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An American Tragedy: Retelling the Leopold-Loeb Story in Popular Culture

by EDWARD J. LARSON*

Although a real boy died and real teenagers killed him, the incident took on a life of its own in American culture. It quickly became known as “the crime of the century” and retained that dubious designation throughout the seventy-five years left in that spectacularly violent time span.¹ No one doubts who committed the crime.² Eighty-five years later, they remain celebrities for this one act. As fact or thinly veiled fiction, the story of their crime was repeatedly told by novelist and dramatists. The resulting trial was featured on stage and screen. Despite the popularity of the genre, however, it never became a subject for a murder mystery. The various accounts agree on such key points as who did it, what they did and when they did it, but not on other fundamental ones.

Are the killers properly referred to jointly as “Leopold and Loeb,”³ separately by their full names as Richard Loeb and Nathan F. Leopold, Jr.,

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1. Chicago newspapers used this term for the crime as early as the day after Nathan Leopold and Richard Loeb confessed to it. *E.g.*, Edwin Balmer, *Erotic Age of Depraved Books is Blamed by Edwin Balmer in Franks Brutal Murder Case*, CHI. HERALD & EXAM’R, June 1, 1924, at 4. A leading historical account of the episode, first published by G.P. Putnam’s Sons in 1975 and republished by University of Illinois Press in 1999, uses that designation as its subtitle. HAL HIGDON, *LEOPOLD AND LOEB: THE CRIME OF THE CENTURY* (1999).

2. After police and prosecutors uncovered some evidence connecting them to the murder of Bobby Franks and undermining their alibis, without benefit of counsel despite their wealth and education, Richard Loeb and Nathan Leopold fully confessed to prosecutors and freely provided physical evidence establishing their guilt beyond a reasonable doubt. They later pled guilty to the crime under the advice of exceptionally good counsel. *See* SIMON BAATZ, *FOR THE THRILL OF IT: LEOPOLD, LOEB, AND THE MURDER THAT SHOCKED CHICAGO* 131-43, 278-79, 283 (2008).

3. *E.g.*, one of the first books about the crime used this designation for the killers as its title. MAURICE URSTEIN, *LEOPOLD AND LOEB: A PSYCHIATRIC-PSYCHOLOGICAL STUDY* (1924). To illustrate the continued popular usage of the “Leopold and Loeb” designation, since 2000, an award-winning musical about the crime uses it as a subtitle and a 2001 comic book has one of its young characters inspired to kill an annoying neighborhood boy by reading a paperback novel titled “The True Story of Leopold & Loeb.” STEPHEN DOLGINOFF, *THRILL ME: THE LEOPOLD & LOEB STORY* (2006) (published script of script and lyrics); DANIEL CLOWES,

or simply as “Dickie and Babe,”⁴ their nicknames? Were they self-conceived Nietzschean supermen testing their superiority over others, precocious teens with too much time and money on their hands, deeply troubled youth whose emotional maturity lagged far behind their intellectual abilities, or repressed lovers bound in a self-destructive master-slave relationship?⁵ Was justice served by them being spared the death penalty?⁶ What does this crime tell us about the murderers, their society and ourselves?⁷

The image of “Leopold and Loeb,” as a crime, the fused character of joint killers, or distinct personalities of two individuals, has become a fixture in American culture. Since breaking on the public consciousness in front-page headlines during the summer of 1924, it has provided source material for novels, histories, plays, movies, a popular musical and even comic books.⁸ In one of the first books about the crime, published in 1924, the author commented: “[T]he act which created a stir far beyond this country is so frightful, psychologically so incomprehensible, so singular in its unfoldment that, if a Poe or a writer of detective stories wished to unnerve his readers, no better tale could be invented.”⁹ Far from diminishing over time, and without any coordinated cultivation, public interest in Leopold and Loeb continued to increase even as its meaning evolved. In a 1990 column, *The Times* of London drama critic Sheridan Morley observed, “[a]part from the Oscar Wilde case, few trials of the last century

ICE HAVEN 14 (2001). Other uses of the designation will appear in references throughout this article. Initially, the case was sometimes designated with Loeb’s name first, as in the title of a 1926 volume reprinting testimony and oral arguments from their trial. THE LOEB-LEOPOLD CASE WITH EXTRACTS FROM THE EVIDENCE OF THE ALIENISTS AND INCLUDING THE ARGUMENTS TO THE COURT BY COUNSEL FOR THE PEOPLE AND THE DEFENSE (Alvin V. Sellers ed., 1926). As suggested above, over time, Leopold secured first billing in common usage.

4. *E.g.*, a 2008 dramatic adaptation of the case by Daniel Henning, which premiered in Los Angeles, is titled “Dickie & Babe: The TRUTH About Leopold and Loeb.” David Ng, *The Plot Thickens; Daniel Henning Takes Care to Make the Notorious Leopold & Loeb Case His Own*, L. A. TIMES, Jan. 27, 2008, § F, at 4 (in his review, Ng speaks of Henning’s “near-obsessive attention to historical accuracy”). In referring to his clients at trial, their defense attorney, Clarence Darrow, typically called them by their nicknames. *E.g.*, Speech of Clarence Darrow, in THE LOEB-LEOPOLD CASE, *supra* note 4, at 162, 174 (“Let us take Dickie Loeb first” and “Now, your Honor, I want to speak of the other lad, Babe.”).

5. See *infra* subsections IIA-C, III.

6. See BAATZ, *supra* note 2, at 410-20.

7. One day after Leopold and Loeb confessed to killing Bobby Franks, popular novelist Edwin Balmer commented, “The murder has become much more than a mere crime. It has become a portentous and ominous social fact.” Balmer, *supra* note 1, at 4. See generally Paula S. Fass, *Making and Remaking an Event: The Leopold and Loeb Case in American Culture*, 80 J. AM. HIST. 919, 951 (1993).

8. *E.g.*, forty years after the murder, Leopold wrote in his own autobiographical retelling of the event:

The details of the crime have been hashed and rehashed so often and in so many different ways. In 1924 there was hardly a person in the United States who didn’t have all the details at his fingertips. It’s all in the newspapers of the period. Books have been written about it. What could I possibly add?

NATHAN F. LEOPOLD, JR., LIFE PLUS 99 YEARS 25 (1958).

9. URSTEIN, *supra* note 4, at 1.

have given quite so much to stage and screen as the Leopold Loeb affair"¹⁰—and this was in England! After listing several classic plays and movies about the Leopold and Loeb case and noting that a new production about it would open in London the following week, Morley added, “[i]f all goes well, we shall doubtless then get the film of the play of the film of the film of the play of the case.”¹¹ This article scans the rich cultural history of one American tragedy.

I. COVERING THE CRIME OF THE CENTURY

Nathan Leopold and Richard Loeb initiated one of the most enduring stories in American criminal history on May 21, 1924, when they abducted and murdered Bobby Franks, the third child in a wealthy Chicago family.¹² This act attracted intense local newspaper coverage that turned into national media frenzy when its perpetrators were identified as two well-educated and privileged teenagers who lived in the same affluent Chicago neighborhood as their victim and were whispered to be lovers.¹³

Journalists, prosecutors and defense psychiatrists quickly turned up details of these next-door killers and their private behavior that mesmerized the public.¹⁴ The psychological defense mounted by Darrow stirred a national debate over free will, criminal responsibility and capital punishment.¹⁵ By the end of the trial, no one could determine who had created the public persona of Leopold and Loeb—the boys themselves, the media,

10. Sheridan Morley, *Diary*, THE TIMES (London), Mar. 12, 1990, at 14.

11. *Id.* As one example of the undying attraction of Leopold and Loeb in American culture, during the 1990s, an organization of artists, writers, and actors in Astoria, New York, the Butane Group, once performed three new stage plays based on them in as many years: *Leopold and Loeb Are Dead Now* (1995), *Leopold and Loeb: A Goddamn Laff Riot!* (1995), and *Leopold and Loeb Get It Up* (1993). See The Butane Group, <http://thebutanegroup.org/history.php> (last visited Jan. 20, 2009).

12. BAATZ, *supra* note 2, at 4-5.

13. A September, 1924, article in the British journal, *The New Statesman*, reported about the case:

The affair has dominated the American newspapers for four months in a fashion that no short description could make real to English readers. In the first fortnight (that is, two months before the trial began), according to the calculation of a well-known American journalist, one Chicago daily gave to the case 228 columns of news, pictures, comment and conjecture. . . . The trial lasted thirty-three days, every one of which a full page, with splash headlines, was deemed to be a reasonable allowance of space for the report in the papers of the great cities.

Leopold and Loeb, NEW STATESMAN, Sept. 20, 1924, at 668-69. Within a month after Leopold and Loeb confessed, a newspaper article depicted the case as horrifying “this entire country.” Margery Rex, *Elinor Glyn Points to Lesson in Franks Case*, CHI. HERALD & EXAM’R, July 30, 1924, § 2, at 2.

