

## Book Review

John A. Ferrell, *Clarence Darrow: Attorney for the Damned*. New York: Vintage Books, 2011, pp. 576, \$32.50 (cloth), \$17.95 (paper).

Reviewed by Karla Mari McKanders

There was little to keep an attorney awake at night when the stakes were merely credit or property. . . . But in criminal law you are dealing with flesh, blood, reputations, shame, disgrace, honor and with wives, fathers, mothers and children. It was vital work, though wearing on your nerves and sympathies. You must learn to endure criticism and to be callous to spiteful remarks (364).

-Clarence Darrow

Clarence Darrow is known as one of the great legal minds in American history. John Ferrell's biography, *Attorney for the Damned*, is a well researched and detail oriented account of Darrow's professional and personal life, including his representation of some of the most notorious "outcasts" in American history. Although Ferrell is a journalist, not a lawyer, the book's detailed examination of the life of one of America's greatest lawyers warrants reading by lawyers and those contemplating a career as a lawyer. The book has already been reviewed extensively in the *Los Angeles Times*, *Seattle Times* and in other news media. This review focuses on the usefulness of *Attorney for the Damned* in legal academia as an instructional tool.

The first several chapters detail how Darrow gave up his corporate practice as a railroad attorney to defend poor workers, anarchists, dissidents and social outcasts. When Darrow's mentor, John Peter Altgeld, passed away, he decided to pursue a legal career defending the defenseless. The book's beginning, tracing how Darrow deliberately gave up a life of wealth for the financial uncertainty of defending the poor, is a great story for law students and new lawyers contemplating whether they should pursue public interest law or work for large law firms or businesses. The compelling moral dilemma Darrow and other attorneys face in making this decision can be used as a teaching tool for advising law students who are considering public interest lawyering. At this time in his life, Darrow, like most law students and new lawyers, was an idealist, believing that "the injustice of the world can only be remedied through law, and order and system" (41).

**Karla Mari McKanders** is Associate Professor at University of Tennessee College of Law.

The beginning of the book also details Darrow's first marriage and divorce, and chronicles the tumultuous relationship with his son. Throughout the book, Ferrell focuses on Darrow's experimentation with free love principles and how, even after remarrying, he continued to have romantic affairs with various women. This theme provides the reader with insight into Darrow's non-conformist attitude and perhaps human flaws.

The book really picks up when Ferrell discusses Darrow's representation of union defendants Steve Adams and Bill Haywood for their alleged murder of Frank Steunenberg. The 1907 trial highlighted the broader national struggle at that time between labor and business. This section of the book would be especially beneficial to law professors who want their students to develop a detailed understanding of public interest lawyering and the moral dilemmas associated with representing defendants considered to be social pariahs. In addition, the details associated with the descriptions of Darrow's closing arguments during these trials are examples of how new lawyers can transform a case through compelling and skillful argumentation.

Darrow's life of free love, political involvement and representing social outcasts certainly took a toll on his personal health. As Chapter 10 chronicles, Darrow was hospitalized with an infection towards the end of a big union trial around 1907. Darrow continued to represent his client but grew so ill that he had to deliver his closing statement sitting in a chair before the jury. This chapter is definitely instructive for law students seeking to balance their personal health and well-being with the practice of law.

*Attorney for the Damned* also raises various ethical issues that are pertinent to balancing effective advocacy with a zealotry to win by any means necessary. In Chapters 11 and 12, Darrow's experience as a defendant charged with jury bribery demonstrates how even great lawyers can be caught in ethical dilemmas. The downward spiral that Darrow experienced can be instructive for law students and attorneys who face their own moral dilemmas in practice. The ethical issues surrounding bribery of jurors and how an attorney responds when charged with a crime are all compelling. At the end of his second trial for bribery, Darrow eloquently decreed that his only crime was defending the poor and the weak against the mighty and the strong.

And it is for this, gentlemen, that I am here today, because I haven't condemned, I haven't judged; I have loved my fellow man; I have loved the weak; I have loved the poor; I have loved the struggling; I have fought for their liberties, for their rights, that they might have something in this world more than the hard conditions that social life has given them (276).

The reader is confronted with the moral dilemma of whether the ends (representation of the poor and obtaining favorable outcomes for his clients) justify the means through which Darrow allegedly obtained those outcomes. The reader is left with the feeling that Darrow may have crossed the line by engaging in juror tampering and bribery.

