A rhetorical Analysis of Clarence Darrow's Invention and Disposition in Two Court Summation Pleas

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A RHETORICAL ANALYSIS OF CLARENCE DARROW'S
INVENTION AND DISPOSITION IN TWO
COURT SUMMATION PLEAS

By

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This thesis is approved as a creditable, independent investigation by a candidate for the degree, Master of Science, and acceptable as meeting the thesis requirements for this degree; but without implying that the conclusions reached by the candidate are necessarily the conclusions of the major department.
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# Table of Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>The Problem</td>
<td>1</td>
</tr>
<tr>
<td>The Justification</td>
<td>1</td>
</tr>
<tr>
<td>The Method to be Employed</td>
<td>4</td>
</tr>
<tr>
<td>The Texts</td>
<td>10</td>
</tr>
<tr>
<td>Summary</td>
<td>11</td>
</tr>
</tbody>
</table>

| II. The Historical Background | 13 |
| Introduction | 13 |
| Outline of the Life of Clarence Darrow | 14 |
| A Summary of the Life of Clarence Darrow | 17 |
| The Haywood Case: Description and Background | 20 |
| The Communist Case: Description and Background | 25 |
| Summary | 31 |

| III. Invention and Disposition in the Haywood Plea | 32 |
| Introduction | 32 |
| Invention | 32 |
| Disposition | 42 |
| Summary | 51 |

<p>| IV. Invention and Disposition in the Communist Plea | 53 |
| Introduction | 53 |
| Invention | 53 |
| Disposition | 66 |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary</td>
<td>75</td>
</tr>
<tr>
<td>V CONCLUSIONS AND EVALUATIONS</td>
<td>77</td>
</tr>
<tr>
<td>Introduction</td>
<td>77</td>
</tr>
<tr>
<td>A Comparison of Methods Employed</td>
<td>79</td>
</tr>
<tr>
<td>Written Opinions on Strengths and Weaknesses</td>
<td>84</td>
</tr>
<tr>
<td>Personal Reactions of the Writer</td>
<td>90</td>
</tr>
<tr>
<td>Summary</td>
<td>95</td>
</tr>
<tr>
<td>LITERATURE CITED</td>
<td>98</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

The Problem

This thesis is undertaken for the purpose of analysing the invention and disposition of two summation court pleas of Clarence Darrow. The study will attempt to answer two major questions: (1) What were Darrow's methods of invention and disposition in these summation pleas? (2) What was the effect of those methods on the court decisions?

The Justification

For the Problem

The writer hopes in this study to discover what features of Darrow's invention and disposition contributed to his effectiveness. By invention the writer refers to the evidence and reasoning which Darrow employed in the summation pleas, while disposition refers to the manner of organisation of the materials in the summation pleas.

In one of the cases selected for study the jury rendered a verdict favorable to Darrow's client; in the other case the jury voted against his client. By studying the methods of invention and disposition in these cases and by comparing the methods employed the writer hopes to determine whether there were significant differences in methods. Such possible differences may help to account for victory and defeat in the
two summation pleas. The comparison of possible differences may enable the writer to make inferences as to the limits by which a speaker must be bound to support successfully a summation plea.

For Darrow

Between 1890 and 1920 Clarence Darrow made hundreds of court pleas and gained an impressive number of victories. Darrow was one of the best known lawyers of the twentieth century. Numerous biographies and magazine articles have been written about the man and his ideas. Before his death Darrow had become a national figure. Biographer Irving Stone wrote of him, "He had become a myth during his own time. Few people in America did not know his name and his face. No one of his day was more discussed, more loved and more hated. . . ."¹

Darrow is reported to have been a powerful orator. Lincoln Steffens described Darrow's speaking in this way, "The powerful orator halting his way slowly, thoughtfully, extemporizing . . . hands in pocket, head down and eyes up, wondering what it is all about, to the inevitable conclusion which he throws off with a toss of his shrugging shoulders."²

A typical Darrow plea drew this headline from the Chicago Daily Tribune, "JURORS WEEP AS DARROW PLEADS." Arthur Weinberg reported another Darrow plea as "one of the most masterly ever heard in an American courtroom."

For the Cases Selected for Study

The William Haywood Case, Boise, Idaho, 1907.—This case was selected as an example of a successful summation plea. In that trial Darrow gained a verdict of not guilty for his client, William Haywood, who was charged of conspiracy to commit murder. The summation plea is considered by many to have been one of Darrow's greatest. Irving Stone has said of it, "The speech, even more so than the one he had made to the Anthracite Commission four years before, is astounding in its organization and its mastery of every detail that had been elicited in the seventy-six days of examination."

The defendant Haywood called it "one of Darrow's greatest," while Darrow himself has said, "In all my experience I never had a better opportunity, and when I had finished I felt satisfied with the effort I had made."

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3 August 16, 1912, p. 1.
5 Clarence Darrow for the Defense, p. 236.
The Communist Trial, Chicago, Illinois, 1920—This was one of the few significant cases in which Darrow received an unfavorable verdict for his clients. The jury ruled the defendants guilty of a conspiracy to overthrow the government. The opinion of Darrow, however, was later upheld when the governor of Illinois, Leonard Small, pardoned sixteen of the anarchists, and when the legislature of that state repealed the law by which the defendants had been convicted.

The summation plea was considered a significant one by Stone, who devoted a chapter to it in his biography, and by editor Weinberg, who listed it as one of Darrow's nine most famous pleas.

The Method to be Employed

The writer has chosen to study the invention and disposition patterns of two summation pleas. To do so the social and legal history of each case must first be studied so that invention and disposition may be evaluated in light of the historical period in which they occurred. According to Thomsen and Baird "Speeches are events, occurring in highly complex situations; responsibility of critical appraisal depends heavily upon the critic's ability to effect faithful

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8 Stone, Chapter X.
9 Attorney for the Damned, pp. xi-xiii.
reconstructions of social settings long since dissolved."\textsuperscript{10} In Chapter II the writer will describe the complex historical continuum which forms the background for the two cases.

The elements to be studied in invention and disposition require clarification. Thonssen and Baird indicate that an analysis of invention should include appraisals of the speaker's intellectual resources, his methods of argument, and the functional truth of his ideas.\textsuperscript{11} Thus, the writer will first analyze, in invention, the intellectual resources which Darrow displayed in each summation plea. This analysis will be made by determining the extent of his capacity for formulating ideas and the extent of his recognition of the pressing problems of the immediate situation.

The second element to be analyzed in invention is the methods of argument which the speaker employed. Most speech texts would uphold logical, emotional, and ethical proof as the three general classifications of these methods. Some differences occur, however, in the definitions of logical, emotional, and ethical proof, and in the component parts of each of these types of proof. The writer has arbitrarily selected the classification of Bremerber and Howell\textsuperscript{12} as the


\textsuperscript{11}\textit{Ibid.}, pp. 334-335.

basis for the study of methods of argument in invention. This classification was selected because of the writer's belief that the Bresnbeck-Howell classification is more clear and fully defined than others which were studied, because the classification is recent (1955), and because the classification is in this writer's judgment the most complete of those available. Bresnbeck and Howell present the following definitions and outlines of the component parts of logical, emotional, and ethical proof:

I. Logical Proof—Logical proof includes the use of evidence, and the logical interpretation of that evidence.

A. Argument from statistics
B. Argument from circumstantial detail
C. Argument from comparison
D. Argument from analogy
E. Argument by generalization
F. Argument by authority
G. Argument by condition
H. Argument by alternation
I. Argument by category

II. Emotional Proof—Emotional proof is the adaptation of the speaker's appeals to the main springs of human motivation.

A. Appeals to drives related to internal stimuli
B. Appeals to drives related to external stimuli
C. Appeals to social motives

III. Ethical Proof—Ethical proof includes the reputation and prestige which the speaker has with the particular audience before and during the speech.

A. The apparent sagacity of the speaker
B. The apparent good-will of the speaker
C. The apparent character of the speaker

Within this outline it is possible to classify the many and varied appeals contained in the two summation pleas.
The rhetorical critic of invention is thirdly concerned with testing the arguments of the speaker for functional validity. This test is suggested by Thonssen and Baird, who state, "In the long run, integrity of ideas depends also upon the accuracy and potency of the intellectual conceptions in functional existence. . . . If history confirms an orator's judgment; if future events prove the accuracy of ideas set forth by the speaker, then the critic must be impressed by the weight of such public address." The writer will attempt to judge the validity of Darrow's arguments by describing the significance of such arguments in recent history.

In summary the study of Darrow's invention will include an evaluation of his intellectual resources; an analysis of his use of logical, emotional, and ethical proof, using the classification of Brembeck and Howell for each of these types of proof; and a judgment of the validity of his ideas, as indicated by recent history.

Analysis of disposition requires the critic to answer three basic questions concerning the matters of thematic emergence, method of arrangement, and the rhetorical order of the speech. The critic is first interested in determining whether the central theme was clear and whether it remained

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13Thonssen and Baird, p. 350.
14Ibid., p. 393.
constantly in focus throughout the speech.

The critic is secondly interested in discovering what methods of arrangement of ideas the speaker employed. As with invention, various classifications might be used as a basis for studying the method of arrangement. Thonssen and Baird, for example, catalogue the methods of arrangement of ideas as historical, distributive, and logical, while Mills has distinguished fourteen methods. Since the difference between such classifications appears, to this writer, to be largely semantic, no one author's classification of methods of arrangement of ideas will be employed. Rather the writer will select appropriate labels for the methods which emerged in the two summation pleas, define what is meant by those labels, and illustrate how those labeled methods were employed in the summation pleas.

Finally, in disposition, the critic is interested in the rhetorical order of the parts of the speech. According to the classical conception of rhetorical order, the parts of the speech are the proem, the statement, the proof, and the peroration. In studying the rhetorical order in the two summation pleas the writer will attempt to appraise

15 Ibid., pp. 394-395.
17 Thonssen and Baird, p. 398.
Darrov's faithfulness to the classical pattern in his organization.

In summary, the analysis of disposition will be made by illustrating the emergence or lack of emergence of the central theme; by describing the methods by which the materials of the summation pleas are organized; and by determining the extent of the speaker's faithfulness to the classical standards of rhetorical order of a speech.

These considerations will form the basis upon which the first question of this thesis, concerning the methods of invention and disposition used by Darrov, will be answered. Chapter III will describe the methods of invention and disposition employed in the Haywood summation plea. Chapter IV will describe the methods used in the summation plea in the communist case.

Answering the second question of this thesis concerning the effect of the methods in the decisions requires judgments and inferences on the part of the critic.

The answers to this question of effect will be based first on a comparison of the methods of invention and disposition employed in the two speeches. It is anticipated that some differences in methods may be found. On the basis of such differences conclusions as to the effect of the methods on the decisions may be warranted.

written sources will form the second criterion for answering the question of effect. The writer will present
the opinions of authors, jurymen, and newspapers on the strengths and weaknesses of the methods employed by Darrow in the two summation pleas.

Finally, the writer will answer the second question of the thesis by a personal evaluation of the two summation pleas. Personal reactions based upon readings of the pleas will be discussed, and some judgment as to the strengths and weaknesses in methods will be attempted. Chapter V of this study will be devoted to answering the second question.

The Texts

The text for the Haywood summation plea was taken from Jesse Brumbaugh's book, Legal and Public Speaking, published in 1932. Brumbaugh indicates that his text is taken from that published in Wayland's Monthly magazine of October, 1907. The Brumbaugh text has been compared with the text published in the recent work edited by Arthur Weinberg, Attorney for the Damned. In both texts the wording appeared to be identical, although the Weinberg text contains deletions.

The text for the communist summation plea was taken from a copy of the book, Argument of Clarence Darrow in the

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18 Jesse Brumbaugh, "Clarence Darrow," Legal and Public Speaking (Indianapolis, 1932), pp. 841-991.
19 Ibid., p. 842.
20 Weinberg, pp. 443-487.
Case of the Communist Labor Party, published following the trial in 1920 by the Charles Kerr Publishing Company of Chicago. This text has been compared with that contained in Weinberg's text. Although the Weinberg text does not contain all of the plea the fifty pages that are printed appear to be identical to the Kerr publication.

The writer attempted to secure the court transcripts of both pleas from the Chicago and Idaho courts. The Clerk of the Supreme Court of Idaho referred the writer to the Hayland's Monthly publication of the Haywood plea. The Clerk of the Municipal Court of Chicago referred the writer to the Kerr publication.

Summary

In this thesis the writer will attempt to determine Clarence Darrow's methods of invention and disposition in two summation pleas, and to determine the effects of these methods on the decisions of the two juries. The Haywood case and the communist case are selected as examples of successful and unsuccessful summation pleas by Clarence Darrow. Invention will be analyzed by determining the intellectual resources of Darrow; by describing his use of logical,

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21 Clarence Darrow, Argument in Defense of the Communists (Chicago, 1920).
22 Weinberg, pp. 123-172.
emotional, and ethical proof; and by appraising the functional validity of the ideas presented by Darrow.

The analysis of disposition will include the determination of the amount of thematic emergence in each summation plea; the selection, definition, and illustration of appropriate labels for the methods of arrangement in each summation plea; and the evaluation of Darrow's faithfulness to classical rhetorical order.