14. See Fass, *supra* note 8, at 919-20, 930-33. One contemporary observer noted, “The daily papers have rarely been so eagerly devoured by their readers as at that time of the Leopold-Loeb case.” URSTEIN, *supra* note 4, at 1.

15. See *Leopold and Loeb*, *supra* note 18, at 670.

the psychologists, the prosecution or the defense.¹⁶ It was a common enterprise that stamped a complex image on a pair of individuals and their joint act.

The media inserted itself into the affair even before the murder became public.¹⁷ Thereafter, journalists, writers and other commentators molded the public understanding of the murder and the murderers.¹⁸ Without necessarily minimizing the gravity of the crime that Leopold and Loeb committed,¹⁹ chroniclers filled them with meaning and shaped their public identity.²⁰ Indeed, one account of the episode noted:

Part of what makes the Leopold-Loeb case historically significant is the manner in which the crime and its perpetrators were represented by the press and the public reaction to the story. Close examination of contemporary newspaper coverage is essential to understanding the social tensions that made the case so sensational and so captivating.²¹

Indeed, to understand the social and cultural response to the episode, it helps to follow the story as it unfolded in the press.

A. Murder, They Wrote

Chicago newspapers broke the story of Bobby Franks' abduction and death on May 23, 1924.²² This joint report of kidnapping and murder made the news story unusual from the outset.²³ At the time, Americans had become accustomed to sensational press reports of children from wealthy families being kidnapped for ransom.²⁴ When local reporters first heard of the brewing story, it fit the normal pattern. On May 21, a wealthy couple living in Chicago's exclusive, largely Jewish, Kenwood neighborhood,²⁵ Jacob and Flora Franks, received a phone call from someone claiming to have kidnapped their fourteen-year-old son, Bobby.²⁶ A ransom note arrived the next day demanding \$10,000 and instructing the

16. On the shared creation of celebrity generally, see David Tan, *Beyond Trademark Law: What the Right of Publicity Can Learn from Cultural Studies*, 25 CARDOZO ARTS & ENT. L.J. 913, 948 (2008).

17. See *Cub Reporters Win Franks Case Glory*, CHI. DAILY NEWS, May 31, 1924, at 3.

18. Fass, *supra* note 8, at 923-29, 938.

19. See John Bartlow Martin, *Murder on His Conscious, Conclusion*, SATURDAY EVENING POST, Apr. 23, 1955, at 138 (a highly sympathetic account of Leopold that stresses the gravity of his earlier crime).

20. See *Id.*

21. Scott A. Newman, 1924 Leopold and Loeb Case, JAZZ AGE CHICAGO, Aug. 2, 2008, <http://chicago.urban-history.org/evt/evt02/evt0200.shtml>. (last visited Jan. 20, 2009).

22. *Kidnap Rich Boy; Kill Him*, CHI. TRIBUNE, May 23, 1924, at 1; *Kidnappers Slay Millionaire's Son as \$10,000 Ransom Waits*, CHI. HERALD & EXAM'R, May 23, 1924, at 1.

23. Fass, *supra* note 8, at 920-21.

24. *Id.* at 921.

25. For a description of the Hyde Park neighborhood, see HIGDON, *supra* note 1, at 18.

26. BAATZ, *supra* note 2, at 7 (Flora Franks took the call; her husband was out of the house looking for their son).

Franks not to contact the police.²⁷ Both the phone call and the note stated that their son was alive.²⁸ Jacob Franks had already informed his attorney and the police of his son's disappearance; he planned to pay the ransom.²⁹

Although no public announcement of the abduction was made at this time, the Chicago *Daily News* received a tip about it on May 22 and assigned James Mulroy to cover the story.³⁰ Hoping to control events, Jacob Franks' lawyer explained the situation to Mulroy and later admitted him into the Franks' mansion in return for a promise that the *Daily News* would not further endanger their son by breaking the story.³¹

On the same day, the newspaper learned that a dead boy had been found in a culvert near Chicago's remote Wolf Lake.³² The unidentified body was naked, scratched, and discolored.³³ Sensing a connection, the *Daily News'* city editor sent another reporter, Alvin Goldstein, to see if the dead boy was Bobby.³⁴ After examining the body, Goldstein called his editor and they agreed that it fit Bobby's description except for the eye-glasses that were recovered with it. Bobby did not wear glasses. Goldstein then called Mulroy, who persuaded Jacob Franks to send his wife's brother to view the body.³⁵ Upon his arrival, he identified the body as Bobby's and called Jacob, who received the message only moments before getting a second phone call instructing him to take the ransom money to a nearby drugstore,³⁶ where he would have received further instructions directing him onto a certain train from which he would throw the small parcel of cash at a set location. The kidnappers would retrieve it there.³⁷ Knowing that his son was already dead, Jacob never went to the drugstore.³⁸ The story of Franks' abduction and murder hit the newsstands a day later.³⁹

Chicago had six daily newspapers in 1924.⁴⁰ They competed ruthlessly for sales and advertising revenue by serving up scandal and sensation.⁴¹ Of course, with gangland violence engulfing the city and a cult of

27. *Id.* at 9.

28. *Id.* at 7-9.

29. *Id.* at 8, 12.

30. HIGDON, *supra* note 1, at 44.

31. *Id.* at 44-45.

32. *Id.* at 44.

33. BAATZ, *supra* note 2, at 11.

34. HIGDON, *supra* note 1, at 44-45.

35. *Id.* at 45.

36. BAATZ, *supra* note 2, at 14.

37. *Slayers Evolve Elaborate Plan to Get Ransom*, CHI. TRIBUNE, June 1, 1924, at 5.

38. BAATZ, *supra* note 2, at 15.

39. *See Kidnap Rich Boy; Kill Him*, CHI. TRIBUNE, May 23, 1924, at 1; *Kidnappers Slay Millionaire's Son as \$10,000 Ransom Waits*, CHI. HERALD & EXAM'R, May 23, 1924, at 1.

40. HIGDON, *supra* note 1, at 27.

41. *Id.* at 27-28.

celebrity sweeping the nation, Chicago papers had plenty of sensational stories to report. In his history of the case, Hal Higdon wrote of the period:

Chicago during this gangster era was a journalist's paradise. . . . The people of the city, disillusioned after the end of the war to make the world safe for democracy, sought titillation, excitement, diversion, entertainment. The Chicago newspapers were anxious to please and served up great gobs of print about crime, scandal, and juicy divorces.⁴²

The abduction and brutal killing of a rich young boy in an exclusive neighborhood provided grist for this mill. At the time, cultural historian John R. Brazil wrote, "public preoccupation with murder and murder trials was in large measure a phenomenon of the press."⁴³ Throughout the 1920s, he noted, "With the single exception of the Lindbergh flight, virtually every sizable paper has its largest circulation during intensive murder trial coverage."⁴⁴ Chicago newspapers stood to gain from covering the Franks murder closely.⁴⁵

At first, the police investigation focused on teachers at Harvard School, the elite prep school that Franks attended in Kenwood and near where he was last seen alive.⁴⁶ Finding Franks' naked, scratched and discolored body so quickly after the abduction led police to suspect pedophilia (rather than ransom kidnapping) as the main motive for the crime.⁴⁷ After examining the body, the coroner stated publically that the boy's body was neither mutilated nor molested⁴⁸ but he left open the possibility of rape in his final report, leading the prosecutor to raise the issue in court.⁴⁹

42. *Id.* at 27.

43. John R. Brazil, *Murder Trials, Murder, and Twenties America*, 30 AM. Q. 163, 163(1981).

44. *Id.* at 164.

45. Speaking of the prospective impact on circulation from extended newspaper coverage of the Franks murder, Darrow noted, "Newspaper sales shoot up beyond belief." CLARENCE DARROW, *THE STORY OF MY LIFE* 233 (1932).

46. BAATZ, *supra* note 2, at 16-17.

47. *Id.* at 21-22. *See also* Fass, *supra* note 8, at 924; *see also* HIGDON, *supra* note 1, at 51, 57.

48. James Doherty, *Kidnapped Boy Died Fighting*, CHI TRIBUNE, May 24, 1924, at 1.

49. Fass, *supra* note 8, at 924, 939. The scratches on the body were probably caused by shoving it in the culvert; the discoloration came from the acid used to by the killers to render the body more difficult to identify. The coroner's report noted, however, "the rectum was dilated and would admit easily one middle finger." BAATZ, *supra* note 2, at 21. In relating the killing of Bobby Frank during the prosecution's closing argument to the court, Crowe noted:

Immediately upon killing him, they took his trousers off. And how do you undress a child? First the little coat, the collar, the tie, the shirt, and the last thing, the trousers. And yet immediately after killing this poor little boy, his trousers alone came off, and for three hours that little dead boy, with his other clothes on him, remained in that car; and they did not take the balance of the clothes off until they pulled the body into the culvert.

