mind. It may be the furthest away in the world from the man I am talking about, but you know what I am, and that is all there is to it.

I don't know the exact words that Browne said to me or that I said to Browne, neither does he. But Ford pretends to peddle to you the exact words. I was not there measuring words, nor was he. When we met at that time, I thought a great calamity had overtaken us by the arrest of Franklin. You don't know what you would have said in a case like that. I don't. I will venture to say there isn't any two men on this jury that would have said the same thing, guilty or innocent.

And so, about Franklin's bail bond, this evidence that I had furnished ten thousand dollars at the request of LeCompte Davis. Davis came to me and told me that he thought Franklin was innocent, and he advised me to give him the money, and said he would make good if Franklin ran away. Would you have done it? Lord, I hope you would have done it. If you would not, you would not have been men. I would not want to be tried before twelve men who would not, or be prosecuted by one man who would not. I have no doubt in the world but what Fredericks would have done it. Any man with any feeling in his heart would have done it, and I did it at Davis' request; I had not seen Franklin. In one breath Fords tells you it was suspicious because I did not do more, in another it was suspicious because I did so much. Which is it? Did I do too much, or did I do too little? True, some of the time when I feared Franklin, I thought of myself, but that was later, not until after the McNamara case was settled. Before that I had no time to think of myself and no inclination to do so. But when I wondered and thought what I ought to do, I did not know, I could not tell. Do you suppose there ever was a time when I seriously thought of it, in my long experience, that I did not know what it would mean to have Franklin offered immunity at my expense? And yet I never asked for anything in the matter. I never gave him a dollar in that long time, or asked him for a statement or for a word which I doubtless could have got. I never raised my hand with him to save myself any more than I have with anybody else since this case began, or since my life began—and I did too much here, and too little there—away with it! Can you sit here, you twelve men, to pass upon my guilt or my innocence and tell me the words I should have spoken or should not have spoken? If you can, you are endowed with the wisdom and omniscience of the Almighty, and I am willing to be judged by that now and hereafter. Now, again, gentlemen, in passing judgment on me, you pass judgment upon yourself—that is all there is to it. If you are so kindly, if you are human, if you are decent, if you love your fellowman, if you believe in him, you will find me innocent; if you feel malicious, if you feel suspicious, if you look upon me as guilty, then find me guilty, I cannot put it any better than that.

Now, as to Franklin, it is not a question as to whether his testimony is corroborated, but is it worth anything? Is there a single one of you gentlemen who would condemn your dog upon his word? Is there one of you who would condemn the meanest reptile that crawls upon the word of Franklin as shown by the testimony in this case? Did he lie when he testified here? Did he lie when he said that he had not thought anything about immunity, but knew that he would get it automatically? Did he lie when he said he was promised nothing?

I have said about all I care to about Franklin. I have said enough, I have said too much. I have no feeling against him, he is the way God made him. He can't help it any more than you can help being you, or I can help being I. It was a hard choice he had to make; it is a hard choice for a weak man, to offer him honor or comparative honor on the one hand, and security at least from the penitentiary on the other. Some men will take one, some will take the other; it depends on the man; he is not responsible for his brain or his skull. I don't want anybody to think that I would judge him with hardness or bitterness. I have never judged any human being that way in my life, I never shall. I am only asking you, gentlemen of the jury, to consider the reasonableness and the probabilities and the improbabilities and the absurdities of his story—nothing else.

Would I take a chance of that kind surrounded by detectives from the beginning to the end. Leave out the moral question. Leave out the tradition of a profession that I have followed for thirty-five years. Leave out everything except the bare chance; would I take that chance with these gumshoe men everywhere, their eyes on everyone connected with this case—detectives—nine of them testifying in this case—detectives over the town as thick as lice in Egypt, detectives everywhere.?

Detectives to the right of me,  
 Detectives to the left of me,  
 Detectives behind me,  
 Sleuthing and spying.  
 Theirs not to question why—  
 Theirs but to sleuth and lie—  
 Noble detectives!

I hadn't a chance with those fellows. Yet, I did take a chance, I took the chance of being alive where they were, as every man does, unless he could rely on twelve men to judge him honestly and kindly and carefully, as I feel I can rely on you.