To determine the effect of these methods on the outcome of the trials the writer will compare the methods of the two summation pleas; cite the opinions of outside sources as to the effectiveness of the methods; and discuss personal reactions to, and evaluations of, the summation pleas.
CHAPTER II

THE HISTORICAL BACKGROUND

Introduction

In this chapter the writer will present a brief history of the life of Darrow and of the legal cases to be studied. The aim will be to clarify the positions of these trials in Darrow's life and to describe the social and legal issues involved in the two cases.

Included in the history of Darrow will be an outline of the significant events and activities of his life, followed by a brief biographical statement. The purpose of the outline is to enable the reader to grasp quickly the course of Darrow's life and the position of each of the cases to be analyzed in his career. The intent of the biographical statement is to give a more detailed sketch of certain aspects of the man, his life, his endeavors, and his significance in the twentieth century.

The legal cases are described in some detail so that the social background and significance of the cases and the events of the trial leading up to the summation pleas can be clearly understood.
Outline of the Life of Clarence Darrow

I. The Formative Years (1857-80)

A. The Background of Darrow

1. Clarence Seward Darrow was born of Scotch-Irish parents on April 18, 1857 in Farmdale, Ohio.

2. His years of development were spent in Kinsman, Ohio.

3. The Darrow family was quite poor.

4. Darrow's mother died when he was fourteen.

B. The Education of Darrow

1. Darrow received no formal or parental religious training.

2. Darrow's father was a strong supporter of education for his children.

3. Darrow's father taught his children to question everything.

4. Darrow attended the Kinsman district school.

5. Darrow, in 1873, attended Allegheny College for one year.

6. Darrow spent one year, 1877, at the University of Michigan Law School.

7. Darrow read widely in great books.

C. The Early Activities of Darrow

1. Darrow worked with his father as a carpenter.

2. Darrow taught district school in Vernon, Ohio from 1874-76.

3. Darrow debated extensively in the weekly town square debates.

4. The Darrow tradition was to be "anti" on every subject.
5. Darrow worked as a clerk in a Youngstown law office from 1877-1880.

6. Darrow married Jesse Ohi in 1880.

II. The Years of Uncertainty (1880-1895)

A. From 1880-83 Darrow ran an unsuccessful law practice in Andover, Ohio.

B. Darrow's wife gave birth to his only child in 1883.

C. From 1884-88 Darrow conducted a successful practice in Ashtabula, Ohio.

D. Between 1888-1895 Darrow built a successful practice in Chicago, Illinois.

1. Darrow and John P. Altgeld formed a close friendship.

2. Darrow became interested and involved in local politics.

3. Darrow was city counsel from 1890-93.

4. Darrow served as corporation counsel for the Chicago and Northwestern Railway from 1893-95.

E. In 1894 Darrow and his wife were divorced.

III. The Years with Labor (1895-1913)

A. Darrow defended the right of unions to conduct strikes.

1. In 1895 Darrow unsuccessfully defended E. V. Debs and the American Railway Union following the Pullman strike.

2. In 1899 Darrow defended successfully the right of the Amalgamated Woodworkers Union to strike.

B. Darrow married Ruby Hammerstrom in 1903.

C. Darrow defended the rights of labor to demand fair wages and conditions.
1. In 1903 Darrow secured better conditions for United Mine Workers through hearings conducted before the U.S. Senate Arbitration Commission.

2. From 1906-08 Darrow successfully defended the Western Federation of Miners against charges of murder in the conflict between miners and owners.

D. Darrow lost the friendship and support of labor leaders.

1. In 1912 Darrow alienated union labor by pleading his clients, labor leaders John J. and James B. McNamara, guilty of dynamiting the Los Angeles Times building during a strike.

2. Darrow successfully defended himself against a charge of bribing a juror in the McNamara Trial.
   a. As a result of this trial Darrow was bankrupt.
   b. As a result of this trial Darrow was blackballed by the unions.

IV. The Years as Attorney for the Damned (1913-27)

A. In 1913 Darrow opened a new Chicago office with Peter Sissman.

B. In 1920 Darrow unsuccessfully defended a group of Communists against the charge of conspiracy to overthrow the government.

C. In 1924 Darrow gained a life term (instead of a death sentence) for the confessed "thrill" killers, Nathan Leopold and Richard Loeb.

D. Darrow defended the right to teach evolution in the John Scopes Evolution Case at Dayton, Tennessee in 1925.

E. In Detroit in 1926-7 Darrow defended successfully a negro doctor, Ossian Sweet, against the charge of murder during a race riot.

F. Throughout the period from 1913-27 Darrow defended hundreds of persons against a myriad of charges.
V. The Years of Calm (1928-38)

A. In 1927 Darrow retired from active law practice in Chicago.

B. Darrow expended energy on a variety of interests.
   1. He lectured frequently on religion, philosophy, and capital punishment.
   2. He participated frequently in formal debates on a variety of topics.
   3. He wrote numerous magazine articles and an autobiography.

C. In 1929 Darrow again entered practice to make a successful defense for two boys accused of murdering two fascists in New York.

D. At the age of 75 Darrow went to Honolulu to defend American army lieutenant Massie against the charge of murdering a Hawaiian.

E. In 1934-35 Darrow served as head of the National Recovery Act Review Board.

F. In 1935 Darrow’s health began to fail.

G. In 1935-38 Darrow’s activities were confined to writing magazine articles.

H. On March 13, 1938 Clarence Darrow died at the age of 81 years.

A Summary of the Life of Clarence Darrow

Clarence Darrow was born on April 18, 1857 in Farmdale, Ohio. His formal education included attendance at the Kinnsman district school, Allegheny College, and the University of Michigan Law School. After a brief period of law practice in Ohio, Darrow moved to Chicago and shortly thereafter became head of that city’s legal staff. After two years he resigned that position to become general attorney for the
Chicago and Northwestern Railway. In 1895 Darrow resigned this position in order to accept the task of defending Eugene V. Debs after the Pullman strike. From 1895 to 1913 Darrow devoted his efforts to the defense of the rights of labor. The more significant cases of this period include the United Mine Workers arbitration (1903), the William Haywood trial (1907), and the McNamara Dynamite trial (1911-1912). Following the last-cited case Darrow was himself indicted on the charge of bribing a juror. After his acquittal he returned to general practice in Chicago. The period between 1912-1932 represents the time of Darrow's greatest fame and success as a lawyer. The more celebrated cases of this period include the defense of William Lloyd and a group of communists against a charge of conspiracy to overthrow the government (1920); the defense of John Scopes in a test case involving the constitutionality of the Tennessee anti-evolution bill (1925); and the defense of a negro, Dr. Ossian Sweet, for the murder of a white man during a Detroit race riot (1927).

Throughout his life Darrow debated and lectured extensively on the topics of religion, capital punishment, and the progress of civilization.

His written works include a novel; autobiographies; recorded debates, legal pleas, and lectures; numerous magazine articles; and a book on the penal system.
During his life Darrow defended approximately two thousand cases in court and won most of them. In his lectures, debates, legal pleas, pamphlets, and books he reached millions of people.

Clarence Darrow died on March 13, 1938 in Chicago, Illinois.

Following Darrow's death tributes to his greatness were printed in numerous publications. Below are a random selection of a few of these tributes.

George Jean Nathan: "One of my greatest and deepest admirations has gone from the world."

Senator Lewis: "His death removes one of the disciples of justice and charity."

James Weldon Johnson: "Clarence Darrow was one of the greatest of Americans, and as time passes the nobility of his character will stand out clearer and clearer in perspective, above misunderstanding, above bitterness, above calumny. I, and the members of my race, feel grateful for his courage and willingness to stand always as the champion of fair play and justice for the Negro."  

24 Ibid., p. 47.
The Nation Magazine: "With the death of Clarence Darrow the nation loses the most colorful of the older generation of rebels. His achievement was to bring a measure of humanity into the law." 26

The Christian Century Magazine: "He had a profound concern for men; he pitied them and pitied most the ones most in need of a redress of bitter grievances. He wanted them to have liberty to think and work and live out their little lives in such joy as is possible for men." 27

The Haywood Case: Description and Background

In 1906 Clarence Darrow was called to Idaho to defend one of America's most militant unions against the charge of murder, a defense which had to include a partial justification of force and violence in the industrial war of the western states. 28

The conflict between the hard-bitten Western Federation of Miners and the Mine Owners Association grew out of the workers' attempts to secure better conditions and wages for their work. In 1900 they were faced with a twelve hour day, a seven day week, and such unsafe working conditions that


hundreds of miners perished each year. For fifteen years the miners had fought with every weapon at their disposal: fists, bullets, clubs, dynamite. Twice they blew up mines in the Coeur d'Alene region of northern Idaho. Numerous attempts to settle the long-standing dispute proved fruitless and the conflict carried on in sporadic spurts from 1898 through the early years of the twentieth century.

On December 20, 1905 a bomb killed former Idaho governor Frank Steunenberg as he opened the gate to his home in Caldwell, Idaho. A piece of fish string and some plaster of Paris were found near the gate. These clues led to the hotel room of Harry Orchard who had been living in Caldwell for several months under the name of Tom Hogan.

Though the evidence pointed to Orchard, the reaction of the newspapers and community was that someone was behind him, and it could only be the Western Federation of Miners with whom Steunenberg had clashed during his term as governor. The former governor had been placed in office with labor support. But when the Coeur d'Alene strike occurred the governor had declared martial law in the region and the strike was broken after bloodshed and violence. There were other reasons why the Federation was linked to Orchard: Orchard had been active in some of the union's strikes; he was a frequent

29Stone, Clarence Darrow for the Defense, p. 185.
visitor to union headquarters; and he had served, on occasion, as the bodyguard of union president Charles Moyer.

Despite the material evidence against him, however, Orchard had refused to confess the crime. At this point, John McPartland of the Pinkerton detective agency came into the case. McPartland met with Orchard and soon secured a confession. This confession, which took three days to record, included explanations of twenty-six murders as well as numerous dynamings. Orchard said that the crimes had been committed under the orders of four leaders of the union: William Haywood, secretary-treasurer of the Federation; George Pettibone, a former active Federation member; Charles Moyer, president of the Federation; and Steve Adams, an active member of the Federation.30

Orchard, in the interim between the confession and the first trial, became inspired by religion, and soon published a book which contained a transcript of his testimony. In that book he maintained that religion had now shown him the error of his ways.31

Steve Adams, living in Oregon, was arrested and brought to the state penitentiary in Boise, Idaho. Haywood, Moyer, and Pettibone were in Colorado at the time of the murder,

30 Harry Orchard, Confessions and Autobiography (Boise, Idaho, 1907).

31 Ibid.
and at the time of Orchard's confession. Governor Gooding of Idaho requested their extradition, but, since the men were not fugitives from Idaho, such extradition was technically illegal.

On February 17, 1906, however, Idaho and Colorado officials placed the men under arrest and transported them to the penitentiary in Boise. This legally questionable method of returning the men to Idaho was appealed to the State Supreme Court of Idaho and finally to the United States Supreme Court. The latter court ruled that although the manner in which the prisoners were extradited was illegal, the case was out of that court's jurisdiction since the prisoners were already in Idaho.

Clarence Darrow entered the case after the United States Supreme Court ruling. The first of the trials involved the defense of Steve Adams against the charge of conspiracy to commit murder. This trial began on February 10, 1907 and lasted three weeks. The jury could not reach a verdict and the defendant was held for retrial.

Between this first trial and the next-scheduled trial of Haywood many interesting events bespoke the fervor of public opinion on the case: Labor raised a $250,000 defense fund; union men throughout the country began to wear large buttons with the inscription, "I Am An Undesirable Citizen."; The Chicago Tribune heralded the coming Haywood trial with
the headlines, "MAJ. BE EPOCH MAKING." 32

On May 9, 1907 the trial of William Haywood vs. the State of Idaho began in the Idaho State Supreme Court. Attorneys for the prosecution were James Haxley, United States Senator William Borah, Owen Van Duyn, and Charles Koelsche. For the defense were Edmund Richardson, John Nugent, Edgar Wilson, Fred Miller, and Darrow.

The judge was Fremont Wood.

The trial lasted for twelve weeks, and, according to Stone, "From the first to the last day the little courtroom was jammed with spectators; because it was hot June weather the doors and windows were thrown open, and the crowds assembled on the courthouse lawn could hear portions of the testimony." 33 Judge Wood's daughter described the whole scene as "an insane asylum," 34 while Darrow himself gives some indication of the atmosphere in The Story Of My Life. "There was a marked contrast between the audiences during Senator Borah's argument and mine. While I was speaking the courtroom was packed and the lawn swarming with workingmen, socialists and radicals, with idealists and dreamers from every section of America. . . . Mr. Borah finished his argument in an evening session on a Saturday night. The courtroom

32 Chicago Tribune, May 9, 1907, p. 1.
33 Stone, p. 224.
34 Ibid., p. 235.
was packed with the elite of Boise and all the state. All of
them were dressed as though attending a social event, which
indeed it was. 35

Clarencearrow began his summation plea to the jury on
July 25, 1907. He concluded four days later after eleven hours
of pleading. On July 29, 1907 the jury returned a verdict of
not guilty.