Speech of Robert E. Crowe, in *THE LOEB-LEOPOLD CASE*, *supra* note 4, at 247. When defense counsel objected to Crowe's subsequent mention of the coroner's finding regarding the victim's distended rectum, the States' Attorney protested, "The Coroner's report says that he had a distended rectum, and from that fact, and the fact that the pants were taken off, and the fact that [the defendants] are perverts, I have a right to argue that they committed an act of

The widening search for Franks' killer or killers went on for seven days before the police developed a solid lead.⁵⁰ Cook County's ambitious state's attorney,⁵¹ Robert Crowe, a Yale Law School graduate who was elected to his post on a reform ticket, took personal charge of the investigation and promised swift justice.⁵² Chicago Police Chief Morgan Collins assigned hundreds of detectives to the case.⁵³ The media raised the alarm of a deranged child murderer on the loose in the city.⁵⁴ As historian of American childhood Paula S. Fass described it, the news initially focused on children at risk. She wrote:

From its first appearance in print, the story of Bobby Franks's kidnapping was unusual. On May 23, 1924, the day the newspapers reported that Bobby had been kidnapped, they also contained a detailed description of the dead body. The simultaneous public knowledge of the kidnapping and the murder set this story apart from earlier kidnapping stories, in which parents' willingness to accede to ransom demands might forestall harm to the abducted child. As the Franks story developed, sensational detail by sensational detail, the papers invested it with meaning and significance by linking it to widespread concerns about childhood and youth.⁵⁵

Parental loss and Franks' brutal death remained the media focus until the culprits were identified.⁵⁶

Gangster murders abounded in Chicago at the time but this one unexplained death of a rich boy in a fashionable neighborhood caught the public eye.⁵⁷ The police and state's attorney devoted enormous resources to the investigation. "It is one of the worst crimes in the history of the city," Police Chief Collins told reporters. "We must and will clear up the murder."⁵⁸ The media covered it closely and competitively, with two different Chicago newspapers promising \$5000 for exclusive information on the crime to supplement the \$5000 offered by Jacob Franks and \$1000 by the police for information leading to capture of the killers.⁵⁹ Eventually

perversion." BAATZ, *supra* note 2, at 381. After considering the objection raised by the defense, the judge admonished Crowe not to speculate on the matter beyond the contents of the coroner's report. *E.g.*, Charles V. Slattery, *Prosecutor with Biting Irony Rips Mercy Plea*, CHI. HERALD & EXAM'R, Aug. 27, 1924, at 1-2.

50. The first solid lead was identifying Leopold as the owner of the eyeglasses found near the victim. HIGDON, *supra* note 1, at 75-77.

51. On Crowe's ambition for higher office, *see* Fass, *supra* note 8, at 938.

52. HIGDON, *supra* note 1, at 27, 50, 78.

53. HIGDON, *supra* note 1, at 50.

54. *E.g.*, *The Danger to the Children*, CHI. HERALD & EXAM'R, May 28, 1924, at 8.

55. Fass, *supra* note 8, at 920-21.

56. *See The Danger to the Children*, CHI. HERALD & EXAM'R, May 28, 1924, at 8.

57. HIGDON, *supra* note 1, at 143. On gangland killings in Chicago at this time, *see generally id.* at 20-21 ("unsafe to walk the streets at night"); BAATZ, *supra* note 2, at 425 (depicted as "a daily event" and increasing). Despite the worsening violence, in court, Crowe described Franks' killing as "the most atrocious" in the annals of American law. Charles V. Slattery, *15 State's Witnesses Weave net About Pair*, CHI. HERALD & EXAM'R, July 24, 1924, at 2.

58. *See* HIGDON, *supra* note 1, at 51 (quoting Mich. *City Evening Dispatch*, March 23, 1924).

59. *See id.*, at 50.

Mulroy and Goldstein would receive not only some of this reward but also a Pulitzer Prize for their role in investigating and reporting on the murder.⁶⁰

B. "A Bug on a Pin"⁶¹

The first major lead in the investigation came from the eyeglasses found near Franks' body.⁶² A mark on the lenses identified the vendor, who in turn reported selling only three frames with those particular hinges.⁶³ The distinguished Chicago lawyer, legal philosopher and future jurist Jerome Frank had bought one of them. A woman purchased another. The third pair, however, had been purchased by a Kenwood teenager, Nathan Leopold,⁶⁴ who had already been questioned by police about the Franks case because he frequently visited Wolf Lake.⁶⁵ Having earned enough prep school credits for admission to college at age 15, graduated from the University of Chicago in three years and qualified to enter Harvard Law School in the fall, the nineteen-year-old Leopold was the brilliant but lonely offspring of a prominent German Jewish family. He knew multiple languages, was an amateur ornithologist recognized for re-discovering a bird species thought to be extinct and had translated classic Italian gay literature.⁶⁶ Leopold had accounted to police for his visits to Wolf Lake as birding trips.⁶⁷

Not wanting to embarrass an important local family needlessly, Crowe summoned Leopold to a private room at the LaSalle Hotel for questioning on May 29.⁶⁸ Leopold could not produce his glasses and, when confronted with the pair found at Wolf Lake, eventually conceded that he must have lost them there while birding.⁶⁹ When asked about his activities on the day of Franks' murder, Leopold repeated a prepared alibi about carousing in his car with Richard Loeb.⁷⁰

Seven months younger than Leopold and a second cousin of the victim,⁷¹ Loeb had been pushed through prep school in two years by an overzealous governess, graduated from the University of Michigan at age

60. *Id.* at 276.

61. An amateur naturalist, Nathan Leopold used this phrase to characterize how he felt he was treated by the media in its questioning and portrayal of him after his arrest for the murder of Bobby Franks. *See* LEOPOLD, *supra* note 9, at 49.

62. *16th Century Gives Origin; 20th an End to 2 Youth's Crime*, CHI. TRIB., June 1, 1924, at 2.

63. HIGDON, *supra* note 1, at 77.

64. *Id.* at 77.

65. *Id.* at 64.

66. For more on Leopold, *see* BAATZ, *supra* note 2, at 33; *see also* HIGDON, *supra* note 1, at 18-19; *see also* Fass, *supra* note 8, at 922.

67. HIGDON, *supra* note 1, at 64-65.

68. BAATZ, *supra* note 2, at 111.

69. *Id.* at 111, 113.

70. *Id.* at 104, 116.

71. *Loeb Second Cousin of Boy He Kidnapped*, CHI. HERALD & EXAM'R, June 1, 1924, § 1, at 3.

seventeen and was taking a graduate course at the University of Chicago, where Leopold was enrolled in law school pending his transfer to Harvard.⁷² From German Jewish families living in Kenwood mansions only two blocks apart, the two had an on-and-off relationship that was already the subject of speculation about its sexuality.⁷³ Leopold was sullen and reclusive, a bird-watcher with few friends; Loeb was dashing and gregarious in the Gatsby style of the 1920s. Leopold was bookish, scholarly, easily offended and attracted to virile young men; Loeb joined a fraternity at college, dated girls, loved parties and obsessively read detective novels. Both drank bootleg liquor, smoked heavily and liked expensive cars.⁷⁴ Loeb's father was vice president of the Sears mail-order and department-store enterprise and wealthier than Leopold's father.⁷⁵ As the key figure in Leopold's alibi, Loeb was called in for questioning and, point by point, corroborated Leopold's account.⁷⁶ Crowe remained skeptical, however, and continued to test their alibi.⁷⁷

Learning early on May 30 that Leopold and Loeb were persons of interest in the case, the media quickly began investigating them.⁷⁸ In a matter of hours, Goldstein tracked down members of Leopold's University of Chicago law study group and obtained copies of typed study sheets prepared for the group by Leopold. The type on some of the sheets matched the type on the ransom note.⁷⁹ With this added information, Crowe now thought the boys were guilty. He became convinced when, later on that same day, the Leopold's family chauffeur and mechanic, Sven Englund, told investigators that the boys could not have driven Leopold's car on the day of murder, as they had claimed, because he had been working on it.⁸⁰ Englund was certain of the date because he had bought a prescription drug for his daughter that day, and the label confirmed the date.⁸¹ "They used some other machine," he told investigators regarding the automobile.⁸² Crowe later joked, "When you are a Swede you're bound to remember when you spend money on your daughter."⁸³ Englund's testimony broke the case.⁸⁴

72. BAATZ, *supra* note 2, at 40, 50, 51.

73. *Id.* at 41, 47, 51-52. For a map showing the homes of Leopold, Loeb, and Franks, see HIGDON, *supra* note 1, at 103.

74. On these similarities and differences, see HIGDON, *supra* note 1, at 20; BAATZ, *supra* note 2, at 28, 41-42, 51, 131; John Bartlow Martin, *Murder on His Conscious*, pt. 1, SATURDAY EVENING POST, Apr. 2, 1955, at 86.

75. BAATZ, *supra* note 2, at 34.

76. *Id.* at 116-17.

77. *Id.* at 116-17.

78. *Id.* at 117.

79. *Id.* at 120-21.

80. *Id.* at 121, 127-28.

81. HIGDON, *supra* note 1, at 92.

82. *Id.* at 91.

83. *Id.* at 92.