Now let me talk a little about Harrington. Do I need to say much about him—a man who came here to work for me, a man who lived in my house, who ate with me and with my wife, who slept under my roof, and who stayed for ten days as our guest—and all the while he was going before Lawler and the Grand Jury and testifying against me? Against me! Great God! Do I need to impeach him? A man sleeping in your house, eating at your table with yourself and your wife, and betraying you! Is there any crime more heinous than that? Would you ever want to look upon Harrington's face again—the man who sat in this courtroom day after day and would not look me in the eye—afraid of being hypnotized? If I started out to hypnotize Harrington I would want a hunk of corned beef; you would have to get him through his stomach. Did he look at you? Did he look one juror in the eye? Will he ever look a human being in the eye again until he goes down to his unhallowed grave?

#### THE DICTAGRAPH TRAP

And then, gentlemen, think of that man plotting in Chicago with the Erectors' Association—my friend, and asking me for money—meeting these men in a hotel in Chicago, and putting up a scheme to trap me into a hotel room, where a dictagraph hidden behind a bureau could record my words. They knew perfectly well then, as they know today, that they could not pick out twelve human beings on the face of the earth that would throw away the liberty of a man upon the testimony of Harrington and Franklin, and so they thought to trap me where the hidden dictagraph might be made to distort my words. Is there any doubt about that? And Harrington, posing as my friend, came here to lure me into a room where he could secretly record and distort my conversation, in order to land me in the penitentiary!

Gentlemen, where is there a parallel for that in the annals of criminal



trials? Let's think of it a moment. Wouldn't it be better that every rogue and rascal in the world should go unpunished, than to say that detectives could put a dictagraph into your parlor, in your dining room, in your bedroom, and destroy that privacy which alone makes life worth living? What would you think of it, one of you men, if your hired man should conceal a dictagraph in your home or your office, and seek to destroy you in that way? And do you want to tell me that the Erectors' Association that would be guilty of a shame like this, would not be guilty of plotting my ruin, and charging me with a bribery for which they themselves were responsible? I want to say this, that if they deliberately put up a job to catch me on the streets of Los Angeles, that job was a sacrament compared with the hidden dictagraph used to trap a man into the penitentiary. They used to have a steer down in the stock yards in Chicago, where Harrington came from, that had been educated; they had educated this steer to the business of climbing an incline to the shambles. There was a little door on the side so that the steer could dart down through this door and not get caught in the shambles, and his business was to go out in the pen, and lead the other steers up that incline to the shambles, and then just before they reached the place he would dodge down through the door, and leave the rest to their destruction, that is Harrington.

If there is a man on earth who would give credit to Harrington in this matter, I would like to look in the face of that man, and I would find he was not a man—that is all. Better, I say again, that all the crimes that men could commit should go unpunished than that credit should be given to a scheme like that which was plotted in the Sherman House by Harrington, Lawler and the Erectors' Association. But what did they get from their infamy? Nothing. I went to Harrington's room where the dictagraph was hidden behind the bureau and talked with him in a friendly way day after day; but evidently the stenographers in the next room who recorded my language were too honest to distort it. And when I went on the witness stand, Ford asked me if I said this and that while the dictagraph was listening. And all the time they had in their wonderful tin box the full record of my conversation—in that tin box which contains

more infamy than any other box in the world—more infamy and less evidence.

More infamy and less evidence—infamy practised by the District Attorney's office. And they did not show this infamy to this jury. They did not dare to show it. Would these dictagraph reports have shown that I told the truth on the stand or that Harrington told the truth? Then they had the effrontery to argue to you that they asked me all they wanted to prove—and my denial of practically every single thing they asked stands unimpeached and you know it. They asked directly if I did not admit to having received ten thousand dollars in bills from San Francisco. I said, "No." Where is the wonderful tin box? Where are the listening dictagraph operators? Would they have testified for me or for Harrington?

Of course they had to have somebody to help Franklin, and so they threatened Harrington. They placed a charge against him, and threatened him with the penitentiary unless he did something for them, and so Harrington comes to the stand, and he lies, and he lies, and he lies, and you twelve men know it. What did he say? There are some links that need filling. Nobody has discovered a single penny that I have spent unlawfully. They have had access to every check I drew. They even photographed the checks in the bank before the bank gave them to me. They have had access to everything I did, and found what? Nothing. A check was given to Mr. Tveitmoe for a perfectly lawful purpose—it was just as necessary to have money in San Francisco as it was to have money here—and they seized upon that check early in the game. And Harrington tells the story; look at it a minute. This man, this Harrington—out of respect for "men" I cut out that word—this Harrington; when there is anything to connect, Harrington does it. He found out that a check had been given to Tveitmoe. How did he find it out? Why he found it out from a detective. He found it out from the Indianapolis Grand Jury. He found it out from Burns. He found it out in ten thousand ways. You cannot tell how. He found out that such a check had been given to Tveitmoe, and he comes on the witness stand and says that I showed him ten thousand dollars in bills on the front porch of my house. Let us