The Communist Cases: Description and Background

Though the United States had not been attacked and was
in no imminent danger in 1918, the war in Europe brought fear
and suppression home to the American people. Under the Es-
ionage Act of 1917 and the Sedition Act of 1918 nearly two
thousand citizens were sent to prison for terms of ten to
twenty years. Their crime had been lack of patriotism to the
American cause by declaring that America did not belong in
the war, by criticizing acts of Congress, or by questioning
the practices of various governmental bureaus. Judges and
jurors were caught up with the rest of the country in the
hysteria, and, according to Irving Stone, "the country suffered
its most complete suspension of civil liberties since the War
between the States." 36

Such laws had been passed before in American history,
as in 1800 when the Alien and Sedition Laws were enacted. In
1918, as in 1800, the prevailing thought was that as soon as

36Stone, p. 367.
war was concluded and the boys came home the tension would subside and the laws could be repealed. But the success of the communist revolution in Russia had drastic repercussions in the United States. By 1919 the situation had become startling. The extremists among the American socialists had split off from their party to form the Communist Labor party with an avowal that "the present is the period of the dissolution and collapse of world capitalism; unless capitalism is replaced by the rule of the working class world civilisation will collapse; the working class must organize and train itself for the capture of the world state; the Communist Labor party of the United States declares itself in full harmony with the revolutionary working-class parties of all countries and stands by the principle stated by the Third International formed at Moscow."37

The sudden success of the Communist movement in Europe and the quick support of Communist doctrines by American extremists so alarmed Congress that it passed the Overthrow Act in 1919. Under this act it was unlawful for any person "openly to advocate by word of mouth or writing the reformation or overthrow by violence or any other unlawful means of the representative form of government now secured to the citizens of the United States; to publish, issue or knowingly sell any

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37Stone, p. 368.
book, paper, document or other written or printed matter which advocated crime and violence as a means of accomplishing the reformation or overthrow of the Constitution, to organize, aid in the organization of, or become a member of any society or association, the object of which is to overthrow the government."

Despite the law, small communist cells were formed in many American cities. On November 29, 1918, William Bross Lloyd, son of Henry Demarest Lloyd, author of *Wealth Against Commonwealth*, drove down State Street in Chicago, with an American flag and a red flag flying side by side from his car. A policeman tore down the red flag and placed Lloyd under arrest. When asked why he also flew the American flag on his car, Lloyd replied that he did it as a matter of courtesy, and that if he couldn't fly the red flag in America he would go to Russia. A few weeks later, on January 12, 1919, Lloyd addressed a meeting at Convention Hall in Milwaukee where he said, "Comrades, I am mighty glad you are all here but I am not so terribly proud of you at that. You have let a bunch of plutocrats and lawyers run this country instead of the working man. What we want is preparedness. We want to organize so if you want every socialist in Milwaukee at a certain place at a certain time, with a rifle or a bad egg in

his hand, he will be there. You want to get rifles, machine
guns, field artillery and the ammunition for it; you want to
get dynamite. Dynamite the doors of the banks to get the
money for the revolution!" 39

Meetings such as the one at Milwaukee caused United
States Attorney General A. Mitchell Palmer, in charge of the
enforcement of the Overthrow Act, to state, "Like a prairie
fire, the blaze of revolution is sweeping over every American
institution of law and order. It is eating its way into the
homes of the American workman; its sharp tongues of revo-
olutionary heat are licking the altars of the churches, leap-
ing into the belfry of the school bell, crawling into the
sacred corners of American homes, seeking to replace marriage
vows with libertine laws, burning up the foundations of society.
There can be no nice distinctions drawn between the theoretical
ideas of the radicals and their actual violations of our nation-
al law. The government is in jeopardy!" 40

This is the social background for the Communist Labor
case in Chicago in 1920 when twenty communists were arrested
and charged with advocating the overthrow of the government
by force. The indictment rested upon the fact that the defend-
ants were members of the newly-formed Communist Labor party.
All had been arrested in one of the raids which Attorney

39 Stone, p. 368.
40 A. Mitchell Palmer, "The Case against the Reds,"
General Mitchell was then conducting in an attempt to enforce the Overthrow Act.

The trial of the twenty men was held in the Criminal Court of Chicago, beginning in May of 1920. Judge Oscar Hebel presided. Prosecuting attorneys were Frank Comerford, Lloyd Hath, and Marvin Barnhart for the State. At the defense table were William Forrest and Clarence Darrow.

The defendants included: Samuel Ash, Max Bedacht, Oscar Jesse Brown, Jack Carney, R. J. Christensen, L. K. England, Edwin Firth, Samuel Hankin, L. E. Katterfeld, Niels Kjar, Charles Krumbeln, William Bross Lloyd, Ludwig Lore, James Meisinger, Edgar Owen, Arthur Procter, Karl Sandberg, Perry Shipman, Morris Stolar, and John Vogel. These men were well-educated; well-to-do; and, with the exception of two, native-born.

The chief witness for the prosecution was Ole Hanson, the former mayor of Seattle, Washington. That city had, a year earlier, been the scene of a general strike. Hanson testified that this strike was communist-inspired. He stated that prior to the Seattle strike the unions of that city had attempted to secure from him control over the city's lighting plant. He further testified that James Duncan, a defense witness and a labor leader in Seattle, had given him a copy of Lenin's *The Soviets At Work*, and that Duncan had told him that the book contained the idea behind the strike.
The state's case was further based on Lloyd's parading of the red flag down State Street eighteen months before, and on Lloyd's speech to the delegation in Milwaukee sixteen months before. 41

The trial lasted ten weeks and ended on July 30, with headlines from the Chicago Daily Tribune reading, "Darrow Dares Jury To Convict Reds On Trial." 42 The jury, out two hours, returned a verdict of guilty. The defendants were sentenced to terms of from one to five years, plus fines.

The case was appealed to the Illinois Supreme Court which upheld the lower court's verdict. Chief Justice Orrin Carter, however, wrote a dissenting opinion.

Under the act of 1919, it would seem that provisions were designed not so much perhaps to punish those who commit violent acts to overthrow the government, but rather it was drafted for the purpose of forbidding any person who held opinions distasteful to the majority of our citizens to express those opinions. Is there anything that can take the place of open and free discussion in a country like ours, that is controlled by public opinion? Is it better to drive such people into the woods, the corners, and the dark places of the world, to conspire in silence and secrecy? Is it not best to allow free discussion in this country of all public questions as to the necessity of changing laws and the form of government? 43

41 Attorney for the Damned, pp. 121-123.
Quoting from this opinion, Illinois Governor Leonard Small pardoned sixteen of the defendants on November 29, 1922, before they had served a day of their sentences.

**Summary**

In this chapter the writer has reviewed the historical background of Clarence Darrow and of the two cases in which the summation pleas to be analyzed were given. In reviewing Darrow's life an outline of Darrow's life was presented to acquaint the reader of the highlights of the life of the speaker, and to clarify the position of each of the summation pleas to be studied in the career of Clarence Darrow. To further give the reader an acquaintance with Clarence Darrow a summary of his life and works was presented as well as tributes written by his friends following his death.

In reviewing the background of each case the writer has attempted to reconstruct the social and legal history of the two cases and to give some indication of the importance and nature of the trials.
CHAPTER III

INVENTION AND DISPOSITION IN THE HAYWOOD PLEA

Introduction

The purpose of this chapter is to describe the methods of invention and disposition employed by Clarence Darrow in the Haywood case summation plea.

The first section of the chapter will be devoted to an analysis of Darrow’s invention in this summation plea. The second section will describe his methods in disposition. The final section in the chapter will summarize the conclusions gained from the preceding analysis of invention and disposition.

Invention

According to Aristotle invention refers to the proofs which produce persuasion. These proofs consist of three types: “The first kind reside in the character of the speaker; the second consist in producing a certain attitude in the hearer; the third appertain to the argument proper, in so far as it actually or seemingly demonstrates.” Thonissen and Baird accept these three types of proof, and add the concepts of the intellectual resources of the speaker and the functional

validity of the arguments as essential ingredients of invention.\textsuperscript{45}

This section will attempt to analyze invention; first, by evaluating the intellectual resources which Darrow displayed in the summation plea; second, by determining and evaluating the methods of logical, emotional, and ethical proof employed by Darrow to support his arguments; and third, by determining the historical accuracy of the contentions presented.

The Intellectual Resources of Darrow

The intellectual resources of Clarence Darrow will be judged by determining the extent of his capacity for formulating ideas, and the extent of his recognition of the pressing problems of the immediate situation.

In the Haywood case Darrow faced a peculiar problem. His client was accused of being the originator of a conspiracy to commit murder. This accusation rested on the testimony of the man who carried out the actual murder. Thus, the duty of the defense was not to prove that Haywood could not have committed the murder, but that he could not have been involved in a conspiracy to do so. The task of the defense was to show clearly the inaccuracy of the prosecution's testimony. Darrow's summation plea was based almost completely on a consideration of this testimony.

\textsuperscript{45}Thonssen and Baird, \textit{Speech Criticism}, pp. 334-335.
In the summation plea Darrow developed four major lines of argument: 1) The case of the state is built solely on the testimony of Harry Orchard; 2) The testimony of every defense witness contradicts the testimony of Harry Orchard; 3) The history of Orchard's life proves that he is a liar; 4) The cause of the workingmen is great and noble.

Thus, in the summation plea Darrow centered his attack on the question which was of major importance in this trial: whether the testimony of the prosecution was of sufficient accuracy and adequacy to convict the defendant of conspiracy to commit murder. Since the prosecution's case was based on Orchard, Darrow's primary method of defense was to point out the questionable value of the testimony of a murderer. He accomplished this first by contrasting Orchard's testimony with that of other witnesses, as the following example illustrates. "Now, gentlemen, Thomas Wood might be mistaken; an honest man may swear to something that is not true. He may think it is true, but he may be deceived. Thomas Wood may be mistaken, but you have got to give me good, straight evidence to show me that Thomas Wood is a perjurer or a liar. I don't believe it. And yet we have got to believe it in order to believe Orchard."46

46 Brumbaugh, Legal and Public Speaking, pp. 904-905. Subsequent page references to this text will follow the quoted material.
Darrow secondly highlighted the doubtful value of Orchard's testimony by presenting to the court a verbal account of the events of Orchard's life.

Look at this fellow, you twelve men, and tell me what you think of him, and whether you will take away a life on account of him. Who was he? He left Ontario a young man. His record was bad. It wasn't infamously bad. His name was not Harry Orchard; his name was Albert Horseley when he left. He went to Detroit with another man's wife. When he reached Detroit his name was Harry Orchard. He lied, he stole, he burglarized, he committed arson and became a murderer. . . . He married. He had a child. Temptation overcame him. He left his wife to toil for herself. He left his child, a baby girl, unprotected and unaided, to grow up alone without a dollar or a penny, or a father's love; and he went out into the world and covered himself with mud and dirt and crime until he was revolting in the sight of God and man."

(pp. 873-874)

It is the writer's conclusion that this centering of the case of the defense on the testimony of the prosecution demonstrated Darrow's ability to formulate and adapt his ideas to the particular circumstances of this trial.

Darrow's recognition of the problems of the situation emerges as a second strong point in the consideration of intellectual resources. As Chapter II of this thesis has suggested the trial was of extreme importance in the war between the Western Federation of Miners and the mine owners. Darrow indicated his awareness of this importance by constant references to the far-reaching consequences of the jury's verdict.

Let me tell you, gentlemen, if you destroy the labor unions in this country, you destroy liberty when you strike the blow. (p. 899)
I want to say, had it not been for the trade unions of the world . . . you today would be serfs instead of free men sitting upon a jury to try one of your peers. The cause of these men is right. (p. 898)

You are jurors in a historic case. You are here, with your verdict to make history, here to make history that shall affect the nation for weal or woe, here to make history that will affect every man that toils, that will influence the liberties of mankind and bring weal or woe to the poor and the weak. (p. 989)

In focusing the attention of the jury on the importance of the case Darrow demonstrated a recognition of the larger issue involved in the situation.

The writer would conclude that Darrow's ability to present relevant ideas suitable to the particular circumstances, and his ability to point out the over-all importance of the situation made his intellectual resources a strong positive factor in this summation plea.

**Darrow's Methods of Argument**

A speaker can elaborate and support his arguments by use of three types of proofs: logical, emotional, and ethical. The critic is interested in determining which of these proofs were employed, and how they were developed. In determining these factors the writer will use the definitions and categories of Brembeck and Howell for logical, emotional, and ethical proof.

Brembeck and Howell define logical proof as the use of evidence, and the logical interpretation of that evidence.

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47 Persuasion, p. 244.
Evidence includes all the testimony, statistics, illustrations, and other material which relate to the subject, as well as the speaker's own generalizations, analogies, and logical arguments.

In light of this definition Darrow's use of logical proof must be described as having been weak. The summation plea did not contain a single direct quotation of the testimony presented earlier in the trial, although Darrow did refer indirectly to such testimony.

Darrow's summation plea contained primarily argument from generalization. That is, he stated a major contention of the defense and then proceeded to support it with indirect references to the character and testimony of Orchard, Haywood, and other witnesses. Though the generalizations which he presented may have been functionally true, Darrow neither established nor maintained them on the strength of direct evidence or reasoning.