84. See *16th Century Gives Origin*, *supra* note 67, at 2.

Confronted with the new evidence, Loeb confessed.⁸⁵ “My God! He told you that,” Loeb said of the chauffeur’s testimony, “Shit!”⁸⁶ He then told Crowe all about the crime.⁸⁷ Leopold confessed after Crowe presented him with Loeb’s testimony.⁸⁸ The two confessions matched.⁸⁹ They had decided to murder someone, it did not matter who. After months of planning, they had rented a car, picked up Franks at random on his way home, bludgeoned him with a chisel, suffocated him with a gag, drove with the body to Wolf Lake, stripped it, tried to obscure its identity with acid and stuffed it in a culvert where they thought that it would not be found. Then they sent the ransom note. They botched various parts of their plan but still almost got away with murder and seemed proud of their scheme.⁹⁰ Leopold and Loeb disagreed on only one major point: Each said the other killed Franks.⁹¹ Regardless of that discrepancy, both boys were clearly guilty of the joint enterprise. They then led investigators around town collecting physical evidence of the crime.⁹²

Crowe announced the boys’ confessions on May 31, ten days after the murder.⁹³ “We have the most conclusive evidence I’ve ever seen in a criminal case, either as a judge or prosecutor,” he told reporters. “The case against these two young men is absolutely conclusive. I can’t see how they can get a way from it.”⁹⁴ Crowe boasted, “I have a hanging case and would be willing to submit it to a jury tomorrow. I shall present the facts, including the confessions, to the grand jury early in the week.”⁹⁵

The boys’ families only then fully realized the gravity of the situation.⁹⁶ Loeb’s uncle, Jacob, a former president of the Chicago School Board, and Leopold’s father and brother, Michael, appeared at the Chicago Criminal Courts Building on May 31 with Loeb’s cousin, Benjamin C. Bachrach, a leading criminal attorney with a reputation for defending gangsters and government officials charged with corruption or murder.⁹⁷ Early the next morning, Jacob Loeb was at the home of Chicago’s renowned defense lawyer Clarence Darrow, who had argued several of the nation’s

85. John Herrick, *Search for New Thrills Motive, Slayers Assert*, CHI. TRIB., June 1, 1924, at 3.

86. HIGDON, *supra* note 1, at 92.

87. BAATZ, *supra* note 2, at 132.

88. *Id.* at 134.

89. *Id.* at 137.

90. HIGDON, *supra* note 1, at 95-112 (summary of confessions).

91. BAATZ, *supra* note 2, at 136-37.

92. Charles V. Slattery, *Slayers Called Victims of Plot by Extortionists*, CHI. HERALD & EXAM’R, June 1, 1924, at 1.

93. *Killers Collapse*, CHI. AM., May 31, 1924, at 1; Herrick, *supra* note 90, at 3 (“‘We have our murderers,’ [Crowe] said”); *see also* Charles V. Slattery, *Slayers Called Victims of Plot by Extortionists*, CHI. HERALD & EXAM’R, June 1, 1924, at 2.

94. HIGDON, *supra* note 1, at 122.

95. Slattery, *supra* note 98, at 112.

96. *See* BAATZ, *supra* note 2, at 138-39.

97. *Id.* at 131; HIGDON, *supra* note 1, at 122-23.

most notorious murder cases of the preceding thirty years and never lost a client to the gallows.⁹⁸ Jacob reportedly pleaded, "Get them a life sentence. That is all we ask. We'll pay anything, only for God's sake, don't let them hang."⁹⁹ Darrow agreed to take the case as an all expenses paid means to challenge the legitimacy of the death penalty and promote his view of human determinism.¹⁰⁰ In defending Leopold and Loeb, Darrow was assisted by Bachrach and Bachrach's brother, Walter.¹⁰¹ The media soon was touting Leopold and Loeb's "million-dollar defense" and anticipating a trial as sensational as the crime.¹⁰² A rich boy's unexplained murder made for front-page news in Chicago but the identity of his wealthy, precious killers captured the nation's headlines.¹⁰³ Darrow's entry into the case made it the top story of the summer.¹⁰⁴

II. THREE FACES OF LEOPOLD AND LOEB

Over the course of the fourteen weeks between their confession and their sentencing, the media offered at least three distinguishable depictions of Leopold and Loeb: Nietzschean supermen, over-indulged teenage thrill-killers, and deeply troubled youth.¹⁰⁵ The prosecution favored the first;

98. BAATZ, *supra* note 2, at 144-45. Up to that time, Darrow had represented 102 clients charged with the death penalty, with all of his clients ultimately either acquitted or sentenced to a lesser penalty. HIGDON, *supra* note 1, at 131. In his 1932 autobiography, Darrow wrote about the time when he was asked to defend Leopold and Loeb, "No client of mine had ever been put to death, and I felt that it would almost, if not quite, kill me if it should ever happen." DARROW, *supra* note 50, at 232.

99. IRVING STONE, CLARENCE DARROW FOR THE DEFENSE 242 (1941).

100. HIGDON, *supra* note 1, at 124; BAATZ, *supra* note 2, at 196.

101. HIGDON, *supra* note 1, at 137, 160.

102. E.g., *Public Backs State in Fight*, CHI. HERALD & EXAM'R, June 4, 1924, at 3 (used phrase "million-dollar defense"); James Doherty, *Millions to Defend Killers*, CHI. TRIB., June 2, 1924, at 1. Prosecutors publically asserted that the fathers of Leopold and Loeb had a "combined fortune of \$15 million" and suggested that they would pay half of it to save their boys from hanging. *Id.* The actual figure was probably closer to \$5 million, which was still substantial in 1924. HIGDON, *supra* note 1, at 136. In his closing argument, Crowe charged:

Take away the millions of the Loebes and Leopolds, and Clarence Darrow's tongue is as still as the tongue of Julius Caesar. . . . Clarence Darrow once said that the poor man on trial was usually disposed of in fifteen minutes, but if he was rich and committed some crime, and he got a good lawyer, his trial would last twenty-one days. Well, they have three good lawyers, and it has lasted just a little bit longer. . . .

Speech of Robert E. Crowe, *supra* note 54, at 224-25.

103. A 1924 account of the case noted that "public interest was concentrated on the doers of the deed" and asserted that it "created a stir far beyond this country." URSTEIN, *supra* note 4, at 1. Other contemporary accounts speak of its nationwide impact. E.g., *Leopold and Loeb*, *supra* note 18, at 659 ("dominated the American newspapers"); REX, *supra* note 18, at 2 ("horried this entire country").

104. Darrow later wrote about the publicity, "Few cases, if any, ever attracted such wide discussion and publicity; not only in America, but anywhere in the world." DARROW, *supra* note 103, at 226; see also *Leopold and Loeb*, *supra* note 18, at 659; HIGDON, *supra* note 1, at 135-37; BAATZ, *supra* note 2, at 161-62, 196.

105. See generally Fass, *supra* note 8, at 924-39.

some public commentators gravitated toward the second; and the defense staked their case on the third.¹⁰⁶ In a front-page essay published on the day following the boys' confessions, the *Chicago Tribune* suggested all three of these depictions as it struggled to explain the complex mix of factors that made the killers so interesting and incomprehensible:

The diabolical spirit evinced in the planned kidnapping and murder; the wealth and prominence of the families whose sons are involved; the high mental attainments of the youths; the suggestions of perversions; the strange quirks indicated in the confession that the child was slain for a ransom, for experience, for the satisfaction of a desire for "deep plotting," combine to set the case in a class by itself.¹⁰⁷

The three faces of Leopold and Loeb that appeared in the Chicago press during the summer of 1924 have haunted American culture ever since. Those faces and a fourth one involving gay repression that emerged over a half-century later represent the contested public image of an eighty-five year-old crime.¹⁰⁸ Each one is outlined below.

A. Persona 1: Nietzschean Supermen

At the time, Americans struggled to understand why two rich, accomplished teenagers who seemed to have everything would kill a young neighborhood boy who had done nothing to offend them.¹⁰⁹ From the first, Leopold's quirky personality and unusual intellect served for some as a substitute for a motive.¹¹⁰ During the two days that he was being questioned prior to his confession, Leopold had an opportunity to talk with reporters. In his history of the case, Hal Higdon presented the scene that seemed to set the stage for the media's subsequent interpretation of Leopold's character:

Reporters peppered him with questions about literature, politics, art, sports. Leopold would puff on a cigarette, pause, then issue a decisive pronouncement in stilted legal language, occasionally flashing a sardonic smile.

Some of his favorite authors, he informed reporters, were Wilde, Nietzsche, Haeckel, and Epicurus but "I won't add Socrates, for I never thought such a lot of him."

Leopold claimed to be a profound student of the past, particularly the sixteenth century, the "wickedest century the world has ever known." He denied being a radical, Communist, or Socialist: "on questions of reform my temperature is decidedly normal." Though an admitted atheist, he did not recommend that view for everyone. A belief in God was a good thing to keep the common people under control, to keep them in their place.¹¹¹

106. See *infra* subsections IIA-C.

107. *Take Loeb and Leopold on Franks Death Route*, CHI. TRIB., June 1, 1924, § 1, at 1. At the time, the word "perversion" was often used to mean homosexuality. Fass, *supra* note 8, at 924.