see if anybody would believe this story, even if a man told it. He swears that some time between the 20th and 30th of September I drew out of my pocket at my house, where he was eating—he never missed a chance to eat with me; I presume he would eat with me now, if I gave him the chance, and have a dagger somewhere concealed in his clothes, if there was room enough for it after he got through eating. And he swears that I went out on the porch of a house standing upon a hill, the porch brilliantly lighted and houses all around, and with Mrs. Darrow and his daughter out in the yard in front, and that I pulled out ten thousand dollars from my trousers pocket that I had been carrying for twenty or thirty days, and showed it to him and told him that I was going to get a couple of jurors with it. Now, is there any sense in that? Any reason in it? Could anybody believe it if it stood alone and uncontradicted in this case—and if a man had sworn to it, instead of Harrington?

And on the morning of the 28th of November, when I came back from Harrington's room where he was alone, I called him into my room and said, "If Franklin speaks I am ruined." And that was all. Now think of it. He must have been reading Burns' stories or Nick Carter's. "If Franklin speaks I am ruined." If I said that, just take a chance and send me to the penitentiary, take a chance. There you are. That is the wonderful corroboration of the most wonderful case that I believe has been tried since men had the right to jury trial.

#### TESTIMONY OF CROOKS AND INFORMERS

Franklin says that he had never seen Harrington more than three times in his life, but Mrs. Hartenstein, the stenographer who occupied the room between us, swore that they met each other daily. The other stenographer across the hall who went in often to take dictation, swore that she had seen them together at least two dozen times. Mr. Russel swears that he had seen Harrington and Franklin together fifteen or twenty times. Is he a liar? I don't know about that. But Harrington is worse. Was Harrington a liar when he lured me to the Hayward Hotel to destroy me with the dictagraph trap? Can there be twelve honest men anywhere in Christendom who would believe him?

Gentlemen, show me, in all their watching and their spying—show me with all the money they have spent, with all the efforts of the strong and the powerful to get me—show me in all these long weary months, where one honest man has raised his voice to testify against me. Just one. Just one. And are you ready, gentlemen, is this day and generation, to take away the name and the liberty of a human being upon the testimony of rogues, informers, crooks, vagabonds, immunity hunters and detectives—such testimony as has been massed against me? God, if my word and my character do not weigh more than all the trash that has been presented to this jury, I don't want to live. I don't want to live in a world where such men could cause the undoing of an American citizen. If they could, are you safe, am I safe? Is there any man who is so high and powerful that his life and his liberty would be safe? You know better, it cannot happen, and it won't happen.

And what else about Harrington. He is contradicted by the four witnesses I told you of. He is contradicted by Fremont Older, who came all the way from San Francisco to tell his story, and he told it straight and truthfully. He is my friend. Ford says he is a liar because he is my friend. I would rather go to the penitentiary and stay there the rest of my life with the friendship of a man like that, than to purchase my liberty by betraying my fellowmen.

Now, let him go; I want to talk to you about one more phase of this case, and the clock's minute hand is moving along as fast as Joe Ford said it was while Hawley was going from his office to Job Harriman's—so I have no time to loiter.

Was there any reason in the world for me seeking to bribe a juror on the 28th day of November? There are two things in this case that are not even disputed. One is that the dictagraph contained nothing in the world to my detriment: here was the place they would have evidence if there was any honest evidence in the world: they needed it or they would not have taken the trouble to do such an infamous act. There is another fact in this case that stands out so clear that every human being who has heard it must know it and understand it, and that is that the McNamara

case was disposed of so far as I was concerned prior to the 28th day of November. Fredericks has said before this jury that he was going to send out for some of these people who formed the committee that made the settlement. Did you see them? He brought Tom Gibbon before you for a few minutes one day, and after talking with him, he sent him off on his business, and we haven't seen Mr. Gibbon since. Neither he nor Harry Chandler, nor any member of that committee has denied a single word of Steffens' testimony that the case was practically settled prior to the 28th.