The only method of logical support used effectively by Darrow, insofar as this writer could judge, was his use of argument by alternation. The summation plea contained numerous comparisons of Orchard's character to the character of defense witnesses. By these comparisons Darrow made clear the dubious integrity of Orchard. This pattern of argument, however, was somewhat weakened by the fact that Darrow neglected factually to validate his premise that the integrity of the defense witnesses was necessarily spotless.
If logical proof is to be regarded as the use of sufficient evidence to warrant general conclusions formally consistent with that evidence, Clarence Darrow must be considered relatively weak in his development of such patterns of argument in this summation plea.

Emotional proof, according to Brembeck and Howell, is the adaptation of the speaker's appeals to the mainsprings of human emotion. This is achieved by appealing to the drives and motives of the audience. The study of the Haywood summation plea convinces the writer that Clarence Darrow made strong use of such methods of argument. His strength does not appear to have been in using appeals either to the internal (anger, sex, sleep) motives, or to the external (bodily injury, emotional tensions) motives of the jury. Rather, the appeals were directed primarily to the social motives of the listeners. Appeals to the jury to gain social approval and esteem by acquitting the defendant are to be found in abundance in the summation plea. For example:

Is there a man on this jury who would want to send those men back to the smelters for twelve hours a day? (p. 899)

If you, gentlemen, by your verdict, want to do your part in this direction, I cannot help it; you will have to go ahead and do it, but I don't think you do. I don't think anybody does who is in his right mind and who loves his country. (p. 900)

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48 Persuasion, p. 64.
But if your verdict should be "Not Guilty" in this case, there are still those who will reverently bow their heads and thank these twelve men for the life and reputation you have saved. (p. 991)

Darrow also appealed to the humanitarian motives of the jury. He discussed the work that Haywood had been doing for the laboring man. His attempt here seems to have been to impress the jury with the noble qualities of his client, and of the union in general. The following quote illustrates this type of appeal.

Haywood was there; the labor organizations were there; and they were there pleading then, as they have always pleaded, for the poor, for the weak, for the oppressed. . . . I don't care how many crimes they have committed—these weak, rough, rugged, unlettered men, who often know no other power but the brute force of their strong right arm, who find themselves bound and confined and impaired whenever way they turn, and who look up and worship the God of might as the only God that they know; I don't care how often they fail. . . . I know their cause is just. I know that trouble and strife and contention have been invoked, yet through brutality and bloodshed and crime has come the progress of the human race. I know they may be wrong in this battle or that, but in the great long struggle they are right, and they are eternally right; and they are working for the poor and the weak, they are working to give more liberty to the man. (p. 897)

In his use of emotional proof, Darrow appealed to the moral and ethical standards of the jury. This was accomplished by describing how the actions of Harry Orchard were immoral and unscrupulous. "Commencing from his earliest youth he has been a liar, that he confesses, and a liar of a singular kind—telling of meaner things than even Harry Orchard ever did" (p. 880). Such descriptions of Orchard stood in sharp contrast to the glowing tributes which Darrow paid to the
humanitarian virtues of his client.

Finally the emotional proof in this summation plea was strengthened by the use of numerous emotionally-charged words and phrases. Words such as, "monstrous liar," "despicable," "this villain," "cutthroat," "perjured villain," "miserable wretch," "that assassin," were frequently employed by Darrow in his description of Harry Orchard. Darrow employed many of a similar type of emotionally-charged phrases to depict the villainy of the prosecution and Orchard. Phrases such as "the rotten testimony that has been given to this jury," "with his hands dripping with blood," "his crooked brain and his crooked, dwarfed soul," "the testimony of a monster," added emphasis to Darrow's picture of Orchard.

The writer concludes that Darrow relied heavily on emotional proof by the use of appeals to the social motives of the jury, and by the use of numerous emotionally-charged words and phrases.

Brembeck and Howell define ethical proof as the reputation and prestige which the speaker has with the particular audience before and during the speech. While it is impossible to determine what the jury thought of Darrow personally, it is possible to evaluate how the content of his summation plea may have contributed to, or detracted from,
his reputation and prestige before the jury.

One of the methods by which Darrow appeared to enforce his prestige was through frequent testimonials to his personal involvement in cases which concern the poor and the oppressed. In this way he appears to have been establishing himself as a constant champion of the cause of the common man.

I am not an unprejudiced witness in this case. Nobody knows it better than I. My mind is not unbiased in this great struggle. I am a partisan, and a strong partisan at that. For thirty years I have been working to the best of my ability in the cause in which these men have given their toil and risked their lives. For nearly thirty years I have given this cause the best ability that God has given me. I have given my time, my reputation, my chances—all this in the cause of the poor. (p. 989)

Darrow utilized a second device which would seem to this writer to have contributed to his general reputation and character. In the introduction to the summation plea he discussed briefly the impossibility for any group to be entirely impartial in such a case. He concluded this discussion with a modest plea for the jury to do the best job it could in the face of these obstacles. This seemingly broadminded and moderate approach to the task of the jury may have been influential in establishing Darrow's ethical appeal.

The Functional Validity of Darrow's Arguments

In analyzing the functional validity of the arguments presented by Darrow no specific criterion can be used. The writer can only infer their validity by tracing the fate of such arguments in later days. Since this trial was concerned
with matters of fact and not of policy most of Darrow's major arguments have no relevance except on the specific occasion, and for the particular circumstances, in which they were originally presented. One argument, however, can be judged in the light of present day history. Darrow's contention that the cause of labor unions was a noble one remains a subject of significant interest today. In 1907 the conditions of the working classes were not nearly so favorable as they are today. At the turn of the century men such as Henry George, Samuel Gompers, and Darrow himself were carrying forward the drive that produced the labor unions, and subsequently, the improved position of the laboring classes today. Thus Darrow's expressed belief in the cause of labor unions seems to have been validated in recent American history.

**Disposition**

In the analysis of disposition in this plea the writer will be concerned with the elements of thematic emergence, arrangement of ideas, and rhetorical order.

**Thematic Emergence**

The analysis of disposition must first discover whether the speaker's central theme, or purpose, was clear and whether it remained constantly in focus throughout the speech.

The theme which emerged in the summation plea was not the one which the reader would perhaps anticipate. Since this was supposedly a defense of a person accused of the crime
of conspiracy to commit murder, the reader might expect the central theme to have been concerned with the reasons why Haywood could not be considered guilty. This objective Darrow achieved, but by a circuitous route. His dominant theme in the summation plea appears to have been to negate the evidence of the prosecution. Since the case of the prosecution was built upon the confession and testimony of Harry Orchard, Darrow's objective became one of proving Orchard so villainous and dishonest that his testimony could not be deemed acceptable by the jury. This theme—that the entire evidence of the state is based upon the testimony of a murderer and liar—became the dominant purpose of the summation plea. Though it was never stated to be the central theme, this contention was expressed immediately after the introduction. "There is not an intelligent man who has listened to this case who does not know that it is Orchard from beginning to end, and there is not a word of incriminating evidence in it, let alone enough to take the life of a human being, without Harry Orchard" (p. 848). This theme was repeated throughout the summation plea with continually stronger emphasis.

Mr. Hawley (the prosecuting attorney) talked to you for a day and a half about how guilty this defendant is. What was the burden of his talk? Was there anything in it but Orchard—Orchard—Orchard from beginning to end? (p. 849)

Gentlemen, I sometimes think I am dreaming in this case. I sometimes wonder whether in a case, whether here in Idaho or anywhere in the country, broad and free, a man
can be placed on trial and lawyers seriously ask to take away the life of a human being upon the testimony of Harry Orchard. (p. 858)

Having repeated this contention numerous times in the early moments of his summation plea, Darrow turned his attention to an evaluation of the testimony of the witnesses for the defense. In the course of the summation plea he referred to the testimony of twenty defense witnesses, but he did not interpret this testimony so that it necessarily proved the defendant, Haywood, innocent. Rather these testimonies were used as illustrations of his contention that Orchard was a liar as well as a murderer.

Mrs. Fitzhugh bought Mrs. King's rooming house, and Sterling with it, and she went in about the first of January, 1904—and she swears that Orchard came there repeatedly—she swearing to some ten or twelve times up to the time that the Independence depot was blown up. Now, gentlemen, let us look at that a minute. Are you going to say by your verdict that these three women are perjurers? . . . Orchard says he was never there in his life. Now, if we leave it right there, between Orchard and these three women, I wonder what you twelve men would say about it. If you believe Orchard, you should never look your wives in the face again. (p. 851)

Thus, throughout this summation plea Darrow moved constantly to an attack upon the case of the prosecution. Through this aggressive defense the theme of the inadequacy and inaccuracy of the prosecution's evidence remained clear and in focus and was summarised vividly in the conclusion.

I only ask you to remember that you are to explain every fact and circumstance in this case consistent with this man's innocence, if you can, and I shall ask you to try, and if you try it will not be difficult to accomplish, for there is nothing in this case but Harry Orchard—
Harry Orchard, an unspeakable scoundrel; Harry Orchard, a perfused villain; Harry Orchard, bigamist and murderer and coward; Harry Orchard, shifting the burdens of his sins upon these men to save his life. If you men can kill my client on his testimony, then, peace be with you. (pp. 688-689)

Darrow's Method of Arrangement of Ideas

In this element the critic is concerned with an analysis of the methods by which the materials of the speech are divided and presented. In his summation plea Darrow employed primarily chronological and topical patterns as the means by which he presented the materials. Topically, the speech was divided into the areas of Orchard's testimony, the overwhelming testimony of the defense, and the nobility of the crusades of labor. Within these topical divisions Darrow developed his materials in a chronological, or time-order, sequence. For example, the first third of this summation dealt mainly with showing chronologically how Orchard's testimony was nullified by each defense witness. Again, in discussing the nobility of the crusades of labor, Darrow traced a chronological history of the attempts of the Western Federation of Miners to secure better conditions for the miners.

These topical and chronological patterns were not developed separately, however. They were interrelated, with the summation plea moving for a few moments in a chronological order, then jumping to another topic, and finally, continuing the chronological movement. Thus, Darrow did not develop a contention fully before moving to the next contention. Rather,
he established the contentions first as generalizations. Then he indirectly referred to, but did not quote, pieces of evidence or testimony and showed the bearing of that evidence or testimony on each of the generalizations which he had established. This method of adapting and relating each piece of evidence and testimony to the main contentions of the defense recurred frequently throughout the summation plea. By this process of constant repetitions the contentions were continually validated and strengthened as the summation plea progressed.

This circular method of constantly repeating and illustrating the contentions of the defense made necessary the use of frequent transition sentences in order that the jury might know which of the contentions was then under discussion. For example:

But let us cut out the Western Federation men for a moment. I am going to give you a little object lesson—a little advance sketch of Harry Orchard as I know him. (p. 854)

Now I want to take another view of this man Orchard. (p. 878)

I think I might go back for a moment to a subject that I left without completing. (p. 953)

Well, now, let us look at that story a little further. (p. 918)

The writer concludes that Darrow's method of arranging ideas in the Haywood summation plea was casual and unorderly, though this possible weakness was partially counteracted by the use of explanatory transition sentences.
Rhetorical Order in Disposition

The objective of analyzing rhetorical order in disposition is to determine whether the classical parts (proem, statement, proof, and peroration) of the summation plea were clearly structured. These parts will hereafter be referred to as introduction, statement, argument, and conclusion.

According to Aristotle, the introduction to the speech (proem) should be devised to gain the attention and interest of the audience; the statement of the argument (statement) should set forth clearly the theme to be developed; the argument (proof) should contain the elaboration of the evidence and reasoning by which the speaker validates and enforces his statement; the conclusion (peroration) should summarize the contentions of the speaker, should enlist the sympathy and good-will of the audience, and should leave the audience with a favorable impression of the speaker. The writer will evaluate Darrow's use of rhetorical order by determining the extent to which his summation plea met these requirements.

The introduction was clearly structured, containing three specific thoughts which would seem desirable, to this writer, in promoting the attention, interest, and favor of the jury. The first of these thoughts was an apology for the

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fact that lawyers generally talk too much; the second included a discussion of the practical impossibility for any body of men to remain impartial in such a case; the third thought called the jury's attention to the great responsibility facing it in attempting to judge his client either guilty or not guilty. Because of its seeming broad-mindedness and because of its challenge to the jury to use its best intelligence and judgment, this introduction would seem to have been desirable in establishing a friendly atmosphere for the plea which was to follow.

I have no doubt that lawyers generally talk too much, and in that I am like all the rest of them. We are so afraid we will leave something unsaid that we say a good many things that had better not have been touched at all and that are entirely unnecessary in the argument of a case. . . . Gentlemen, I need not tell you how important this case is. . . . How important to a great movement which represents the hopes and wishes and the aspirations of all men who labor to sustain their daily life. . . . We are all human, we are all influenced alike, moved by the same feelings and the same emotions, a part of the life that is around us, and it is not in the nature of things that this Court or this jury would not to some degree have been influenced by all that has gone before. But, gentlemen, . . . I have no doubt that you twelve men before us—intend to carefully guard and protect the rights, the hopes, the interests, and the life of this defendant. (pp. 543-545)

This introduction was very brief, evidently less than ten minutes in an eleven hour speech.