108. See *infra* section III; Fass, *supra* note 8, at 940-44.

109. E.g., see URSTEIN, *supra* note 4, at 48.

110. Fass, *supra* note 8, at 925.

111. HIGDON, *supra* note 1, at 88-89.

Once he confessed, Leopold was ripe for portrayal by the media as a self-conceived Nietzschean superman exempt from normal moral, ethical and legal standards.

The media stamped this identity on Leopold at the time of his confession and it stuck in the minds of many. For example, on the day that Leopold confessed, an article in the *Chicago Tribune* noted:

Now Nathan is having an "experience" that seems to bring him no "regret," no worry, no alarm. A marvelous opportunity to study his own reactions! And with a sense of detachment he watches—as a scientist might—his own curious lack of emotion.¹¹²

The following day, the *Tribune* called Leopold a "psychic adventurer de luxe."¹¹³ On that same day, June 1, the *Chicago Herald and Examiner* commented, "Mr. Leopold Jr. is undoubtedly the brains of the combination, the breadth and scope of his knowledge alone would be sufficient to sweep the other boy along."¹¹⁴ It characterized the Franks murder as "the most cold-blooded and motiveless crime" in the historical record.¹¹⁵ An article in the *Tribune* stated that the "mental makeup" of Leopold was revealed by his depiction of the murder as an experiment that he "did as easily as he would stick a pin through the back of a beetle."¹¹⁶ Recalling reporter's coverage of this widely reprinted comment, Leopold later wrote, "I was justifying the whole horrible thing on the grounds that 'scientific curiosity' gave me the right to commit it as an experiment, their stories unanimously said the next day."¹¹⁷

The prosecution latched on this interpretation of the killing. Crowe characterized Leopold as "the most brilliant boy of his age I've ever known!"¹¹⁸ As the trial approached in a city renown for gruesome gangster killings, he referred to the Franks case as "the most atrocious, cruel, brutal, cowardly, dastardly murder in the history of American jurispru-

112. Maurine Watkins, *Big Experience Either Way, Is Nathan's View*, CHI. TRIB., May 31, 1924, § 1, at 3.

113. Genevieve Forbes, *They Slew for a Laboratory Test in Emotion*, CHI. TRIB., June 1, 1924, § 1, at 1.

114. *Expert Charles A. Bonniwell Analyzes Character of the Two Student Slayers and Reveals their Innermost Thoughts*, CHI. HERALD & EXAM'R, June 1, 1924, at 2 (includes analysis of facial characteristics of Leopold and Loeb).

115. *Genius Used for Six Months in Planning Cruel Slaying*, CHI. HERALD & EXAM'R, June 1, 1924, at 1.

116. *Two Experts See Abnormality in Franks Slayers*, CHI. TRIB., June 16, 1924, § 1, at 9. Several variations of Leopold's quote appeared at the time. E.g., URSTEIN, *supra* note 4, at 49 ("such a death can be justified as easily as the impaling of a butterfly"); Doherty, *supra* note 107, at 2 ("as easy to for us to justify that experiment as it is to justify an entomologist in impaling a beetle on a pin").

117. LEOPOLD, *supra* note 9, at 49. In this autobiographical account written over three decades after the event, Leopold claimed that he was misquoted and that his actual comment referred to the media's treatment of him, not his treatment of Franks. *Id.*

118. Watkins, *supra* note 117, at 3. On this point, Darrow agreed with Crowe. See DARROW, *supra* note 103, at 231 (Leopold "had, and has, the most brilliant intellect that I ever met in a boy").

dence.”¹¹⁹ Summarizing the perceived character of Leopold as a detached, philosophical killer, historian Paula Fass wrote:

As soon as Leopold stepped before the public eye, the press began to fashion a portrait of a Nietzsche-obsessed scientist who had destroyed his feelings in the interest of experimentation and cold ratiocination. Since there was no obvious motive and Bobby's identity was entirely incidental to the plot that Leopold and Loeb had concocted as a test and consummation of their friendship, making sense of the crime was no easy task. In many ways, therefore, the portrait of Leopold became a substitute for a motive.¹²⁰

In this popular interpretation of the killing, the more social, less brilliant Loeb appeared as a thrill-seeking follower who adopted Leopold's delusions of superiority and made them his own.¹²¹ The day after his confession, for example, one newspaper article referred to Loeb as “a suggestible type.”¹²² Leopold became the manipulative monster who managed the murder.¹²³

The image of one or both killers as self-conceived implementers of a Nietzschean ideal, although contested, clung to the case. It was fully developed in the popular 1948 motion picture *Rope*, directed by Alfred Hitchcock and starring James Stewart.¹²⁴ Although the movie did not use the killers' real names and reset the crime in an urban apartment, it was widely recognized as a dramatic representation of the Leopold-Loeb case.¹²⁵ The plot and the Nietzschean persona of the killers are summarized in a 1948 *Los Angeles Times* review, which described the movie as follows:

119. Slattery, *supra* note 62, at 2.

120. Fass, *supra* note 8, at 924-25.

121. This image of Loeb fit his reported explanation for the crime. When asked about his motive for killing Franks, Loeb was quoted in 1924 as responding:

The pleasure of planning it and the notoriety which the papers would give to the crime and the fact that I would talk it over with other people and derive a thrill from my feeling of superiority, in that I knew the true facts about the crime. What is pleasant to me I have a right to do, because I am the greatest individual in society. . . .

URSTEIN, *supra* note 4, at 48.

122. Expert Charles A. Bonniwell, *supra* note 119, at 2.

123. Commenting on his own view of the crime as a young boy in Chicago during the summer of 1924, Leopold's later attorney Elmer Gertz wrote, “I then regarded Nathan Leopold as the worse of the two young fiends. I was persuaded that he had mesmerized Dick Loeb into plotting with him.” ELMER GERTZ, A HANDFUL OF CLIENTS 5 (1965).

124. *ROPE* (Warner Brothers 1948). For one indication of the movie's popularity, see “*Rope*” *Will Hold Over*, L. A. TIMES, Oct. 1, 1948, at 22.

125. In announcing the film in January, 1948, the movie-industry journal *Variety* stated, “[T]heme is of a thrill murder, done for no reason but to satisfy a sadistic urge and intellectual vanity. Plot has its real-life counterpart in the infamous Loeb-Leopold case, and based on the play by Patrick Hamilton.” *Film Reviews*, VARIETY, Jan. 1948, in Variety Review Database, ProQuest document ID 1002141651. At the time, syndicated movie columnist Hedda Hopper wrote of *Rope*, “The story is a murder mystery, based on the Loeb-Leopold case.” Hedda Hopper, *Looking at Hollywood*, L. A. TIMES, Jan. 30, 1948, at 15. The popular connection of *Rope* to the Leopold-Loeb case continues. When the movie was re-released in 1984, for example, a review by the noted film critic Vincent Canby observed that it “turns Chicago's infamous old Leopold-Loeb murder case into something approximating a drawing-room comedy.” Vincent Canby, *Hitchcock's 'Rope': A Stunt to Behold*, N. Y. TIMES, June 2, 1984, § H, at 19.

Actually it is a practical paraphrase of the Loeb-Leopold case which rocked the country about a quarter of a century ago.

John Dali and Farly Granger commit a psychological and "perfect" murder. They regard themselves as superior men. They destroy an inferior man. The plan is to make their deadly work undetectable.

They have learned a justification for the act from James Stewart who was their instructor in college at one time. He, it seems, theorized that murder might be excused under certain circumstances.

As Brandon and Philip in "Rope," Dali and Granger took the theorizing of Rupert Cadell (Stewart) seriously. Dali succeeds very well in coldly carrying the whole thing off; Granger is the "weaker" partner in the crime and neurotically blows up.¹²⁶

In an interpretative segment released with the DVD version of *Rope*, the writer who adapted Patrick Hamilton's play, *Rope's End*, for Hitchcock's movie explained, "The intention was that this teacher had influenced the boys with Nietzsche's philosophy of the superman."¹²⁷

To coincide with the movie's release, Dell Publishing Company issued an inexpensive pulp thriller, *Alfred Hitchcock's Rope*,¹²⁸ which told the same story and borrowed much of the movie dialog. Using the names from the movie for the characters, the book's introduction neatly summarizes the Nietzschean character popularly ascribed to Leopold and Loeb:

Brandon is brilliant and arrogant, a young egomaniac proudly convinced of his place in a select group of individuals whose acts are above any moral law. Phillip is a gifted pianist, but a weakling, influenced by Brandon to try murder.¹²⁹

At one point in the book shortly after the murder, Brandon exclaims to Phillip:

"An Immaculate murder. We've killed for the sake of danger and for the sake of killing. And we're alive—truly and wonderfully alive!"¹³⁰

Later, Brandon explains to one of his dinner guests, Henry Kentley, his beliefs regarding the superior "few" who should have the privilege of killing inferior people:

"The few are those men of such intellectual and culture superiority that they are above the traditional moral concepts. Good and evil, right and wrong, were invented for the ordinary average man, the inferior man—because he needs them." . . .