Now, gentlemen, perhaps most of you don't believe in all the philosophy which Lincoln Steffens believes in. What of it? Suppose some evening when you are in your jury room, and you, being instructed not to talk about this case, get into an argument among yourselves about matters of philosophy, and the old question of free will and necessity crops up. I wonder if you will all agree, and if you don't, will you say that the man who disagrees with you is a liar, because he has a different philosophy? You won't, not unless your own philosophy is very poor. Suppose you start a little discussion on politics or religion, or who is the best baseball player in America, as you have before now, will you agree? Not at all, and there may not be one man on this jury who would believe as Lincoln Steffens believes as to what we call crime, and what is punishment, and what are social crimes, and what are not. But he is a big man with a broad vision, a man who sees further than most men.

#### WORLD MOVES TOWARD MERCY

Gentlemen, because you don't believe a thing today is no sign that it is not true. There are dreams, and the dreams of today become facts tomorrow. Every effort towards humanizing the world, every effort in dealing with crime and punishment has been toward charity and mercy and better conditions, and has been in the direction of showing that all men are at least partly good, and all men are partly bad, and that there isn't so much difference in men as we had been taught to believe. Every effort that will last beyond the day and the year must have a humane idea, must have for its purpose the uplifting of man, must have its basis

in charity and pity and humanity, or else it cannot live. Lincoln Steffens believes that, you believe it, too. You may not believe this way or that, but it is aspiration that has raised man from the savage drinking the blood of his fellow from his skull, and has led him up through trials and toil and tribulation by which he has arrived at the place where he can have mercy and charity and justice and can look forward to an ideal time when there will be no crime and no punishment, no sin, no sorrow, and when man will visit no cruelty upon his fellowmen.

Almost everything that you believe now was scouted at and hissed, scarcely a hundred years ago. Most acts of humanity that we practice today would have been despised and denied two hundred years ago. The world is moving, and as it moves brutality is further off, and humanity is nearer at hand. I don't care for Steffens' views; it is facts that I am interested in.

Was my practice humane in this case? Among the other heinous charges that Mr. Ford saw fit to bring against me was that I had betrayed my clients—I, who had almost given my life's blood in their service—I, who never had a client in my life that I didn't consider my friend—I, who under the traditions of the profession, and under the feelings of my heart have put myself in the place of every client that I ever served—I, who worked day and night to save those lives that fate had placed in my hands, and who had bared my breast to the hostility of the world to serve them! I betrayed them! Gentlemen, I wish you knew, I wish I could make you understand. I didn't need to do it I was not on trial then. I was living in peace. It was nothing to me except that I made their case my own. And what happened? It was as if I were a boy walking upon the sand by the sea and the sky was clear above me, excepting here and there a fleeting cloud, as there always is in every clear sky; the waves were calm and peaceful, and in a moment the heavens fell and the ocean overwhelmed me. If it shall be written in the book of Fate that I have not made sacrifice enough for them, well and good, let me drink the cup to the dregs.

Did I think the McNamara case was disposed of? Is there any question but what we began the settlement of that case on the 20th of November? Mr. Ford said I knew these people were guilty from the beginning. Where is the evidence? I did not. I have practiced law for many a year. I do not go to a client and say, "Are you guilty, are you innocent?" I

would not say it to you. Every man on earth is both guilty and innocent. I know it. You may not know it; I know it. I find a man in trouble. In a way his troubles may have come by his own fault. In a way they did not. He did not give himself birth. He did not make his own brain. He is not responsible for his ideas. He is the product of all the generations that have gone before. And he is the product of all the people who touch him directly or indirectly through his life, and he is as he is, and the responsibility rests on the infinite God that made him. I do what I can for him, kindly, carefully, as fairly as I can, and do not call him a guilty wretch.

I had no knowledge whatever about the McNamaras until it was borne in on me day by day that this man I knew who trusted everything to me could not be saved if he went to trial. Just as the doctor finds that his patient must die, so it came to me that this client was in deadly peril of his life. Do you think that if I had thought there was one chance in a thousand to save him I would not have taken that chance? You may say I should not. That if I believed he was guilty I should not have tried to save him. You may say so; I do not. If this man had suffered death it would have brought more hatred and violence, more wrong and crime than anything else; for, after all, gentlemen, the source of everything is the human heart. You can change man by changing his heart. You can change him by changing his point of view of life. You cannot change him by scaring him, by putting him in the pen, by violence and cruelty. If you look on him as a doctor looks on his patient, and ascertain the cause of his conduct, then you may change him. These acts of violence will occur over and over and over again until the human race is wise enough to bring more justice and more equality to the affairs of life than has ever obtained before.