In dealing with the statement of the argument we are raising the question of how clearly the theme was stated. Darrow's statement of the argument was, "There is not an intelligent man who has listened to this case who does not
know that it is Orchard from beginning to end, and there is not a word of incriminating evidence in it, let alone enough to take the life of a human being, without Harry Orchard" (p. 648). With this statement Darrow succeeded in presenting the theme which was to emerge throughout the summation plea. In terms of clarity of statement this theme is well presented. However, this theme would, to this writer, have been strengthened had it included an initial summary of the contentions of the defense. Further strength may have been attained had Darrow made explicit the fact that the validation of this theme in the argument would prove Haywood's innocence.

To analyze the argument of the speech in disposition the critic must determine the clarity of the pattern of development of the statement. The objective is to ascertain whether the argument contained an understandable pattern of elaboration of the statement. Here Darrow adhered firmly to the classical conception of the argument. In the course of the summation plea Darrow developed extensively three contentions to support his statement. Throughout the summation plea the relation of these contentions to the statement of the argument was constantly reviewed by Darrow, as has been previously indicated in the section on thematic emergence.

Darrow's conclusion, in good Aristotelian fashion, contained a summary and a final appeal. He began by briefly reviewing the arguments. "Gentlemen, from beginning to end this
is a case of Orchard. He was caught and he turned to shift his crime upon these men" (p. 987). He then turned to a strong emotional appeal, designed not to enlist the pity of the jury for his client, but rather to show the goodness and courage of the defendant. "God knows it would be a sore day to me if he should go upon the scaffold. The sun would not shine or the birds would not sing on that day—for me. . . . I would think of the great cause that he represents" (p. 990). The "great cause" of which Darrow spoke in lauding Haywood was then united with the hopes of all labor.

Gentlemen, it is not for him alone that I speak. I speak for the poor, for the weak, for that long line of men, who, in darkness and despair—have borne the labors of the human race. The eyes of the world are upon you—upon you twelve men of Idaho tonight. Wherever the English language is spoken or wherever any tongue makes known the thoughts of men in any portion of the civilised world, men are talking, and wondering, and dreaming about the verdict of these twelve men that I see before—me—now. (pp. 990-991)

Finally, he concluded with a strongly emotional appeal to the jury to earn the devotion of millions of people.

But if your verdict should be "Not Guilty" in this case, there are still those who will reverently bow their heads and thank these twelve men for the life and reputation you have saved. Out on our broad prairies where men toil with their hands, out on the wide ocean where men are tossed and buffeted on the waves, throughout mills and factories, and down deep under the earth, thousands of men, and of women and children—weary with care and toil—these men and these women and these children, the poor, the weak, and the suffering of the world, are stretching out their helpless hands to this jury in mute appeal for Will Haywood's life. (p. 991)
This chapter has attempted to analyze the methods of invention and disposition employed by Clarence Darrow in the Haywood summation plea.

It is the conclusion of this writer that Darrow’s methods of invention were generally strong. He displayed considerable intellectual resources both in formulating relevant ideas to meet the circumstances of the situation, and in recognizing and emphasizing the important problems involved in the case. The predominant method of proof Darrow utilized was emotional. His use of logical proof was extremely limited, while his use of ethical proof, although also limited, was probably a positive factor in this summation plea. Darrow’s ideas on the great worth of labor unions must be considered another influential factor in this summation plea, as these ideas have been largely validated in recent American history.

Darrow’s methods in disposition were somewhat weaker than those of invention. Though his central theme remained in focus throughout the summation plea, his methods of arrangement of ideas to support this theme were somewhat loose and casual. This possible defect was partially rectified by the use of numerous transition sentences to weld ideas together. The pattern of parallel development of several contentions at the same time enabled Darrow to keep his main contentions constantly before the jury, but contributed to the previously-mentioned
looseness in development. Darrow adhered generally to the classical conception of rhetorical order. His introduction seemed well-adapted to get the attention, interest, and favor of the audience; his statement was clear, although perhaps somewhat inadequate; the argument was adequate in terms of clear elaboration of the statement; and the conclusion contained a summary and a strong emotional appeal to the jury.
CHAPTER IV

INVENTION AND DISPOSITION IN THE COMMUNIST PLEA

Introduction

The purpose of this chapter is to describe the methods of invention and disposition employed by Clarence Darrow in the communist case summation plea.

The first section of the chapter will be devoted to a description of Darrow's methods in invention, while the second section will describe his methods in disposition. The final section in the chapter will summarize the conclusions of the preceding analysis of invention and disposition.

The standards for judging invention and disposition are the same as those used in analyzing the Haywood case summation plea. The writer will simply identify the standards for each of the elements in invention and disposition, since explanation and justification of these standards is contained in the preceding chapter.

Invention

This section will attempt to describe invention, first, by evaluating the intellectual resources which Darrow displayed in the summation plea; second, by determining the methods of logical, emotional, and ethical proof employed by Darrow to support his arguments; and, third, by determining the historical accuracy of the contentions presented.
The Intellectual Resources of Darrow

The intellectual resources of Clarence Darrow will be judged by determining the extent of his capacity for formulating ideas, and the extent of his recognition of the pressing problems of the immediate situation.

In the communist summation plea Darrow made a direct attack on the merits of the law which his clients had been accused of violating, and upon the legality of the methods employed to enforce the law. The subsequent repeal of this and similar laws may attest to the validity of the arguments presented in this attack. However, the task of the jury in this case was not to judge the merits or legality of the law itself. Such matters are the province of the Supreme Courts of the federal and state governments. Neither was the jury to determine whether other laws had been violated in the enforcement of the particular law. The sole task of the jury was to decide whether the actions of the defendants indicated that they were involved in a conspiracy to overthrow the federal government. Thus, though the main ideas in Darrow's summation plea may have represented a very logical and valid objection to legislative suppression of political opinions, these main ideas did not appear to substantiate the innocence of his clients. Darrow left unanswered the basic question of whether the defendants had actually violated the law. The writer must then conclude that in terms of formulating ideas
to meet the situation, Darrow was relatively weak in this summation plea. It is further the writer's belief that some of the content of Darrow's ideas may have hampered the acceptance of his position by the jury. In defending the political views of his clients Darrow presented the following idea:

I do not know whether socialism or communism will work or not. I do know that capitalism does not work. I do know that our present system of industry is a crazy quilt that allows no man to be really honest, that allows no man to be unselfish, that allows no man to live without sacrificing his fellow man. I know that the present system does not work. I know that it makes men greedy and selfish and mean. I know it stifles every good motive in man. I know that under the present system no one on earth can be as good as he would be. I know that capitalism does not work and never can work. None of these devout lovers of the capitalistic state, all of whom are sure they are going to Heaven—not one of them would want to go to Heaven if it was run on the same scheme as the earth. (p. 11)

The writer would suspect that such statements are unlikely to achieve the sympathy of a jury in the United States.

Also of significance in judging Darrow's ideas to have been weak in this situation is the fact that the summation plea presented no solution to the challenge of communism. Even were the jury to have accepted the right of the defendants to hold unpopular political views a problem still remained unsolved: How was the challenge of the communist system to be

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51 Page numbers for quoted material are from a typed manuscript of the communist summation plea in the writer's personal possession. This manuscript was recorded from Clarence Darrow, Argument of Clarence Darrow in Defense of the Communist Labor Party (Chicago, 1920).
met in this country if not by law? It is the writer's opinion that in failing to present a method by which such a challenge could be met, Darrow's summation plea may have created only fear at a time when the American people desired security from foreign aggressors.

Darrow's recognition of the general problems of the situation was the stronger area in his intellectual resources in this summation plea. As Chapter II of this thesis has indicated the problem of communism attracted widespread interest in the United States following the First World War. In his summation plea Darrow indicated his awareness of this interest by constant references to the importance of the jury's verdict.

I am interested in the verdict of this jury as to whether this country shall be ruled by the conscienceless men who would stifle freedom of speech when it interferes with their gold. (p. 1)

If you are the right kind of jurors, and I fancy that most men are that, you would sacrifice your home or your furniture or even your reputations with the mob, to do your duty in this case. (p. 3)

In this summation plea, however, Darrow did more than merely call the jury's attention to its great responsibility. Darrow demonstrated throughout the summation plea his belief that enforcement of the law under which his clients were being tried would result in the loss of individual liberties in the United States.

If I had believed that after one autocracy had been overthrown, that here in America, where we cherish individual liberty; here in America, twenty states would pass a
statue like this, which we had got along without for one hundred and fifty years, so that great interests might silence every human voice while they were robbing the American people; if I had believed that this would result, perhaps I would not have believed we should have entered this war. (p. 3)

Gentlemen, somebody is interested in this case. Today they are after these men. Tomorrow they will be after Gompers and the trade unions and everybody who dares defy their power. They are out to make money. They are out to destroy whatever is between them and their prey. Today it is these twenty men. Tomorrow it will be somebody else. You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free. The same thing that would get me may be used to get you, and the government that is not strong enough to protect all its citizens ought not to live on the face of this earth. (p. 11)

I have always loved this country. . . . I love the freedom that has come from new ideas. . . . I love it for what it has been, materially and spiritually; I love it because over its vast areas one can find a free breath of pure air; because of its intellectual freedom. . . . I love it for these and for these I will fight. I know the danger of security and ease and power. I know that freedom produces wealth and then wealth destroys freedom. I know that the nation that is not watchful of its liberty will lose it. I know that the individual that will not stand for his rights will have no rights. (p. 37)

Such passages indicate to this writer that Darrow recognized the great problem created when legal measures were attempted in order to counteract the communist menace.

The writer concludes that Darrow's recognition of the important problems involved in the situation may have partially compensated for his inability to formulate ideas of defense fitting the immediate situation. The writer would suggest that Darrow may have become so involved in the great threat of the law to individual liberties that he subordinated
the task of defending his clients to a personal attack on the law itself.

**Darwin's Methods of Argument**

A speaker can elaborate and support his arguments by use of three types of proof: logical, emotional, and ethical. The critic is interested in determining which of these proofs were employed, and how they were developed. In determining these factors the writer will use the definitions and categories of Brembeck and Howell for logical, emotional, and ethical proof.

Brembeck and Howell define logical proof as the use of evidence, and the logical interpretation of that evidence. Evidence includes all the testimony, statistics, illustrations, and other material which relate to the subject, as well as the speaker's own generalizations, analogies, and logical arguments.

In contrast to the Haywood summation plea, Darrow employed much logical proof in the communist summation plea. The primary methods of logical support employed were the citing of the testimony of defense and prosecution witnesses, the use of frequent historical examples, and quotations of recognized authorities on the subject of individual liberty.

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52 *Persuasion*, p. 188.
In citing the testimony of witnesses Darrow appears to have been attempting not to prove that his clients did not violate a law, but rather that their actions could not be construed as an attempt to overthrow the government by force. Thus, testimony was used as an attack against the law, rather than as a defense of his clients' innocence.

Darrow also employed several generalizations in his use of logical proof. These were well supported by both testimony and example, so that they appeared to have logical support. For example, in attempting to prove that the possession of a red flag did not indicate revolutionary tendencies Darrow referred to the use of the red flag throughout history by many groups.

Much has been said about the red flag. I say, gentlemen, that I have as much right to have a red flag as you have to own a green one, or a yellow one, or one of any other color. . . . Gentlemen, the Communist Labor Party did not invent the red flag. . . . It was the flag of the workingman long before Greece, and in Greece it was the flag of the workingman; in the Roman Empire it was the flag of the workingman; in ancient France, in Germany, in Russia, in Switzerland, in England, in Spain and in the United States. . . . The common people had a red flag. It came from the god of the sun, the red rays of the sun, as far back as you can read in history; when it took a more definite meaning it meant the common red blood which courses through the veins of all men alike; it represented the brotherhood of man. (p. 7)

Again, in attempting to show the prejudice of the prosecution he first established his contention, and followed with direct testimony and historical examples in an attempt to validate the contention.
Nov let me tell you another little incident here to show the prejudice of these gentlemen.

When they burglarized my client's house in the daytime, in violation of the state constitution and in violation of the provisions of the federal constitution, and they took from him a circular, gentlemen, you remember it; Mr. Barnhart read it, with tears in his voice, and said, "My God, can it be?"

What was it? Now, let me show you what they are trying to do to you. . . . It would bring a blush to the face of any man who tried to be fair, to be asked to convict a human being upon the evidence. Now, it was Kjar who had a circular announcing that on the 14th of November there was to be a picnic. It was on the same date as the overthrow of the Russian government; they were celebrating it; there were to be pictures of street scenes of Russia on the day when the old regime had fallen, and the people with high hopes and fine dreams, dreams that perhaps will never be realized, were ushering in the new.

All right, gentlemen, the world is full of those pictures. "The king is dead; long live the king."

There was never a king who died but what the dejected people thanked God that the king was dead and looked forward with joy and hope because a new king was to rule. . . . I got a card on the 14th day of June, I think it was, just a little while ago. Some aristocratic gentlemen, who believe in jails for Chicago, were holding a celebration over the fall of the Bastille in Paris a hundred and fifty odd years ago. . . .

Isn't it marvelous how a Chicago man does like liberty in some other country? (pp. 16-17)

A third example to illustrate this method of generalized argument supported by example is to be found in Darrow's defense of the right of the Communist Labor party to instigate strikes.

