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Source: *Virginia Law Review*, Apr., 1959, Vol. 45, No. 3 (Apr., 1959), pp. 414-418

Published by: Virginia Law Review

Stable URL: <https://www.jstor.org/stable/1070743>

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# REFLECTIONS ON CLARENCE DARROW

GEORGE S. LEISURE\*

IN THE recent best seller *Attorney for the Damned*,<sup>1</sup> Arthur Weinberg has collected a series of addresses by Clarence Darrow and in so doing has performed a magnificent service for the lawyers of our country—particularly the young lawyers going into the field of trial law. The Editors of the *Virginia Law Review* have invited me to comment on Clarence Darrow, I assume, by reason of the fact that I was privileged to accompany Mr. Darrow to Honolulu when he made one of his moving addresses in the famous *Massie*<sup>2</sup> case. Mrs. Leisure and I went from New York to Chicago where we joined Mr. and Mrs. Darrow and journeyed by rail and steamer to the Hawaiian Islands. The four of us spent some three months together on that occasion, and if I may quote Mr. Darrow in his biography,<sup>3</sup> “we grew to be close friends.”

Clarence Darrow was of the unusual mold which appears only once in many generations. Of Walt Whitman, Darrow said, “Both in substance and in construction he ignored all precedents and dared to be himself.” This statement could just as well describe Clarence Darrow himself. Joseph N. Welch, the Boston lawyer, said of him, “He was so brave and so fearless that he did not realize he was either.”

The selected addresses in *Attorney for the Damned* cover a wide expanse of our history. The first shows young Darrow appearing for the defense as early as 1898 in the *Wisconsin Woodworkers Conspiracy* case.<sup>4</sup> While Mr. Weinberg has entitled his book *Attorney for the Damned*, he might equally well have called it *Attorney for the Poor*. When the *Wisconsin Woodworkers Conspiracy* case was tried, the labor unions of this country were not sufficiently well organized to

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1. Simon and Schuster, Inc., New York (1957), with foreword by Mr. Justice William O. Douglas.

2. The *Massie* case was tried in Honolulu in 1932 with Clarence Darrow and George S. Leisure for the defense. Mr. Darrow's final plea to the jury is presented in *Attorney for the Damned* at 104.

3. DARROW, *THE STORY OF MY LIFE* (1932).

4. The *Woodworkers Conspiracy* Case (the *Kid* case), tried at Oshkosh, Wisconsin in 1898, is included in Weinberg's book at 267.

have million dollar war chests for use either in aggressive action or in their own defense. The trial of the *Woodworkers* case consumed three full weeks in the courtroom, and Clarence Darrow's summation to the jury lasted two days. This, of course, excluded the weeks spent in preparation for the trial. For this great effort he received a total fee of \$250. Much later in life, at the time of his debate in New York with Judge Talley on capital punishment (1924), he pointed out to a heckler in the audience that he had defended more than half his clients free of charge.

While Clarence Darrow, at the very threshold of the labor union movement in this country, fought for the right of the underprivileged working man to strike, it is interesting to observe that this great advocate for the poor even then had the vision to foresee that the strike, if unregulated by law, could become harmful to society and dangerous to government itself. He believed civilized man must learn, for the common good of all, to submit his differences to the ordinary rules of law. In the *Pennsylvania Anthracite* case,<sup>5</sup> he maintained that the people of America might not always be dependent for fuel either upon mine owners or workers. The factory owner must consider whether he has any moral duty to those dependent upon him for bread and must consider the danger and evil to society that will result if he closes his doors. Similarly, the working man must consider his responsibility to the community and to those dependent upon him. Darrow considered this soul searching a moral duty which both employer and employee should recognize and say: "I may be looking at this question only from my own standpoint. I will submit my differences to someone else." He believed this moral law would one day be made a part of the civil law.

Chronologically the last address included in *Attorney for the Damned* is Darrow's plea to the jury in the *Massie* case which was tried in Honolulu in 1932. Tommy Massie, a graduate of the United States Naval Academy, had been assigned to duty at Pearl Harbor. His young wife, Thalia, was attacked and raped by five youths on Oahu. They were promptly indicted and brought to trial for the crime. At that time, the case was little different from certain cases of juvenile delinquency which occur in New York and other cities in the United

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5. Darrow represented the United Mine Workers in arbitration proceedings before the seven-man Anthracite Miner Commission appointed by President Theodore Roosevelt in 1903. His summation of the miners' case is included in *Attorney for the Damned* at 327.

States. But when the jury failed to convict any of the defendants, Tommy Massie, bent upon obtaining a confession which would make conviction in a second trial certain, found himself and his associates charged with murder for the killing of one of the rapists. The case became a cause *celebré* overnight. Racial issues were involved, and people took sides on the Islands as well as all over the United States. A well known Philadelphia philanthropist undertook to raise funds to engage Clarence Darrow for the defense of Tommy Massie, Thalia's mother, and two sailors who were indicted on a conspiracy charge for the killing.

Mr. Darrow, past seventy, came out of retirement to accept the case. As he crossed the United States from Chicago by train, at all important stops large groups of newspaper men from all over the country boarded the train to interview him about the case and about his views in general. Prohibition was then a burning public issue. When the train stopped at Omaha, one young reporter asked him what he thought of prohibition. Darrow answered by asking another question: Did the young reporter ever take a drink? The young man reluctantly admitted he did. Darrow retorted, "Don't you want anybody else to have any fun?"