### THE MEN WHO BUILT CIVILIZATION

And let me tell you about these acts that grow from social conflict. The men who stand for the workers strike out in their blindness. True they strike out in the night and often wrongly. These men who built the civilization which we enjoy; these men who have built the railroad bed and laid the tracks, and who man the locomotives when you and I ride peacefully across the country in Pullman cars; these men who go ten, twenty and thirty stories in the air to the top of the high buildings, taking their lives in their hands, and whose mangled remains are so often found on the earth beneath—these are the men who have built our civilization, and let me say to you that every step in the progress of the race, every

step the world has taken has been for the elevation of the poor. There is no civilization without it—there can be no civilization without it. The progress of the world means the raising of these through organization, through treating them better, through treating them kindlier, through treating them more justly. Every step in civilization means the elevation of the poor, means helping the weak and the oppressed, and don't ever let yourself think that though these people often do wrong, that though they are blind, rebellious and riotous, that after all they are not doing their part and more in the progress of the world. I knew it, I felt it then. I knew that though terrible were the consequences of this blind act, consequences which nobody foresaw, still it was one of those inevitable acts, which are a part of a great industrial war. I believe that the loss of life was an accident. Nobody meant to take human life in the Times disaster and the position of the State in the settlement of the matter showed that nobody meant to take human life. I heard these men talk of their brothers, of their mothers, of the dead; I saw their human side. I wanted to save them, and I did what I could to save them, and I did it as honestly and devotedly and unselfishly as I ever did an act in my life, and I have nothing to regret however hard it has been. Gradually it came to me that a trial could not succeed. Gradually another thing came to me. It was expensive—the money of the Erectors' Association, of the State of California, the power of the Burns Agency, everything was against us. It needed money on our side, and a great deal of it. It needed money that must be taken from the wages of men who toil—men whose cause I have always served, and whether they are all faithful to me or not, the cause, that I will serve to the end. I could not say to them that my clients would be convicted. I could not say to the thousands who believed in them, and who believed in me, that the case was hopeless. The secrets that I had gained were locked in my breast, and I had to act—act with the men whom I had chosen to act with me. I had to take the responsibility, grave as it was, and I took it.

Was this case disposed of before Franklin was arrested? Why, gentlemen, there is no more question about that than there is that you twelve men are in front of me. Lincoln Steffens testified that on the 20th day of November after he and I came from San Diego, he made the proposition for a settlement to me. The idea grew out of a conversation we had with Mr. Scripps, and I said I wished it could be done, but I said, "If anything is done it must come from you." On that very day he went to Meyer Lissner and Thomas Gibbon. At first, I had so little confidence in the possibility of a settlement that I scarcely thought about it for a day or two, but soon



Mr Steffens brought back reports which gave me the confidence to wire my friend Mr. Older, and ask his advice.

All the leading men connected with the labor movement on this coast were then at Atlanta. I could not get to them. I had to take the responsibility, and the other lawyers had to take it with me. What else could we do? I could not consider politics. I could not consider my own interests. I had to consider those accused men, nothing else, and there isn't one of you twelve men who would ever hire a lawyer who you didn't believe would consider your interests first of all—and if he did not he wouldn't be true to his profession, or true to his own manhood. Those things alone could I consider. I wired on Wednesday, the 22nd; I wired to Fremont Older and I wired to Gompers to send me a man at once, and I named certain men; and Mr. Older came down here on Wednesday morning. Now is that all a lie? Did I wire to these men on that day? If so, why?

Ford says I might have got up all this scheme, so as to cover up a case of jury bribing. Well, I might—I might. Sometime his bitter heart might be touched by feelings of kindness and charity, it might—if the days of miracles had not passed. And so I might have got up this elaborate scheme, because I foresaw that I was going to give Franklin four thousand dollars on the next Tuesday morning and start him off with the money to bribe a juror. Why, gentlemen, I might have done it—and therefore you will argue, says Ford, that I did. And this in a civilized country, at least, presumed to be.