Now, gentlemen, strikes have often been called in industrial matters, and everybody knows it. They have been called to affect political matters just the same. Belgium had two recent strikes. . . .

The Belgians went out as a man and parliament was called together and gave them limited suffrage. . . .

In 1904, after the Russian-Japanese War, the Russians struck for a constitutional form of government, and
the strike involved a territory of more than three thousand miles in length. . . .

Sweden had a general strike a few years ago to establish woman's suffrage. Purely a political strike, nothing else. . . .

I could call attention to strike after strike. The French strike, one of the last strikes threatened. The strike of the English miners and railroad men, when they refused to mine coal or haul cars if they were to be used to send troops to Russia. (pp. 33-34)

These methods of support by generalization, example, and reference to testimony were logically developed in a deductive pattern with the generalization preceding the support by which it was validated. It is to be remembered, however, that these logical patterns were directed toward attacking the law itself, rather than toward defending the innocence of the clients. Thus, to the reader of today, the argument may sound more brilliant than it perhaps appeared in the original situation.

The writer concludes that Darrow made frequent use of logical methods of argument in this summation plea.

Emotional proof, according to Breembeek and Howell, is the adaptation of the speaker's appeals to the mainsprings of human emotion. 53 This is achieved by appealing to the drives and motives of the audience.

In this summation plea Darrow employed much emotional proof, primarily directed at the social motives of the jury.

53 Persuasion, p. 64.
These appeals consisted mainly of three types: appeals to the traditional American values of freedom and patriotism; attempts to associate the prosecution with evil, authoritarian forces; and attempts to associate the communist cause with that of all people.

Examples of appeals to the traditional American values of freedom and patriotism are:

I repeat it, put it down again—a cheap policeman twice violated the Constitution, the Federal Constitution and the State Constitution, outraged every right the defendant had while a prosecuting attorney was standing by his side down in Moline. (p. 5)

This flag was the flag of the first colonists in the United States. It flew proudly at the battle of Bunker Hill with other flags of all kinds. This flag flew where Washington had command. It flew at the Battle of Brandywine. The Nuns of Bethlehem embroidered one with the greatest care and sent it to the Commander that he might rally his men under that banner to fight for America against Great Britain. (p. 8)

Darrow's use of denunciatory language in attempting to associate the prosecution with evil, authoritarian forces was also strong and constant.

From the beginning to the end this case has been marked by the most flagrant violation of law, by every effort to magnify, to create passion and prejudice, that you gentlemen might forget those things that are dear to the heart of every real American; that you gentlemen might forget what America once stood for; that you might do your ignoble part toward bridling the tongue of man, toward paralyzing his mind, toward stifling his thought, toward uprooting and destroying that freedom of speech which has been the cornerstone of American institutions. You are really asked to make America the home of the tyrant, the informer and the usurer, who is willing to trample laws and constitutions and human rights beneath his feet, that
he may plunder undisturbed. (p. 5)

In sharp contrast to the attacks on the prosecution was Darrow's association of the cause of his clients to the cause of common people.

I do not know why the common man should not rule if he can. (p. 9)

It has been the doctrine of most of the great idealists and dreamers of the world. I do not know whether it will come or not. I will tell you where it comes from, gentlemen. It is in you... It is in every man whose sympathy goes out to his fellow man. It is in every man who hates poverty, not because he is poor, but because other men are poor. It is born of sympathy; it is born of love; it is born of the feeling of common brotherhood. (p. 10)

I do not know whether communism would work. I do not know whether we can ever get a state or society where men are good enough, ideal enough, kindly enough and human enough to say, "Here is mine, I will throw it in with yours, and we will work together for the common good." (p. 10)

These emotional appeals were interlaced with the logical proof so that the two methods of argument augmented and supported one another. It is the writer's conclusion that Darrow employed emotional proof through appeals to the social motives of the jury.

Brenbeck and Howell define ethical proof as the reputation and prestige which the speaker has with the particular audience before and during the speech. While it is impossible
to determine accurately Darrow's prestige before the trial, it is possible to evaluate how the content of his summation plea may have contributed to, or detracted from, his reputation before the jury.

Darrow attempted to use his prestige as a method to validate the evil purposes of the prosecution. By reference to his experience he attempted to support this contention. "I must say that in all my experience, which now covers forty-two years, it seems to me I never saw a case where every cheap feeling has been appealed to; . . . where everything has been urged to swing a jury from their duty that they might join the mob, as has been done in this case" (p. 1).

Darrow appeared also to have attempted to establish his prestige by testimonials to his personal involvement in the case.

I have loved America first of all because she stood for this. Make us a nation of slaves and I shall love it no more. (p. 2)

I believe in this case and in my duty in this case. (p. 2)

I am interested in the verdict of this jury as to whether this country shall be ruled by the conscienceless men who would stifle freedom of speech when it interferes with their gold. (p. 1)

Thus, Darrow attempted to establish his prestige by reference to his long legal experience, and by testimonials to his personal involvement in the case. However, his ethical proof appears to this writer to have been weakened when he attacked the merit of the American system of government and
the capitalistic system of competition in business.

I would like to see the proletariat have a chance to rule; the others have had it long enough, and these never have. The proletariat may lose their idealism as they get a better chance in the world; that often happens too, but if it was nothing excepting for a change, I would like to see it tried. (p. 13)

There are too many law makers. There is Congress; the Senate and the President and the Supreme Court and the State Legislature and another Supreme Court and Lawyers and everybody else. (p. 33)

Such statements of opinion and attitude would seem to this writer to have placed him, in the minds of the jury, in the same category as the men whom he was defending.

The writer concludes that Larrow's use of ethical proof to establish his personal involvement in the case, and to vilify the prosecution may have been weakened by his admitted sympathy with the ideas and beliefs of the defendants.

The Functional Validity of Larrow's Arguments

In analyzing the functional validity of the arguments presented by Larrow no specific criterion can be used. The writer can only infer their validity by tracing the fate of such arguments in later days.

The arguments which have significance beyond the immediate trial were the contentions that the law to suppress free expression of political opinions was illegal, and that the communist menace could not be eliminated through legislation. The first of these contentions was validated when the law under which the defendants had been tried was repealed. The second contention
remains a matter of much dispute today. The growth of the communist ideology throughout the world perhaps validates Darrow's contention, and perhaps supports his belief that the American system of democracy must stand or fall on the basis of its merits as determined through free discussion and free exchange of political views.

**Disposition**

For the analysis of disposition in this summation plea the writer will be concerned with the elements of thematic emergence, arrangement of ideas, and rhetorical order.

**Thematic Emergence**

In analyzing disposition the critic must first discover whether the speaker's central theme, or purpose, was clear and whether it remained constantly in focus throughout the speech.

It is extremely difficult to locate in this summation plea any central theme. Darrow's arguments ranged all the way from an attack on the case of the prosecution to an abstract discussion of the merits of the communist system. There was, within the summation plea, no statement by which Darrow attempted to tie any of these arguments together or any summary statement of the position of the defense. The closest statement to a central theme was to be found early in the summation plea.

"Gentlemen, I can only ask you to decide this case upon the facts as you have heard them, in the light of the law as you understand it; in the light of the history of the country, whose
institutions you and I are defending" (p. 3). From this
statement Darrow's summation plea proceeded to lengthy argu-
ments on eight main points: Man is incapable of measuring
the truth of opinion; The prosecution has violated laws in
this case; The evidence of the state is superficial and in-
conclusive; The communist philosophy cannot be killed by
legislation; All men have a right to their political views;
The American system of capitalism is a failure; The witnesses
of the prosecution are liars; The workingman should rule the
state. These arguments were developed in this order with no
summary or transition statements to give direction or purpose
to the summation plea. This reader was sometimes not aware
of when one argument had been completed and another begun.
For example, in analysing the testimony of one of the witnesses
for the prosecution Darrow began in this way, "Now, they brought
two witnesses here, one of them Wilson. Now, gentlemen, I want
to speak to you about Wilson, and I am going to speak about him
and take the chance of Mr. Comerford's waving the Starry Banner
in front of you, which I know he will do anyway, and talking
about everything except the case" (p. 23). This statement would
appear to be the beginning of an analysis of Wilson. Darrow
continued, however, "I want to be absolutely on the square
with this jury. No man believed that the United States' duty
was to enter this war more than I did; and so far as I could,
I helped to the best of my ability and strength as Mr. Bernhart
told you" (p. 23). From here Darrow discussed his personal patriotism. Later he returned to the topic of Wilson, which he had left.

Thus, the writer concludes that Darrow's central theme in this summation plea was unstated and not summarized. The failure to show the relationship of the arguments to a central theme was a possible weakness of this summation plea.

**Darrow's Method of Arrangement of Ideas**

In this element of disposition the critic is concerned with the methods by which the materials of the speech are divided and presented.

In this summation plea Darrow developed eight arguments (cited in the previous section).

These arguments were developed deductively, with the generalization being stated first, and the elaboration of the argument following. Darrow employed primarily chronological and topical patterns to elaborate the arguments. For example, in presenting the contention that communism could not be killed by legislation Darrow first stated the contention. Following this statement he presented a chronological resume of the significance of the red flag in the crusades of the workingmen throughout history. After completing the historical development of the significance of the flag Darrow took up another topic in support of the general argument of the communist philosophy, discussing the opinion of great men throughout
history on the merit of such a philosophy. Thus, after stating the argument, Darrow alternated and interlaced chronological and topical patterns to expand the argument. These patterns prevailed throughout all eight contentions of the summation plea.

Although it was at times difficult to determine which of the arguments Darrow was supporting, this summation plea, nevertheless, proceeded in a relatively orderly manner. That is, Darrow's development of each argument as a unit was fairly complete, although some deviation to other points can be found. If a reader were to delete the unrelated remarks, each of the developed contentions would read as a separate little essay. This pattern of total development for each individual contention added some clarity to the summation plea.

The development of these contentions as parts of a speech appears to this writer, however, to have had two weaknesses. None of the contentions was summarized following its elaboration. Thus, no relationship between each of the contentions and the innocence of Darrow's clients was ever established. Secondly, Darrow employed few transition sentences to make clear the fact that he was beginning the development of another argument. As the reader proceeds in the text he gradually becomes aware that a transition has taken place, and soon after this discovery he begins to realize what new argument has been taken up. Before the reading of each of the arguments is completed the reader sees clearly the argument and its significance.
But the failure to present transition sentences to clarify the argument next to be developed appears to this writer to have detracted from the general excellence of the material presented within each of the arguments.

The writer concludes that the method of arranging ideas in this summation plea, although desirable in terms of clarity of arguments, lost effectiveness through a failure to employ transition and summary sentences between each of the arguments.

**Rhetorical Order in Disposition**

The objective in analyzing rhetorical order in disposition is to determine whether the classical parts (proem, statement, proof, and peroration) of the summation plea were clearly structured. These parts will hereafter be referred to as introduction, statement, argument, and conclusion.

According to Aristotle, the introduction to the speech (proem) should be devised to gain the attention and interest of the audience; the statement of the argument (statement) should set forth clearly the theme to be developed; the argument (proof) should contain the elaboration of the evidence and reasoning by which the speaker validates and enforces his statement; the conclusion (peroration) should summarize the contention of the speaker, should enlist the sympathy and good-will of the audience, and should leave the audience with
a favorable impression of the speaker. The writer will evaluate Darrow's use of rhetorical order by determining the extent to which his summation plea met these requirements.

The introduction in the communist summation plea left, in the opinion of the writer, much to be desired. The points presented were disjointed and unrelated, and the point of termination of introduction and beginning of argument is difficult to determine. The introduction contained four thoughts which would not seem to this writer to have gained the favor of the audience, although they may have attracted their interest. The first of these ideas was concerned with the alleged unfairness of the case; the second contained a challenge to the jury to convict the defendants; the third dealt with Darrow's personal interest in the case; and the last described the disastrous results that a guilty verdict would bring to the United States. These ideas were blended together with no obvious transitions between them.

I must say that in all my experience, which now covers forty-two years, it seems to me I never saw a case where every cheap feeling has been appealed to. . . .

Now, gentlemen, let me be plain about it. If you want to convict these twenty men, then do it. . . . If under this hue and cry of today, which I say is moved and instigated by a gang of profiteers who would traffic in the blood of men . . . if it can be done, all right; perhaps it can; but there is no more reason why my clients should be saved than anybody else. . . . They

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are not cowards enough to beg, and if you want to convict them for this, then convict them. . . .

. . . I have seldom known a case where I believed so heartily that I am right as in this. I believe in this case and in my duty in this case.

I know that mixed with every man is an infinite heritage, and I do not know what is there; but I do know this, that a jury of twelve men is the only protection between a human being and those who attack him; and I know, gentlemen of the jury, that when that safeguard is lost then man's freedom is gone. (pp. 1-3)

The writer concludes that the introduction was not clearly structured, contained no statement by which the favorable reaction of the jury might be obtained, and lacked a clear transition into the thesis and body of the summation plea.