Mr. Darrow was met in San Francisco by attorneys who submitted to him affidavits signed by all four defendants setting forth the facts of the case. By contrast, his arrival in Honolulu brought a welcome by smiling, singing Hawaiian girls who loaded him down with flowers. He was invited to stay in large suites at the Royal Hawaiian Hotel, one of the finest in the world. However, Mr. Darrow felt he should stay at a downtown hotel, so we took adjoining double rooms at the Alexander Young Hotel. Admiral Stirling, then in command of the Navy in the Pacific gave every possible assistance during the trial. In fact, the Navy men took up a collection among their group to engage two alienists from the Pacific Coast mainland to testify on Tommy Massie's behalf.

The Island was seething with race dissension when Darrow arrived. But this was not the first time the great advocate had been able, by virtue of his wisdom and strength of character, to pour oil on troubled waters and command the respect of even those who did not agree with him.

During the trial he told the jurors he had presented the case without appealing to the nationality or race of any juror, asking them to pass on it as a human case. Darrow pointed out that Massie had done the

best he could to perform his Navy duties and had spent much time attending his wife; he had lost sleep, courage, and hope. He was distraught. Darrow argued that institutions for the insane were filled with men and women who had less cause for insanity. He reminded the jurors the human mind was not easy to understand at best.

In addressing a jury, Mr. Darrow did not talk "at" them or "over" them. He reasoned with each individual juror and sought to place heavy responsibility squarely upon that juror's shoulders. In selecting a jury, he conversed with a juror over the jury rail as would two neighbors talking over a fence. It was not uncommon for him, when he had finished "visiting" with a prospective juror, to make some such remark as: "And if you are selected as a juror in this case, you will do the best you can, won't you?" When the juror answered he would, I suspect Mr. Darrow had made a friend.

During the *Massie* trial the door between our two rooms was always open, so I had the opportunity of observing the advocate. Up to the evening before his address to the jury, Mr. Darrow had not made any outline of his argument on paper. In fact, some of the Navy boys at Pearl Harbor called up the evening before his jury address and wanted to see him. I was about to tell them Mr. Darrow would sum up the case to the jury on the following day and I was sure he would rather be alone, when he asked me to tell them to "come on over." They stayed until about 10 o'clock. The following day he summed up to the jury until noon. After lunch I left his room and closed the door, thinking he would wish to outline the rest of his argument in his mind. When I returned, I found him sound asleep on his bed. He closed this memorable address by asking the jurors to take the case with its dire consequences as one of their own. Although the *Massie* case represented a technical defeat for Darrow,<sup>6</sup> he felt he had done his small part in bringing peace and justice to an island wracked and torn by strife.

Today the question is often asked, was Clarence Darrow a great lawyer? Certainly no one can read Mr. Weinberg's fascinating book without realizing he was an outstanding man. I had the honor of spending the first years of my legal career in the law office of Charles Evans Hughes. I do not feel that Clarence Darrow was as great a lawyer as Chief Justice Hughes in the sense of being equally familiar with the

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6. After two days of anxious waiting the jury brought back a verdict of guilty of manslaughter. Judge Davis sentenced the four defendants to ten years imprisonment, but Governor Judd commuted the sentence to one hour.

great body of American law. But as an advocate, Clarence Darrow had no peer in his time, and there were giants in those days. He was an insatiable reader of all literature. I do not recall ever having heard a book mentioned in his presence with which he was not thoroughly familiar. He once remarked to me that every man should keep a book handy to read while waiting for his wife.

Although this great humanitarian at times seemed to be carrying the troubles of the entire world upon his stooping shoulders, he was blessed with a charming sense of humor. This humor not only was present in his daily life, making him a great delight to be with, but it appears continuously throughout his speeches. His oratory, like the performance of a great musician, covered the entire keyboard of human emotions. During speeches to a jury he has been known to bring tears to the eyes of both judge and jurors with his deep sincerity—and moments later move them to laughter by some droll remark or observation on human existence. Before the *Massie* trial began in Honolulu Mr. Darrow was ill for a short time. Phil Kingsley, representing the *Chicago Tribune*, Russell Owen of the *New York Times*, and many other reporters from local and mainland newspapers were present. It was not unusual for Mr. Darrow to start the conversation at the breakfast table with some remark as: "Well, here is the morning paper. I wonder how I am today."

Mr. Weinberg closes *Attorney for the Damned* with an address by Clarence Darrow on behalf of a man whom I believe to have been his closest friend, John Peter Altgeld, former Governor of the State of Illinois. In his editing of this address Mr. Weinberg points out that when Governor Altgeld failed to be re-elected, Clarence Darrow took him into his own law office as a partner, and that Governor Altgeld died on March 12, 1902, while lecturing in defense of the Boers. Irving Stone in his remarkable biography of Darrow<sup>7</sup> said there were many horse drawn carriages at the funeral, but Darrow walked alone beside his friend. Clarence Darrow in this address said that John P. Altgeld was one of the rarest souls who ever lived. He called him a soldier in the everlasting struggle of the human race for liberty and justice on earth. He said his patriotism was of that pure ideal mold that placed love of man above the love of self, and that a truer, greater, gentler, kindlier soul never lived and died. This last tribute to a friend may be taken as a fitting epitaph for Clarence Darrow.

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7. STONE, CLARENCE DARROW FOR THE DEFENSE 126 (1941).