#### THE McNAMARA SETTLEMENT

Older and Davis and Steffens and I met together. Was I betraying my clients? Davis spoke up and said to me, "Mr. Darrow, you can't afford to do it." Judge McNutt was there; he was as fine a man as ever lived in the world, as loyal to me as any friend I have ever known, as true to his profession, and as true to the higher ideals of manhood as any man I have ever met.

Davis said, "You will be misunderstood by Union Labor." I told him I had no right to consider myself. I had no right no consider the men who furnished the money. My duty was over there in the county jail with those two men, whose lives depended upon my courage and my fidelity and my judgment. Whatever befell me I must be true to them, and no lawyer lives who is true to his profession and true to himself who ever hesitates in an emergency like that.

McNutt at once agreed with me. Davis went to the District Attorney

—and this is uncontradicted. The first proposition that came from Lissner and Steffens was that J. B. McNamara should plead guilty and that all other prosecutions should stop. Davis then went over to the District Attorney, and brought back word that it would require a term of years at least for J. J. McNamara. That was discussed on Wednesday on Wednesday, November 22nd, between Older and Davis and Steffens and myself. And Judge McNutt is dead, dead, says Mr. Ford. I couldn't help it. If the Angel of Death hovering around the court room had come and asked my advice, I would probably have told him "Take Ford, and spare McNutt," but he didn't. I cannot help it because the Angel of Death made a mistake.

This matter was considered on Wednesday. Steffens said that he would see that the original proposition went through, and he went back to Chandler, the manager of the Times. Chandler was meeting with Steffens, and then word came from the East—from the East—from the seat of money and power and wealth and monopoly; word came that it was not enough to take J. B., but that J. J. must plead guilty to something; and we worked on that. We worked on it the rest of the week, and Steffens swears that he went and interviewed these defendants. Each brother was willing to suffer himself, but J. J. didn't want his brother to be hanged, and J. B. didn't want J. J. to plead guilty to anything. J. B. agreed to plead guilty and take a life sentence, and J. J. said to us that after his brother's case was out of the way he would plead guilty and take a ten years' sentence. Ford said that I should have told J. B. that J. J. was to plead guilty. Why? I was defending J. B., and it was my business to get the best terms I could for him. I was also defending J. J., and it was my business to get the best terms I could for him. I had no right to play either one against the other—no right, let alone what a man would naturally do. Now, that was the condition, going back and forth before Saturday. We had agreed to accept the District Attorney's terms if no better terms could be had. On Saturday, when that jury list was drawn it was not handed over to Franklin for him to look up the missing names; it was kept until night, until he himself called to me for it, and I gave it to him. There was nothing else to do. In the face of the world, and in the face of our employe, we were bound to go on as we had. On Sunday, Steffens, McNutt and I spent most of the day at the jail, where, finally, each of the brothers separately agreed with our plan. On Sunday night McNutt called Davis to his house and told him that the McNamaras had agreed to our plan.

Now, gentlemen, what is there against all that, anything but the

breath of counsel? Nothing! The testimony as to the settlement of the McNamara case stands here clear as sunlight. On Monday morning, Mr. Davis went to Fredericks and Fredericks agreed that he would accept the pleas of guilty—J. B. to take life and J. J. ten years. Now, what about it, gentlemen? Is all this a lie? Is it another dream? Why even Franklin doesn't testify against this. If they had got Franklin and Harrington to contradict it, then they might argue that I had some motive on the 28th of November for seeking to bribe a juror. But nobody testifies against it. Fredericks doesn't deny it, Chandler doesn't deny it, nor Lissner nor Gibbon. There is no denial.

In the meantime I had received a telegram from Ed. Nockles on Friday, and in reply I wired him to come on immediately. Was that dispatch a fake? Was it sent to cover up a case of jury bribing at the beginning of the next week? On Monday every one of the parties interested had formerly agreed to the plan of settlement. We had agreed to it on Sunday. We had agreed to it on Saturday, but we were still trying to do better if we could. Davis had told us that the settlement must be made at once. And with this condition of affairs, when I had no thought whatever that the McNamara case would be tried, is it likely that on Tuesday morning, I would take four thousand dollars, not of my own money, but of money that was sorely needed, and not only waste that money, but take a chance of the destruction of my life and a term of years in the penitentiary, by sending Franklin down on the corner of Third and Main streets to bribe a juror?