In dealing with the statement of the argument we are raising the question of how clearly the theme was stated. As has been explained in the section on thematic emergence the central theme in this summation plea is impossible to determine positively. The only statement that could perhaps be construed to be the theme statement was, "Gentlemen, I can only ask you to decide this case upon the facts as you have heard them, in the light of the law as you understand it; in the light of the history of the country, whose institutions you and I are bound to protect" (p. 3). Assuming this was the statement of theme, it appears to be weak, for the statement contained no summary of the contentions which would validate it. Further this statement did not appear again in any fashion throughout the remainder of the summation plea. Thus, even
were the writer to concur that the statement was a valid central theme, the conclusion must still be reached that the theme did not accurately indicate the arguments which were to be developed in the body of the summation plea.

To analyze the argument of the speech in disposition the critic must determine the clarity of the pattern of development of the statement. The objective is to ascertain whether the argument contained an understandable pattern of elaboration of the statement. As has been indicated in the section on method of arrangement of ideas the individual contentions presented in the argument were quite clearly structured. Since, however, no definite stated theme can be found in the summation plea, and since the relation of the contentions to the innocence of the defendants was not established, the writer must judge Darrow's argument to have been weak in terms of containing a clear pattern of development of the central theme. This failure to establish any central theme or direction for the contentions developed was, in this writer's opinion, a grave shortcoming of this summation plea.

The purpose of the conclusion should be to summarize the contentions presented, to enlist the sympathy and goodwill of the audience, and to leave the audience with a favorable impression of the speaker.

The conclusion was possibly the strongest part of the communist summation plea, conforming well to the goals which
a conclusion should achieve. The conclusion began with a brief summary of the contentions. "This is what I plead for, and I am not interested in whether my clients' opinions are right or wrong. If they are wrong the American people under free discussion can find the wrong. . . . The prosecution have taken these phrases . . . which are used by every political party . . . and have twisted them into damning phrases that this jury might send these men to jail" (p. 36). Darrow then turned to a strong emotional appeal of a very personal nature.

I might prophesy that sometime on healing wings the dove would descend upon the earth and there would be no more wars or rumors of wars; that every man would love his fellow man and the whole world seek the highest good of all; where want shall be forever banished; where there shall be no more ignorance and no more greed. . . . I do not know what the future holds in store for us. Life is not all a summer's dream, whether it is the individual life or the national life. We are born. We are tossed on the sea of fate. We are driven here and we are driven there. . . . We live on faith and we live on hope and we nerve ourselves to stand the hard rebuffs of life; we take it as it is, and the nations are only aggregations of men. (p. 37)

Finally Darrow concluded with a strong emotional appeal to the jury not to disregard the freedom that was their heritage.

Gentlemen, I do not pretend to know the future that is in store for America. . . . While we live we should protect all the freedom that we have and strive for more. We should protect our constitution as our fathers gave it. Protect it not only in the letter but in the soul. . . . This is freedom. It is the freedom we have worked for and, gentlemen, it is the freedom I urge you to protect and save. . . . I ask you to say that men shall be free,
and if in the open discussions between free men my clients triumph, well and good; they ought to triumph; and if they are wrong their theories must go down. I urge you to stand for the right of men to think; for the right to speak boldly and unafraid; the right to be master of their souls; the right to live free and to die free. There is no other cause that is so much worth while. There is no other sentiment or emotion that ever moved the human soul as priceless as this.

Gentlemen, I submit this case, assuring you that my clients are my last concern; I ask you to do your part in the great cause of human freedom, for which men have ever fought and died. (p. 38)

Summary

This chapter has attempted to analyze the methods of invention and disposition employed by Clarence Darrow in the communist summation plea.

It is the conclusion of the writer that Darrow's methods of invention contained both weak and strong points. Darrow displayed considerable intellectual resources in recognizing and emphasizing the great problems which were involved in the situation, but this strength was partially reduced by his inability to formulate ideas relevant to the immediate situation. Darrow's methods of logical and emotional proof were dominant in this speech. His self-expressed association with the beliefs of the defendants, however, may have reduced his prestige before the jury and may have contributed to a lack of ethical proof in the summation plea. Darrow's contentions that legal suppression of political opinion was illegal, and that the communist menace could not be eliminated through legislation were ideas which remain of significance in recent American
history. These ideas must therefore be considered a strong positive factor in an analysis of Darrow's invention.

Darrow's methods of disposition appear to be weak in this summation plea. The plea does not contain any central purpose or unified development of contentions toward an obvious objective. Darrow's ideas were arranged in deductive, chronological, and topical patterns, with each argument being developed as a separate entity. The clarity of these patterns was reduced by the failure to provide transition or summary sentences. The rhetorical order in this summation plea was not entirely in harmony with classical standards. The introduction rambled and was ill-suited for obtaining the favor of the jury. The statement remained unstated throughout the speech. The argument failed to establish any understandable pattern by which a theme could be inferred or supported. The conclusion was highly personal, and contained both a summary and a strong emotional appeal to the jury.
CHAPTER V

CONCLUSIONS AND EVALUATIONS

Introduction

The purpose of Chapter V is to answer the second question of this thesis: What effect did Clarence Darrow's methods of invention and disposition have on the verdicts in the Haywood and communist cases.

An answer to the question of effect will be based first on a comparison of the methods of invention and disposition employed in the two summation pleas. In making this comparison the purpose of the writer is to discuss similarities and differences among the various methods of invention and disposition in the two summation pleas. On the basis of such similarities and differences, conclusions as to the effect of the methods on the verdicts of the courts may be warranted.

Written sources will form the second criterion for answering the question of effect. The writer will present the opinions of authors and jurymen on the strengths and weaknesses of Darrow's pleas. The citing of written sources is obviously an inconclusive method of determining specific strengths and weaknesses. It is hoped, however, that such sources will give some indication of possible causes of success and failure.

Finally, the writer will answer the second question of the thesis by a personal evaluation of the two summation pleas.
Reactions based upon careful reading and study of the pleas will be discussed, and some judgments as to the strengths and weaknesses will be attempted.

Before comparing the two summation pleas it seems desirable to call the reader's attention to what this thesis has not attempted to do. The intention is not to suggest that victory and defeat in the two pleas can definitely be accounted for on the basis of the methods of invention and disposition employed. The writer is aware that numerous other variables within the speaker, occasions, and contents of the trials were influential in the decisions of the courts. The beliefs of the jury, the skill of the opposition, the nature of the testimony, and many other factors determine what the verdict of a court will be. It is to be remembered, however, that court trials represent one of the few occasions on which an immediate favorable or unfavorable reaction to the speaking of men can be observed through the verdict of the jury. It is also noteworthy that defense and prosecuting attorneys in significant cases, such as the two included in this study, are typically speakers of acknowledged talent. Thus, it may be possible to uphold the contention that success and failure are more the results of the contents of the pleas than of the technical speaking qualities of any single lawyer. It seems reasonable to assume that even though many other elements influence court decisions, the invention and disposition of the lawyers may have considerable
influence on the decisions which are reached by judges and juries in criminal cases.

A. Comparison of Methods Employed

To compare the methods of invention and disposition employed in the two summation pleas the writer will draw from the conclusions expressed in Chapters III and IV. A comparison of each of the elements in invention will first be taken up, followed by a comparison of the elements in disposition.

Invention

In determining the methods of invention employed the writer discussed the intellectual resources of the speaker, his methods of argumentative development, and the functional truth of his ideas. This section will compare these three elements in the two summation pleas.

It was the conclusion of the writer that the Haywood plea of Clarence Darrow displayed great intellectual resources both in terms of visualizing the over-all importance of the trial and in presenting ideas relevant to the situation. His persistent reiteration of the effect that the trial would have on the cause of labor and his ability to center his attack on the weaknesses and inadequacy of the prosecution's case attest to these intellectual resources. The contentions presented in support of these ideas were strikingly clear and perceptive. In the communist summation plea, however, the intellectual resources of Darrow were open to question. His inability to
relate his arguments to the immediate problem of obviating the innocence of his clients appears to have been a considerable weakness. While Darrow's plea indicated a recognition of the great problems that communism would cause, his elaboration of that problem did not include a justification of his clients' actions. This failure to relate the general argument to the specific problem under consideration could have caused the summation plea to lose direction and purpose. Thus, in the area of intellectual resources, Darrow's methods appear to have been stronger in the Haywood plea.

A marked contrast is to be found in Darrow's use of logical proof in the two pleas. The Haywood plea was characterized by extensive elaboration of broad generalizations which had not been factually established. Little direct evidence and testimony were introduced into the plea to support these generalizations, except the general historical facts which Darrow discussed in his attempt to vilify Orchard. Even this material was presented in more an emotional than a factual manner. The communist plea, in contrast, showed strong use of logical proof. Examples and testimony were frequently cited by Darrow. These methods added support to Darrow's contentions, although, again, he failed to relate these established contentions to any specific purpose, or to a definite defense of his clients. Thus, Darrow's logical proof was considerably more in evidence in the communist plea, though the positive effect of this proof was
probably weakened by the lack of any clear purpose.

In both pleas the emotional proof employed by Darrow was strong and frequent. The emotional appeals appear to have been directed at the social motives of the jury. Both pleas contained frequent references to the duty of the jury; both contained sharp denunciations of the prosecution or its witnesses; and both attempted to associate the defendants with the common people. The writer concludes that emotional proof was one of the dominant methods displayed by Darrow in both summation pleas.

Darrow's use of ethical proof in both cases was moderate. In each case he made direct and repeated references to his personal involvement and interest in the case. A significant difference occurred, however, in the use of ethical proof in the two cases. In the Haywood plea Darrow adopted a seemingly sympathetic position as to the difficulty of the task before the jury. The communist plea, however, saw Darrow taking a position of agreement with the ideas of the defendants by ridiculing the merits and prospects of the American system of democracy and capitalism. Thus, while Darrow's ethical proof in the Haywood case may have made the jury favorably disposed to him, it is possible that in the communist case his attempts at ethical proof may have alienated him to the jury.

The writer is impressed, in both summation pleas, with the perception and validity of the arguments presented. Darrow's discussion, in the Haywood case, of the cause, effect,
and prospects of the labor unions seems remarkably foresighted. His contention, in the communist case, that freedom could not be preserved by suppressing alien elements also shows the functional validity of his thinking.

**Disposition**

The analysis of disposition in both pleas included descriptions of the elements of thematic emergence, rhetorical order, and arrangement of ideas. This section will compare these elements in the two summation pleas.

The Haywood plea was characterized by a strong and constantly-repeated theme. This theme dwelt on the inadequacy and inaccuracy of the prosecution's case. The theme was stated early in the summation plea and was constantly reiterated as the plea progressed. The communist summation plea contained no stated or implied theme. The logically-developed contentions of this plea were therefore weakened by the lack of any direction or purpose. The two summation pleas could well serve as examples of clear and unclear thematic development.

In both summation pleas Darrow employed primarily topical and chronological patterns to expand his arguments. In the Haywood summation these patterns were interlaced, with the content of the plea moving back and forth over the contentions in a spiraling pattern. This process of relating each bit of evidence to the general arguments seems to have been effective
in sustaining attention on all of the contentions throughout the plea. Such a pattern caused the plea to appear to lack order, although this defect was partially counteracted by the use of frequent transition sentences.

Darrow also employed topical and chronological patterns in the communist plea. Here, however, the spiraling pattern of repeating and elaborating each contention bit by bit was less in evidence. While the development of each contention as a separate unit added some clarity, this desirable result was partially nullified by a failure to relate the contentions to any central theme and by a failure to provide adequate transition sentences between contentions.

The writer contends that neither plea showed a clear pattern of arrangement of ideas. The Haywood plea was weak in arrangement because of the casual and unorderly method of including numerous arguments. The communist plea appeared to be weak in arrangement because of the lack of relation of the arguments to a central theme, and because Darrow failed to present suitable explanatory transition sentences between arguments.

Darrow's adherence to classical rhetorical order in the Haywood summation plea appeared desirable. The introduction, statement, argument, and conclusion were clearly-structured and fostered the continuing emergence of the central theme. Both introduction and conclusion contained strong emotional appeals
to the jury. The communist summation plea deviated from classical standards. The introduction was lengthy and seemingly undirected, theme statement could neither be found nor inferred, and the argument failed to maintain a direction or purpose. Only the conclusion included methods which adhered to classical standards. The summary and the emotional appeal which it contained seemed the strongest part of this summation plea. In rhetorical order, therefore, the communist plea lacked most of the desirable qualities of the Haywood plea.

In summary this comparison shows the communist plea to have been weaker than the Haywood plea basically in that it failed to present or support any specific purpose, and in that it contained statements which heavily detracted from the establishment of any common ground between jury and defense.

**Written Opinions on Strengths and Weaknesses**

In this section the writer will present the opinions of authors and jurymen on the strengths and weaknesses of the methods employed by Darrow in the two summation pleas.

Although numerous descriptions of Darrow's speaking can be found in recent books and magazines, there is little of an extremely specific nature. Most of what has been written attests to the unquestionable excellence of Darrow's speaking. Descriptions enable the writer to determine the general pattern of Darrow's speaking techniques, but few are conclusive enough to serve as definite indicators of strengths and weaknesses.
The following section will include some of the descriptions and impressions of Darrow's speaking.