"I gather you agree with Nietzsche," Kentley was saying through tight lips, perhaps trying to keep from sounding indignant, "and his theory of the Superman."

"I do," Brandon assented.¹³¹

In the end, the film's culprits are exposed just about as easily as Leopold and Loeb were caught in real life. Proud of their achievement, they are not

126. Edwin Schallet, *'Rope' Attains Ultimate Grimness in Murder Vein*, L. A. TIMES, Sept. 25, 1948, at 11.

127. Hume Cronyn, in "Rope Unleashed," bonus material on ROPE DVD (Universal Studios Home Video 2006).

128. ALFRED HITCHCOCK'S ROPE (New York: Dell Publishing Co., 1948) (the book's paperback cover calls it "A Dell Thriller").

129. *Id.* at ii.

130. *Id.* at 9.

131. *Id.* at 74.

very discreet killers. Released on DVD in 2006, the movie continues to perpetuate Leopold's Nietzschean identity. The product description issued with the DVD describes *Rope* as "a highly-charged thriller inspired by the real life Leopold-Loeb murder case."¹³²

The characters of Leopold and Loeb continue to inspire writers and dramatists, many of who draw on the superman image. For example, a 2002 major motion picture, *Murder by Numbers*, starring Sandra Bullock as a detective who relentlessly pursues two modern-day privileged teenage murders loosely modeled on Leopold and Loeb.¹³³ One, named Richard, is wealthy, popular, and obsessed with crime—like Loeb. Another, named Justin, is brilliant, socially awkward and obsessed with notions of superiority—like Leopold. The movie opens with Justin espousing his faith in Nietzschean ethics to his high school classmates with Richard appearing uninterested. Their teacher asks, "Doesn't anyone want to challenge Justin's thesis? Are you all willing to submit to this Darwinian struggle?"¹³⁴ The scene is followed by ones showing the boys plotting and executing their Nietzschean killing. In the DVD annotation, producer-director Barbet Schroeder explained, "[t]he scene was a little longer. There was a little more explanation of their philosophy, but we decided to cut it down because there is no real explanation that is going to satisfy anybody. It is always going to look simply stupid."¹³⁵ Nevertheless, the script provides no other explanation for the murder. "Something is not right about that kid," the relentless detective says about Richard at one point.¹³⁶ As presented in this performance, characters clearly based on Leopold and Loeb act on their sense of Nietzschean superiority. Over eighty years after their crime, Leopold and Loeb cannot escape this interpretation in the popular culture.¹³⁷

B. Persona 2: Precocious Teenage Thrill-seekers

Drawing on her expertise in early twentieth century youth culture, historian Paula Fass identified a second media portrayal of Leopold and

132. *Product Description*, <http://www.amazon.com/Rope-James-Stewart/dp/B000ECX0O2> (last visited Jan. 20, 2009). Amazon.com listed *Rope* as its second bestselling DVD among Hitchcock's 1940s movies, and number 7181 overall in movies and television.

133. *MURDER BY NUMBERS* DVD (Warner Home Video 2002).

134. *Id.*

135. *Id.*

136. *Id.*

137. *E.g.*, near the beginning of John Logan's widely preformed play, *Never the Sinner*, which had its London opening in 1990, Leopold and Loeb discuss their philosophy of life in a fictional scene that captures this aspect of their popular persona:

LEOPOLD. The *Übermensch*—the *Superman*—as Nietzsche envisioned him is aloof to the petty concerns of mankind. . . . The superman is exempt from the laws that bind the common run of humanity. He lives in a realm that transcends the body politic.

LOEB. Above.

LEOPOLD. Yes. Above humanity. . . . He feels no obligation to be limited by the social, religious, and moral conventions of his contemporaries. Their paltry laws and ethics pale to insignificance before him.

Loeb that emerged during the months between their confession and sentencing. With a keen eye for the interests of the media and public commentators in crafting this second persona, she wrote:

If Leopold was an alien fiend, and the case simply a quirk, it was difficult to justify its continuing prominence in the daily press. To make the case significant it had to become a reflection on modern life For the case was a sensation in part because, at nineteen and eighteen, Leopold and Loeb were children themselves, not much older than their victim. Soon Leopold and Loeb were appropriated to a Fitzgeraldesque type of youth, suffering from ennui, overeducation, or overindulgence, and especially from intellectual precocity.¹³⁸

In this persona, Leopold and Loeb exemplified the indulged youth culture of the 1920s “jaded by the Jazz-life of gin and girls,”¹³⁹ with their extreme wealth, privilege and intelligence simply making them into exaggerated, though still recognizable, forms of every boy, or at least every rich, pampered and precocious boy of the Twenties. Here, Loeb’s reputation as “a good average youngster,”¹⁴⁰ fit perfectly. In various early accounts of the crime, Loeb appeared as a well-liked, fun-loving fraternity boy who had gone astray under bad influences.¹⁴¹

In Chicago and presumably elsewhere, the teenage murderers became the subject of countless church sermons and moralistic commentary.¹⁴² Many ministers and rabbis presented Leopold and Loeb as a warning to parents and children about the need for moral training, religious instruction and parental discipline in an overindulgent, materialistic age.¹⁴³ Billy Sunday, a popular Protestant evangelist and former Chicago White Sox baseball player, declared: “I think this hideous crime can be traced to the moral miasma which contaminates some of our ‘young intellectuals.’ It is now considered fashionable for higher education to scoff at God.”¹⁴⁴ He attributed the crime to “precocious brains, salacious books, infidel minds.”¹⁴⁵

LOEB. Hm.

LEOPOLD. So you begin to understand the awesome responsibility of the *Urbemensch*.

LOEB. To live up to his exalted potential, yes. To be remembered.

LEOPOLD. Yes.

LOEB. *To stun the world.*

JOHN LOGAN, *NEVER THE SINNER* (1994), at 12 (Samuel French, Inc., edition of script).

138. Fass, *supra* note 8, at 926.

139. See Maurine Watkins, “*Dick Innocent, Loebs Protest; Plan Defense*,” CHI. TRIB., June 1, 1924, at 5.

140. *Expert Charles A. Bonniwell Analyzes Character of the Two Student Slayers and Reveals their Innermost Thoughts*, CHI. HERALD & EXAM’R, June 1, 1924, at 2.

141. See E.g., Watkins, *supra* note 144, at 5; see also Forbes, *supra* note 118 at 3; see also *Two Experts See Abnormality in Franks Slayers*, CHI. TRIB., June 16, 1924, at 9. See generally, Fass, *supra* note 8, at 925.

142. W. H. Carwardine, *Franks Slaying Warning to Parents, Chicago Pastors Say*, CHI. HERALD & EXAM’R, June 9, 1924, § 1, at 4 (“Never in the history of the city have the clergymen had such an object lesson with which to enforce the truth of the hour”).

143. See *id.*

144. *Hang the Slayers, Billy Sunday Says*, CHI. HERALD & EXAM’R, June 5, 1924, § 1, at 3.

145. *Id.*

A popular early-twentieth-century writer of manuals on childrearing, William Arch McKeever, further universalized the crime's moral message. Using the murder to stress the value of a proper diet for children, he observed:

Another partial explanation of the Loeb-Leopold case is the fact of chronic dissipation. The digestive tracts of thousands of youths today are clogged with the poisons and impurities of a constant supply of too much rich food. This heavy mass thrown into the stomach, washed down with bad drinks and smokes, this chronic poison, actually changes the chemistry of the blood which surges through the brain and initiates the thinking.¹⁴⁶

Seeing the killing in such common terms, one Chicago minister claimed that the case had "caused more heart searching on the part of parents than any crime within my memory of forty years in the ministry."¹⁴⁷ Such a response apparently reflected parental fear that the killers were somehow like their own children. Accordingly, a week after Leopold and Loeb confessed, a column in the *Chicago Herald and Examiner* asked readers, "What would you do if you should wake up tomorrow morning and read in the morning papers that your son had confessed to the brutal, cruel, murder of a poor, little, friendly, unsuspecting, good-natured child?"¹⁴⁸

By portraying Leopold and Loeb as overindulged youth seeking bootleg thrills in the Jazz Age, commentators drew lessons from the case for all parents. In a co-authored book that appeared shortly after the trial, the national leader of the Progressive Era movement to establish juvenile courts, Denver Judge Ben B. Lindsey, cautioned:

Let no parent flatter himself that the Leopold-Loeb case has not lesson for him. . . . It was more than the story of a murder. It was the story of modern youth, of modern parents, of modern economic and social conditions, and of modern education.¹⁴⁹

Similar warnings appeared in Chicago newspaper articles during the pre-trial period.¹⁵⁰ Chicago mystery writer Edwin Balmer commented at the outset:

We have striven to free our youth, to put upon them little or no responsibility; we have permitted and encouraged the casting off of restraints, a contempt for old codes and morals. . . . And two of the most gifted and brilliant products of the periments of today are held by the state's attorney, charged with the most revolting crime of the century.¹⁵¹

In a popular 1924 book based on her coverage of the case, Chicago journalist Maureen McKernan depicted Leopold and Loeb as "two frightened,

146. See HIGDON, *supra* note 1 at 135 (quoting William A. McKeever).

147. Carwardine, *supra* note 147 at 4. See also Balmer, *supra* note 1, at 4 ("No single act in our memory has cast such fear and awe over all classes of people").