Gentlemen, if you can believe it, I do not know what your minds are made of. If there is anybody whose prejudice and hatred are so deep that they cannot be removed, who can believe a thing like that, I would like to search him with an X-ray, look inside of his skull and see how the wheels go round.

The settlement of the McNamara case cost me many friends, friends that have been coming back slowly, very slowly, as more and more this matter is understood. I am not a fool. I can prove that by Ford. I knew I was losing friends. Was I saving myself? Can any man on this jury or any person point to a single place in this whole matter, where I ever sought to save myself? Was I trying to save myself when Steffens came to me after Franklin's arrest and asked if the settlement could still be made, and I said it could, and then he turned to me and said, "Some one may think that some of you lawyers are connected with this Franklin matter," and I said to him promptly, "If anybody has suspicions of anything like that, you tell them for me that this matter is never to be in any

way considered in disposing of the McNamara case. Let the law take its course in that." And have I ever haggled or bargained or sought to throw myself into the balance anywhere? I was thinking of my clients, not of myself.

You may pursue me with all the infamy and venom you wish, but I know, I know in my inmost heart that in all the sacrifices and responsibilities I have taken in my life, I never made one so hard as this, gentlemen. With the eyes of the world upon me, knowing that my actions would call down the doubt, and in many cases, the condemnation of my friends, I never hesitated for the fraction of a second. Perhaps if I had hesitated my flesh would have been too weak to have taken the responsibility. But I took it, and here I am, gentlemen, and I am not now trying to get rid of the responsibility. Was it wise or unwise? Was it right or wrong? You might have done differently, I don't know.

I have been a busy man. I have never had to look for clients, they have come to me. I have been a general attorney of a big railroad, I have been the attorney several different times, and general counsel, as it were, of the great City of Chicago. I have represented the strong and the weak—but never the strong against the weak. I have been called into a great many cases for labor unions. I have been called into a great many arbitration cases. I believe if you went to my native town, that the rich would tell you that they could trust not only my honor, but my judgment, and my sense of justice and fairness. More than once have they left their disputes with the laboring men, with me to settle, and I have settled them as justly as I could, without giving the working man as much as he ought to have. It will be many and many a long year before he will get all he ought to have. That must be reached step by step. But every step means more in the progress of the world.

#### SOCIETY IN OPEN RUPTURE

This McNamara case came like a thunderclap upon the world. What was it? A building had been destroyed, and twenty lives had been lost. It shocked the world. Whether it was destroyed by accident or by violence no one knew, and yet everyone had an opinion. How did they form that opinion? Everybody who sympathized with the corporations believed it was dynamite; everyone who sympathized with the workingman believed it was something else. All had opinions. Society was in open rupture; upon the one hand all the powerful forces thought, now we have these men by the throat, and we will strangle them to death; now we will reach out the strong arm of money and the strong arm of the law, and we

will destroy the labor unions of America. On the other hand were the weak, and the poor, and the workers whom I had served; these were rallying to the defense of the unions and to the defense of their homes. They called on me. I did not want to go. I urged them to take someone else, but I had to lay aside my own preferences and take the case. There was a direct cleavage in society. Upon the one hand, those who hated unions, upon the other, those who loved them. The fight was growing fiercer and bitterer day by day. It was a class struggle, gentlemen of the jury, filled with all the venom and bitterness born of a class struggle. These two great contending armies were meeting in almost mortal combat. No one could see the end.

I have loved peace all my life. I have taught it all my life. I believe that love does more than hatred. I believe that both sides have gone about the settlement of these difficulties in the wrong way. The acts of the one have caused the acts of the other, and I blame neither. Men are not perfect; they had an imperfect origin, and they are imperfect today, and the long struggle of the human race from darkness to comparative civilization has been filled with clash and discord and murder and war, and violence and wrong, and it will be, for years and years to come. But ever we are going onward and upward toward the sunshine, where the hatred and war and cruelty and violence of the world will disappear.

Men were arrayed here in two great forces—the rich and the poor. None could see the end. They were trying to cure hate with hate.

I know I could have tried the McNamara case, and that a large class of the working people of America would honestly have believed, if these men had been hanged, that they were not guilty. I could have done this and have saved myself. I could have made money had I done this—if I had wanted to get money in that way. I know if you had hanged these men and other men, you would have changed the opinion of scarcely a man in America, and you would have settled in the hearts of a great mass of men a hatred so deep, so profound, that it would never die away.