One of the most interesting descriptions is that written by Haywood in his autobiography. Discussing Darrow's speaking in the Haywood summation plea the defendant wrote:

When Darrow arose to address the jury he stood big and broad-shouldered, dressed in a slouchy gray suit, a wisp of hair down his forehead, his glasses in hand, clasped by the nosepiece. . . . When he spoke he was sometimes intense, his great voice rumbling, his left hand shoved deep in his coat pocket, his right arm uplifted. Again he would take a pleading attitude, his voice would become gentle and very quiet. At times he would approach the jury almost on tip-toe.56

A more complete summary of Darrow's methods is provided by Arthur Garfield Hays.

Then Darrow would stand up, slouch his shoulders, talk quietly, and for an hour would hardly mention the facts of the case on trial. In homely language and with a great wealth of illustrations, he would talk about human beings, the difficulties of life, the futility of human plans, the misfortunes of the defendant, the strange workings of fate and chance that had landed him in his trouble. Darrow would try to make the jury understand, not so much the case, as the defendant. . . . Even his statement of the facts of the case will have to do with the defendant himself as a human being, rather than with the legal significance of the evidence. In the ordinary labor case, where the defendant is charged with crime, Darrow will show that his client was not moved by greed or personal interest; he was fighting for his fellows. He will travel far beyond the immediate issue of guilt or innocence, leaving with the jury a desire to do what they can for the defendant, even if guilty; to acquit him if innocent. The whole background of a case—

on a different coloring from his deeply sympathetic manner of presentation.  

Such general descriptions of Darrow's speaking are available in numerous books and magazines. General descriptions of Darrow's methods in the two summation pleas analyzed in this thesis can also be found. Concerning his methods in the Haywood plea Darrow himself wrote:

The trial of this case, like trials of all industrial conflicts, necessarily covered the widest possible field. There was practically no direct evidence against any of the defendants except the testimony of Harry Orchard. This was so tainted that the State attempted to bolster it up with evidence of every sort of conduct and violence, covering any area of six or seven States and more than two years of time. It was the task of the defense to rebut the evidence of the State and show that the defendants and the union were not responsible for the inevitable results that followed in such conflicts. It was also their task to show the efforts made by mine owners, detectives, allied organisations, scabs, and hostile citizens in the general disorder and social upheaval. So this trial developed into a history of the strike, covering most of the mountainous sections during that stretch of time.  

Martin Maloney mentions, in his discussion of the Haywood plea, this ability which Darrow displayed in showing the great significance and importance of the case.

When Darrow defended Haywood, he used his client as a symbol for the whole labor cause, and so related the trial to all the struggles of the poor. . . . When he discussed motives, he was trying to get sympathy for his client, and this was the essential element in his entire method. When he dealt with the social and economic philosophy and history . . . he was educating his

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58 The Story Of My Life, p. 152.
jurors to see the entire case in a long perspective of events. In effect, he was recoloring and reshaping the whole case for them. 59

In discussing Darrow's emotional proof Maloney also notes Darrow's practice of denouncing the prosecution or its witnesses. Maloney states that when Darrow used emotional proof he was attempting "to point out the perfidy of the prosecution scapegoat whom he always selects, thus inspiring in his listeners disgust, anger, or contempt for the opposition." 60

A member of the prosecution, Senator William Borah, commented on this method of emotional support. "If Orchard had not turned state's evidence he would be on trial, and the eminent counsel from Chicago would be defending him with all the eloquence he possessed instead of denouncing him as the most despicable monster on earth." 61

Weinberg also indicates that this method of denunciation was a common trait of Darrow's summation pleas.

In many of his courtroom pleas he directed his ire against an individual; it might be the prosecutor, a witness for the opposing side, or the complainant. The reader will come across this tactic in plea after plea, for it is one of Darrow's favorite means of making the jury sympathize,


60 Ibid., p. 299.

not only with the defendant, but with any man who is under brutal scrutiny for his motives and frailties.\(^6\)

About the communist summation plea there is little written in the nature of criticism. Darrow himself explained his defeat in this way. "The State was allowed to bring into the evidence the Communist Manifesto of Russia. They were permitted to use evidence about riots in Seattle, Wash., and to present any act or event that had occurred in any part of the world that could be connected with any communist movement, great or small."\(^6\)

Maloney suggests another possible reason for Darrow's failure in this case.

The pleas in defense of Person and of the Chicago communists seem to represent a sort of conscience payment which Darrow felt that he had to make because he had supported America's entry into World War I. In the latter plea, he says, "If I had believed that after one autocracy had been overthrown, that here in America, where we cherish individual liberty; here in America, twenty states would pass a statute like this, which we had got along without one hundred and fifty years, so that great interests might silence every human voice while they were robbing the people... perhaps I would not have believed we should have entered this war." This feeling on Darrow's part was probably the reason why the speeches are not among his greatest. No pleader is at his best when he feels he must justify himself.\(^6\)

\(^{62}\)Ibid., p. xvii.

\(^{63}\)The Story Of My Life., p. 218.

\(^{64}\)History and Criticism, p. 292.
Such comments and descriptions give the reader an overall impression of Darrow's methods, but provide little basis for evaluation of specific strengths and weaknesses. The descriptions do, however, indicate a general agreement with the conclusions of the previous section.

Specific reactions to Darrow's speaking are much more limited in number. Stone, in his biography of Darrow, suggests a somewhat specific reason for Darrow's defeat in the communist case.

It was a good speech, as Darrow would have said. It reverberated around the world. Always juries had gone with him, but this time he had gone too far. In order to accept his philosophy they would have had to undergo a revolution in their own minds which would have been more radical than the one advocated by William Bross Lloyd and his fellow radicals... Some of his friends were astonished that the jury did not turn around and ask for an indictment of counsel for the defense.65

This reaction by Stone is similar to the statement made by the foreman of the jury, Frank S. Reid, in the Weinberg text.

This is our country. It is the best country in the world. It is good enough for us. If others do not think it is good enough for them, let them get out and stay out. Although no evidence of overt acts was presented, we are certain that had the defendants carried their revolutionary program to its logical conclusion, or had it run its course, a state of anarchy would have been brought about.66

65Clarence Darrow for the Defense, p. 378.
66Attorney for the Damned, p. 172.
This statement supports a conclusion of the comparison concerning Darrow's inability in the communist plea to create a favorable relationship between jury and defense.

In summary, the general reactions of other sources on strengths and weaknesses in these summation pleas indicate a general consistency with the conclusions of the comparison made in the previous section. In the Haywood plea Darrow succeeded in impressing the jury with the trial's significance, and he succeeded in relating the cause of the defense with that of all common people. In the communist plea Darrow was unable to establish successfully this favorable relationship between jury and defense.

**Personal Reactions of the Writer**

The preceding sections of this chapter have attempted to indicate the strengths and weaknesses of the Haywood and the communist summation pleas. These sections, however, give only general conclusions as to which of the strengths and weaknesses may have helped cause victory and defeat in the two pleas. The final section of this chapter, then, is perhaps most important in clarifying what specific desirable and undesirable methods may have been responsible for success and failure.

The statements of this section are based upon careful reading and study of the summation pleas. They represent the personal reactions of the writer to the ideas and arguments
It would be easiest to say that in the Haywood summation plea Darrow simply did everything correctly, as defined by speech texts, and that this adherence to desirable methods was the reason for his victory in the case. The writer, however, is not of that opinion. While the Haywood summation plea is definitely a superb speech, one method appeared weak. This reader gained the impression that Darrow's method of logically supporting his contentions was extremely weak. Little direct evidence was employed. Each contention was characterized by emotional rather than logical support. When we consider that a trial situation is one in which a jury should be seeking facts and evidence to support adequately and accurately a guilty or not guilty verdict, the absence of such support in the Haywood plea seems to be a weakness. It is the writer's opinion, however, that two factors overcame this possible weakness.

The first of these factors was the great perception and understanding of the problems which Darrow displayed in this plea. This reader was impressed by Darrow's ability to expand the argument far beyond the immediate situation and issue. The discussion of the relation of the case to the entire history of labor's struggle for better conditions causes a shift in the reader's conception of what is important in the case. He becomes concerned with possible effects of the verdict on the
cause of labor, rather than with the immediate problem of
the guilt or innocence of Haywood. By this statement the
writer does not mean to imply that perhaps Haywood was guilty.
His innocence is strongly supported in the plea. Rather the
impression is gained that the decision of guilt or innocence
is not of primary importance, that even if Haywood had been
guilty a tolerant and lenient sentence would be desirable.
The writer contends that this ability to elaborate clearly the
larger social significance of a particular situation was one
of the truly great qualities of Darrow's summation plea in the
Haywood case.

The second factor of possible significance in overcoming
the absence of logical proof was Darrow's ability to include
material designed to create a favorable relationship between
jury and defense. Statements showing the common ground between
the defense and the ideals and beliefs of all men abound in the
plea. Appeals to the humanitarian ideals of the group further
enhanced this favorable relationship. By appealing to the
basically good and kind motives in man this summation plea fos-
ters a desire to do as much as possible for the defendant. It
appears that Darrow recognized the importance of this method
in his speaking. "Jurymen seldom convict a person they like,
or acquit one they dislike. The main work of a trial lawyer
is to make a jury like his client, or at least to feel sympathy
for him.⁶⁷ Although perhaps extreme in its approach this statement is certainly an accurate description of Darrow's method in the Haywood summation plea.

The summation plea in the communist case gains a less favorable reaction from this reader. Although the logical support of ideas was stronger in this plea than in the Haywood summation, the reader was made uneasy by ideas which appear to have been in sharp contrast to accepted American ideals and beliefs. Here the weakness did not appear to rest in the fact that Darrow's objection to the particular law was a radical position. The uneasiness was caused by the extreme statements which were presented in elaborating the objection. While it would seem reasonable to advocate the repeal of the law because it was perhaps unconstitutional, or because it fostered injustice, the appeal to the jury to acquit the defendants because the entire American system of democracy and capitalism was unjust or impractical seems too extreme. Even were the reader to agree with this contention, it still appeared highly undesirable to present such a belief so boldly to a jury of American citizens.

Thus, in the communist summation plea, Darrow appears to have violated the rule he himself believed so important: the necessity of establishing a common ground between defendant

and jury. In this trial the writer would speculate that the statements of Darrow may have had the opposite effect—that of causing the jury to dislike both the clients and him. This appears to have been the most significant difference between the two summation pleas. The Haywood case summation plea was characterized by an ability to develop the case against a broad backdrop of past and future history, and by persistent statements showing the sympathetic relationship between the jury and the defendant.

The communist case summation plea, although similar in that it developed the case against a large social background, failed to establish the significance of this development to the jury, and failed to create a favorable climate between speaker and audience. Whether this failure was due to a lack of sufficient audience analysis, or whether it occurred because Darrow became too involved in expounding his personal philosophy, is a question which cannot be answered. But this inability to encourage a sympathetic attitude for his clients is perhaps an excellent example of the necessity of properly establishing a common ground between speaker and audience. It further indicates the necessity for the speaker to modify his ideas in accordance with audience motives and values. Wayne Minnick presents a fitting statement of the importance of this modification of ideas. It is Minnick's contention that the purpose of audience analysis is compromise.
An evaluation of probable audience response is absurd unless the speaker intends to modify his discourse in one way or another because of the knowledge gained.

Modification . . . consists of two things: adjustments in the substance and context of the speech to make it interesting and intelligible to the particular audience, and second, adjustment in substance and context to make the thesis of the speech palatable.

The purpose is compromise: The temporary surrender of some desirable ends for the attainment of others.68

This brief description of the necessity for audience analysis appears to the writer to provide a partial basis for Darrow’s failure in the communist case. The inability to make the ideas palatable by modifying the statements in order to reconcile the differences in belief between jury and defense is considered by the writer to be the primary defect in this summation plea.

Summary

This chapter has attempted to determine the effects of Darrow’s invention and disposition on the decisions of the courts in the Haywood and communist cases. The writer has attempted to determine these effects by comparing the methods in the two pleas, by reference to opinions of outside sources, and by a personal evaluation of strengths and weaknesses in the two pleas.

68 Wayne Minnick, The Art of Persuasion (Boston, 1957) pp. 242-244.
The comparison of methods employed in the two pleas showed the communist plea to have been weaker than the Haywood plea in that it failed to present or support any specific purpose, and in that it contained statements which detracted from the establishment of any common ground between jury and defense.

The citing of outside sources was inconclusive in determining strengths and weaknesses. The general reactions of authors and jurymen indicated that Darrow's greatness was partially due to his ability to relate his arguments to the desires and ideals of the juries. Two sources supported the contention that in the communist plea Darrow failed to establish this desirable relationship between defense and jury.

In the personal evaluation the writer presented the contentions that the excellence of the Haywood plea was in large measure due to Darrow's ability to express clearly the great significance of the problem, and to emphasize the motives and ideals which his clients shared with the jury and all other humanitarian people.

The writer contended that in the communist plea Darrow's defeat may have been partially due to his refusal to modify his ideas in order to make them acceptable to the beliefs of the jury.

The striking difference in relating the ideas to the beliefs of the jury in the two pleas emphasizes the importance
for the speaker to modify his ideas in accordance with the attitudes and beliefs of his audience. As the communist case indicated strong logical proof does not nullify the necessity for the creation of a favorable attitude between speaker and audience. Unless such a favorable attitude is brought about by the speaker he has little chance of obtaining acceptance and support of his ideas.
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