148. Winifred Black, *If Your Son Were Slayer?* CHI. HERALD & EXAM'R, June 9, 1924, § 1, at 2.

149. BEN B. LINDSEY & WAINRIGHT EVANS, *THE REVOLT OF MODERN YOUTH* 104 (1925).

150. E.g., John T. Wallace, *Home Blamed for Slaying*, CHI. HERALD & EXAM'R, June 11, 1924, § 1, at 6 ("The crime of Nathan Leopold Jr. and Richard Loeb was laid at the door of parental neglect"); Rex, *supra* note 18, at 2 ("awaken parents to the great responsibilities of training their children to finer ideals").

151. Balmer, *supra* note 1, at 4.

foolish boys who found themselves in a terrific mess with the eyes of the world upon them.”¹⁵²

In defending his clients from the death penalty, Clarence Darrow drew on this image of a misguided youth to characterize Loeb.¹⁵³ In his closing argument to the court, for example, Darrow wove trial evidence about his client’s childhood into a compelling portrayal of the “boy” that he persisted in calling “Dickie”:

Here was a boy of tender age, placed in the hands of a governess, intellectually, vigorous, devoted, with a strong ambition for the welfare of the boy. He is pushed in his studies, as plants are forced in hothouses. . . . She putting before him the best books, which children generally do not want; and he, when she is not looking, reading detective stories, which he devoured, story after story, in his young life. . . .

Now these facts are beyond dispute. He early developed the tendency to mix with crime, to be a detective; as a little boy shadowing people on the street; as a little child going out with his fantasy of being the head of a band of criminals. How did this grow and develop in him. Let us see. *It seems to me as natural as the day following the night.*¹⁵⁴

Loeb, in Darrow’s hands, becomes an ordinary boy who was pushed too hard to become precocious.¹⁵⁵ In concluding his oral argument about Loeb, Darrow characterized the crime as the product of common childish excess that did not call for hanging:

From the age of fifteen to the age of twenty or twenty-one, the child has the burden of adolescence, of puberty and sex thrust upon him. Girls are kept at home and carefully watched. Boys without instruction are left to work the period out for themselves. It may lead to excess. It may lead to disgrace. It may lead to perversion. Who is to blame? . . .

There is not the act in all this horrible tragedy that was not the act of a child, the act of a child wandering around in the morning of life, moved by the new feelings of a boy, moved by the uncontrolled impulses which his teaching was not strong enough to take care of, moved by the dreams and the hallucinations which haunt the brain of a child. I say, your Honor, that it would be the height of cruelty, of injustice, of wrong and barbarism to visit the [death] penalty upon this boy.¹⁵⁶

At other points in the trial when it served their purposes, Darrow attributed

152. MAUREEN MCKERNAN, *THE AMAZING CRIME AND TRIAL OF LEOPOLD AND LOEB* 73 (1924). Depicting their response to their sentence, McKernan similarly wrote about Leopold and Loeb, “When the boys realized that they were to live, the frozen expressions of their faces broke, and for once they were mere boys.” *Id.* at 375.

153. Still defending Loeb (and perhaps himself) eight years after the boy’s conviction for murder, Darrow wrote in his autobiography:

“Dicky” Loeb was not only a kindly looking boy but he was and is a kindly boy. He was never too busy to personally do a favor for anyone that he chanced to know. There was no reason why he should be put into prison for life excepting for the strange and unfortunate circumstances that might not occur again in a thousand years.

DARROW, *supra* note 103, at 231.

154. Speech of Clarence Darrow, *supra* note 4, at 162-64 (emphasis added).

155. Darrow later describes Loeb as “a good-natured, friendly boy.” DARROW, *supra* note 50, at 230. Reflecting this view of Leopold and Loeb as the natural product of overdevelopment, one article about the case noted that “the end results of precocity are often perversion, at least mental and moral.” Forbes, *supra* note 118, at 3.

156. Speech of Clarence Darrow, *supra* note 4, at 170-71, 173.

other persona to his clients, especially in order to humanize Leopold, but he typically presented Loeb as a precocious teenager who could be anyone's misguided child.

This image of Leopold and Loeb, which Fass describes as dominant in 1924,¹⁵⁷ survives in popular culture. For example, John Logan's play about the Leopold and Loeb case, *Never the Sinner*, which had its Chicago premier in 1985 and has been performed widely ever since, opens prior to the murder with the main character spouting all sorts of gibberish about Nietzsche and being supermen.¹⁵⁸ It closes, however, with a split stage showing Darrow making his closing argument and his clients in jail. The light has shifted to them, and the script reads:

LEOPOLD. Dick, why did we kill Bobby Franks?

(Pause. They look at each other.)

LOEB. I don't know.

LEOPOLD. (With great difficulty.) I don't know either. (Pause.) We're not Supermen, are we?

(Beat.)

LOEB. No, I guess not.

(Light cross fade back to ...)

DARROW. I have stood for three months as one might stand trying to hold back the tide. I wish to make no false pretensions to the court. The easiest thing and the most popular thing to do would be to hang my clients. . . . But stretching out over this land more and more fathers and mothers, the humane, the kind and the hopeful—who are gaining an understanding of these two boys, *but of their own as well*—they will join in no acclaim of the death of my clients.¹⁵⁹

Logan took Darrow's words almost verbatim from the trial transcript.¹⁶⁰ He made up the ones here attributed to Leopold and Loeb. The passage captured the image of them as misguided youth. Building toward this conclusion for his play, a heated fictional exchange between the chief lawyers in case has Darrow replying to State's Attorney Robert Crowe's insistence on the death penalty for Leopold and Loeb by saying, "They're boys, Bob. Boys. And they're scared."¹⁶¹ As it is performed time and again, Logan's play reinforces the portrayal of Leopold and Loeb as precocious boys who made a bad mistake.¹⁶²

157. Fass, *supra* note 8, at 924-26.

158. LOGAN, *supra* note 142, at 12 (quoted in part above at n. 142).

159. *Id.* at 84.

160. See Speech of Clarence Darrow, *supra* note 4, at 211-12 (emphasis added).

161. LOGAN, *supra* note 142, at 60.

162. An article in the *New York Times* later noted that *Never the Sinner* "opened to rave reviews" in Chicago and went on to be an "off-Broadway hit" in New York. Dennis McDougal, *John Logan's Solo Show*, N. Y. TIMES, Jan. 9, 2005, at § 2, at 1; see also *Fall's Fresh Faces*, L. A. TIMES, Sept. 10, 1998, § F, at 8 ("off-Broadway hit"). *E.g.*, such an image of Leopold and Loeb also appeared in an edgy 2001 comic book, *Ice Haven*, in which one neighborhood boy, described on the back cover as a "troubled youth," abducts and kills another neighborhood boy after reading a cheap old paperback crime novel titled *The True Story of Leopold and Loeb*. CLOWES, *supra* note 4, at 14-15. In the comic-book abstract of the novel, Loeb is described as "an affable and gregarious fellow" and Leopold is depicted as "a

C. Persona 3: Deeply Disturbed Youth

As much as some commentators and defense counsel might favor the view of Dickie and Babe as modern teens on a joy ride, it was difficult for some people to square that image with a close inspection of these two particular college graduates—and the media and public inspected them very closely during the summer of 1924. This was particularly true for Leopold, who always seemed alien, but also increasing so for Loeb, as people took a closer look at him. After all, they admitted to kidnapping and killing a fourteen-year-old neighbor, sought a ransom and never expressed remorse.¹⁶³ Then, during the hearing of their case, which ran from July 21 to September 10, both defendants (but especially Loeb) appeared to alternate between states of utter disinterest and positive amusement—but never to look contrite.¹⁶⁴ Many people saw them as either pathologically disturbed or completely insane.¹⁶⁵

Although it did not keep him from seeking mercy for his clients by characterizing them as mere boys, Darrow ultimately opted to portray them in court as deeply troubled but not insane.¹⁶⁶ Obviously they had killed Bobby Franks. Prior to obtaining counsel, they had helped the prosecution assemble an airtight case.¹⁶⁷ If his clients now pled not guilty by reason of insanity, their case would be decided by a jury, and Darrow believed that, given their education, intellect and lucid confessions, no jury would find that Leopold and Loeb did not know what they were doing when they killed Franks, and that it was wrong, which was the legal standard for the insanity defense.¹⁶⁸ If they pled guilty, however, the judge, John R. Caverly, would decide their fate and Darrow hoped that, given their age and mental condition, Caverly might spare their lives.¹⁶⁹ The defense would not need to show legal insanity, only mitigating circumstances.¹⁷⁰ With the aid of a high-powered psychiatric team,¹⁷¹ Darrow set about to create a third persona for Leopold and Loeb: deeply disturbed youth who were emotionally unable to control their actions.

quiet, prickly honor student with a passion for ornithology.” *Id.* As portrayed in this comic book, Leopold, Loeb, and Bobby Franks seem much like the comic book’s modern young characters. *Id.*

163. See HIGDON, *supra* note 1, at 141, 155.

164. URSTEIN, *supra* note 4, at 55-56; *see also* MCKERNAN, *supra* note 157, at 73-75.

165. One local citizen interviewed by a Chicago newspaper commented on the case, “I can’t conceive of normal persons committing such a revolting deed.” *No Poverty to Excuse Deed*, CHI. HERALD & EXAM’R, June 1, 1924, § 1, at 3.