And I took the responsibility, gentlemen. Maybe I did wrong, but I took it, and the matter was disposed of and the question set at rest. Here and there I got praise for what was called an heroic act, although I did not deserve the praise, for I followed the law of my being—that was all. I acted out the instincts that were within me. I acted according to the teachings of the parents who reared me, and according to the life I had lived. I did not deserve praise, but where I got one word of praise, I got a thousand words of blame! and I have stood under that for nearly a year.

This trial has helped clear up the McNamara case. It will all finally be cleared up, if not in time for me to profit by it, in time for my descendants to know. Some time we will know the truth. But I have gone on about my way as I always have regardless of this, without explanation, without begging, without asking anything of anybody who lived, and I will go on that way to the end. I know the mob. In one way I love it, in another way I despise it. I know the unreasoning, unthinking mass. I have lived with men and worked with them. I have been their idol and I have been cast down and trampled beneath their feet.

I have stood on the pinnacle and I have heard the cheering mob sound my praises; and I have gone down to the depths of the valley, where I have heard them hiss my name—this same mob—but I have summoned such devotion and such courage as God has given me, and I have gone on—gone on my path unmoved by their hisses or their cheers.

#### PRAISE AND BLAME ARE UNJUST

I have tried to live my life and to live it as I see it, regarding neither praise nor blame, both of which are unjust. No man is judged rightly by his fellowmen. Some look upon him as an idol, and forget that his feet are clay, as are the feet of every man. Others look upon him as a devil and can see no good in him at all. Neither is true. I have known this, and I have tried to follow my conscience and my duty the best I could and to do it faithfully; and here I am today in the hands of you twelve men who will one day say to your children, and they will say to their children, that you passed on my fate.

Gentlemen, there is not much more to say. You may not agree with all my views of philosophy. I believe we are all in the hands of destiny, and if it is written in the book of destiny that I shall go to the penitentiary, that you twelve men before me shall send me there, I will go. If it is written that I am now down to the depths and that you twelve men shall liberate me, then, so it will be. We go here and there, and we think we control our destinies and our lives, but above us, and beyond us, and around us, are unseen hands and unseen forces that move us at their will.

I am here and I can look back to the forces that brought me here, and I can see that I had nothing whatever to do with it, and could not help it, any more than any of you twelve men had to do with or could help passing on my fate. There is not one of you that would have wished to judge me, unless you could do it a in way to help me in my sore distress—I know that. We have little to do with ourselves.

As one poet has expressed it,

Life is a game of whist. From unknown sources  
The cards are shuffled and the hands are dealt.  
Blind are our efforts to control the forces  
That though unseen are no less strongly felt.  
I do not like the way the cards are shuffled,  
But still I like the game and want to play  
And through the long, long night, I play unruffled  
The cards I get until the break of day.

I have taken the cards as they came; I have played the best I could; I have tried to play them honestly, manfully, doing for myself and for my fellow man the best I could, and I will play the **game to the end**, whatever that end may be.

Gentlemen, I came to this city a stranger. Misfortune has beset me, but I never saw a place in my life with greater warmth and kindness and love than Los Angeles. Here to a stranger have come hands to help me, hearts to beat with mine, words of sympathy to encourage and cheer, and though a stranger to you twelve men and a stranger to this city, I am willing to leave my case with you. I know my life, I know what I have done. My life has not been perfect; it has been human, too human. I have felt the heart beats of every man who lived. I have tried to be the friend of every man who lived. I have tried to help in the world. I have not had malice in my heart. I have had love for my fellowmen. I have done the best I could. There are some people who know it. There are some who do not believe it. There are people who regard my name as a byword and a reproach, more for the good I have done than for the evil.

There are people who would destroy me. There are people who would lift up their hands to crush me down. I have enemies powerful and strong. There are honest men who misunderstand me and doubt me; and still I have lived a long time on earth, and I have friends—I have friends in my old home who have gathered around to tell you as best they could of the life I have lived. I have friends who have come to me here to help me in my sore distress. I have friends throughout the length and breadth of the land, and these are the poor and the weak and the helpless, to whose cause I have given voice. If you should convict me, there will be people to applaud the act. But if in your judgment and your wisdom and your humanity, you believe me innocent, and return a verdict of not guilty in this case, I know that from thousands and tens of thousands and yea, perhaps millions of the weak and the poor and the helpless throughout the world will come thanks to this jury for saving my liberty and my name.

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