After the bribery trials, Darrow returned to Chicago and continued his representation of people “. . . who had no money; they were poor, they were down-trodden; they were suffering, but it was always a glad welcome, always a hand extended, never a refusal” (283). Although he experienced the death of many close friends during this period, he continued to work for the most hated defendants. For example he represented Isaac “Ike” Bond, an African American accused of killing a white woman. Nonetheless, Darrow continued to struggle emotionally. At one point, Ferrell quotes him as stating, “Life was a weary journey to ‘death and annihilation, [. . .] and the wiser human beings found their own brand of dope—intellectual, spiritual, or physical—with which to endure.’ No one can find life tolerable without dope” (290).

Chapter 15 details Darrow’s representation of several defendants whom the U.S. government targeted during the Red Scare, a period when the Espionage Act of 1917<sup>1</sup> and the Sedition Act of 1918<sup>2</sup> gave law enforcement officials the power to ban newspapers and made it a crime to use “disloyal, profane, scurrilous or abusive language about the government” (299). Darrow represented several defendants targeted and prosecuted under these acts including Theron Cooper (a pacifist in Chicago), Schulim Melamed (an anarchist slated for deportation), Richard Pettigrew (charged with making anti-war comments in the press), and Victor Burger (accused under the Espionage Act for his anti-miliarist views). Darrow’s philosophy in representing these individuals was that “Truth is elusive. What is right today can be wrong tomorrow. What matters is the freedom to keep searching” (313). During this time, Darrow also met with President Woodrow Wilson expressing concerns over the harsh conditions under which his clients and other anarchists were being treated and tried. As a sign of the times, during one of his speeches, Darrow quoted Thomas Jefferson and Wendell Phillips, “No man can speak his convictions, no man can write them, and no man can print them with the fear of jail in his heart! He must speak them freely and unafraid. Even if he speaks extravagantly and wildly and foolishly, he must be left to do it freely” (307).

Chapter 17, which describes the Loeb and Leopold trials, is one of the most significant sections in the book. Darrow represented two teenage killers Nathan Leopold and Richard Loeb for the heinous murder of a 14-year-old boy. Instead of taking them through a jury trial, Darrow early on convinced the boys to plead guilty, leaving only a mitigation trial. This chapter details how Darrow helped revolutionize criminal law through the introduction of cutting-edge psychological evidence on the defendants’ state of mind. Ferrell powerfully recounts Darrow’s eloquent closing statement against imposing the death penalty in this case, ultimately saving his clients’ lives.

After the Loeb and Leopold trials, Darrow joined the American Civil Liberties Union as he took on the famous 1925 Scopes trial. Tennessee state law prohibited teachers from instructing their students on evolution. The ACLU

1. Ch. 30, tit. I § 3, 40 Stat. 217, 219.

2. Pub.L. 65-150, 40 Stat. 553, enacted May 16, 1918.

mounted this test case to attract national attention to teaching creationism in public schools. The teacher, John Scopes, was charged with teaching evolutionism in his Dayton, Tennessee classroom. While the prosecution tried to limit the issues in trial to the public's right to decide, through its legislature, how to run the schools, Darrow and his team attempted to shift the focus to academic liberty, free thought, and scientific inquiry, controversial matters in the Bible belt.

Chapter 19 focuses on Darrow's representation of African Americans in Detroit accused of murdering a white man in self-defense. The murder occurred when a white neighborhood mob attempted to oust one man from his home. The NAACP recruited Darrow to litigate what they felt was a case that would test the constitutional guarantees of equal protection during the Jim Crow era—another example of his willingness to advocate for unpopular issues. As part of the defense team, Darrow helped win an acquittal for one man, which led the prosecutor to dismiss charges against the other defendants.

Despite his success in the courtroom, Clarence Darrow died penniless, leaving his wife to sell their possessions to survive. Perhaps this is a cautionary tale for those representing clients who cannot afford legal counsel or a lesson that a man's life or greatness cannot be measured through material success.

This book can be used in many different academic contexts although perhaps most appropriately in an ethics class and for advising students who want to pursue public interest lawyering. Ferrell's exploration of the historical context surrounding Darrow's representation of union members can help students and law professors alike understand how important it is to consider how social, political and economic factors impact our clients and their cases. The book can also be a cautionary tale for lawyers who may decide to challenge legal rules of ethics, as it provides insight into how this can impact their reputations, careers and personal health.

Overall, while *Clarence Darrow: Attorney for the Damned* is written for a general audience, it could be a great teaching tool. Although, as a lawyer, I wanted more details about the clients and the intricacies of the trials in which Darrow participated, the book grapples ably with various issues that attorneys face in practice. In addition, it is the wonderful story of a brilliant attorney who advocated eloquently for the most pressing issues of his time.