166. DARROW, *supra* note 50, at 234 (“We did believe and sought to show that their minds were not normal and never had been normal”).

167. *See* Slattery, *supra* note 97, at 1 (“I will hang them, State’s Attorney Crowe said”).

168. DARROW, *supra* note 50, at 236. *See also* BAATZ, *supra* note 2, at 278.

169. DARROW, *supra* note 50, at 237. *See also* BAATZ, *supra* note 2, at 284.

170. For a discussion of Darrow’s strategy and reasoning behind it, *see* HIGDON, *supra* note 1, at 163-64; *see also* Fass, *supra* note 8, at 931.

171. For background on members of this team written by a journalist covering the trial, *see* MCKERNAN, *supra* note 157, at 164-66.

Anticipating that the defense would assert that Leopold and Loeb were insane when they killed Franks, Crowe moved quickly to secure three of Chicago's best forensic psychiatrists for the prosecution.¹⁷² Using traditional methods and definitions, they determined the defendants to be sane.¹⁷³

The defense countered by engaging three renowned East Coast alienists who adopted a modern Freudian approach to psychology that focused more on subconscious motives and emotional or instinctive drives than on physical evidence of mental disease.¹⁷⁴ One of them, William Alanson White, who as chief-of-staff at Washington's St. Elizabeth's Hospital had helped to introduce Freudian psychoanalysis to America,¹⁷⁵ explained their methods:

The new analytic psychology goes much deeper in its analysis of motives and delves beneath the surface of the obvious into the region of the so-called unconscious where reside those primitive tendencies of which the individual himself may be quite unaware and yet which, in their efforts at expression, avail themselves of all manner of devious byways which are calculated to obscure their real meanings.¹⁷⁶

Although Crowe scornfully dismissed them in court as "three wise men from the East [who] came to tell your Honor about these little babies,"¹⁷⁷ these psychologists and their testimony attracted widespread attention and inevitably shaped the public understanding of the defendants.¹⁷⁸

The defense also hired two physicians, Harold S. Hulbert and Karl M. Bowman, to conduct a complete mental and medical examination of Leopold and Loeb. The 50,000-word-long Hulbert-Bowman report, later described as "probably the most comprehensive psychiatric study ever made of two defendants in a murder case,"¹⁷⁹ laid bare to the court and public the most private fantasies and actions of Leopold and Loeb.¹⁸⁰ Indeed, the public learned of these before the court when the press some-

172. DARROW, *supra* note 50, at 235 ("Before any lawyer was employed the State had called into their counsel the best-known alienists in Chicago"). See also Leopold, *supra* note 66, at 63; HIGDON, *supra* note 1, at 128-29, 137.

173. LEOPOLD, *supra* note 66, at 64; see also THE LOEB-LEOPOLD CASE, *supra* note 4, at 34-40.

174. See HIGDON, *supra* note 1, at 137; see also Fass, *supra* note 8, at 932. The three were William Alanson White of Washington, William Healy of Boston, and Bernard Glueck of New York.

175. Fass, *supra* note 8, at 932.

176. HIGDON, *supra*, note 1, at 137-38 (quoting William Alanson White).

177. Speech of Robert E. Crowe, *supra* note 54, at 238.

178. E.g., a reporter who covered the trial said of the testimony and report of these defense psychologists:

Probably never in the history of criminal trials has there ever been before such a painstaking, elaborate and detailed examination of any person charged with a crime, by such a distinguished corps of scientists as was made of Nathan F. Leopold, Jr., and Richard Loeb, in this case.

MCKERNAN, *supra* note 157, at 81-82.

179. HIGDON, *supra* note 1, at 147.

180. See MCKERNAN, *supra* note 157, at 83-140.

how obtained an advance copy and (except for explicit parts about sexual acts) made its content front-page news.¹⁸¹

The testimony and reports of defense experts created a third persona for Leopold and Loeb. These experts did not portray them as either self-styled supermen or teenage thrill-seekers. Rather, in the hands of these experts, the defendants became textbook Freudian examples of profound emotional and mental disorder: not criminally insane, but deeply troubled.¹⁸² According to the defense experts, both were emotionally scarred in childhood by oppressive governesses. Loeb was addicted to detective novels and fanaticized about leading a criminal gang; Leopold had “super-normal” intelligence and dreamed of becoming the slave to a virile king. Loeb idealized his mother, whose death he blamed on himself; Loeb still talked to his teddy bear about his fantasy life. Psychopathically dependant on each other, they had entered into a secret pact in which Leopold assisted Loeb to commit crimes in return for sexual favors. The result had been a series of increasingly serious crimes ending in Franks’ murder. Each had privately considered killing the other, and both had contemplated suicide.¹⁸³ These private thoughts and actions, plus others from the reports and testimony of the defense experts, would feature in later accounts of Leopold and Loeb.¹⁸⁴ They became fodder for their public image.

In their individual court testimony and their written Joint Medical Report, four defense psychiatrists, three from the East and one local, diagnosed each defendant as deeply disturbed from childhood in his own distinct way.¹⁸⁵ Together, the mix was toxic.¹⁸⁶ In his court testimony, for example, White explained:

181. Fass, *supra* note 8, at 933, 940-41. For an example of newspaper use of the report’s contents, see *Here’s Report by Alienists on Dick Loeb*, CHI. TRIB., July 28, 1924, § 1, at 3. In her post-trial book that included both the Hulbert-Bowman report and the defense psychologists’ Joint Medical Report, Chicago Herald and Examiner reporter Maureen McKernan also deleted what she referred to as “unprintable matter concerning the sex lives of the defendants.” MCKERNAN, *supra* note 157, at 82.

182. In a 1924 book, a widely published psychologist summarized this view of Leopold and Loeb as follows:

We believe these boys were in an irresponsible condition due to a failure of their emotion, will, and thinking power. This fact, which a psychiatrist could have proven again and again, does not at all exclude the apparent deliberation and carrying out of a carefully prepared plan of action.

It seems a priori unbelievable that these boys were conscious of the full import of their actions. . . . Had these students of jurisprudence, victims of an early moral shipwreck, been able to realize the far-reaching consequences of their action, they would have refrained from them. . . .

URSTEIN, *supra* note 4, at 2.

183. These various aspects of life and character of Leopold and Loeb appear in the Hulbert-Bowman report or the trial testimony of the defense experts. For a summary, see BAATZ, *supra* note 2, at 445-60; see also HIGDON, *supra* note 1, at 144-56, 193-205; see also THE LOEB-LEOPOLD CASE, *supra* note 54, at 26-27; Fass, *supra* note 8, at 933-36.

184. See MCKERNAN, *supra* note 157, at 83-163 (“super-normal” at 153); see also URSTEIN, *supra* note 4, at 54-65.

185. See MCKERNAN, *supra* note 157, at 141-63 (reprints Joint Medical Report).

186. For an edited summary of their oral testimony to this effect, see THE LOEB-LEOPOLD CASE, *supra* note 4, at 15-34.

We can only understand this homicide by understanding the back and forth play of these two personalities as they are related to each other. Now, Dickie Loeb, with his feelings of inferiority, developed certain anti-social tendencies In his fantasies, the criminalistic gang was his audience. In reality, Babe Leopold was his audience. Babe is generally the slave in the situation. But he is a powerful slave, who makes Dickie king. . . .

I do not believe that the Franks homicide can be explained without an understanding of this relation. Babe would not have entered it alone, because he had no criminalistic tendencies, as Dickie did. Dickie would never have gone as far as he did without Babe to give that final push.¹⁸⁷

When directly asked if Loeb's mental condition was normal or otherwise, White testified, "Decidedly otherwise. He is still a little child talking to his Teddy bear."¹⁸⁸ White specifically diagnosed Loeb as a borderline schizophrenic with "an infantile emotional make-up which was a long way from the possibility of functioning harmoniously with his developed intellect."¹⁸⁹

In their courtroom testimony, the other defense experts further explored this troubled relationship and Leopold's role in it. After discussing his slave-like devotion to Loeb, for example, New York psychologist Bernard Glueck concluded:

Nathan F. Leopold, in my estimation, is a definitely paranoid personality, perhaps developing a definite Paranoid psychosis. I have not seen a definite psychosis of this sort in as young a person as he is.¹⁹⁰

Commenting on both defendants, Harvard psychiatrist William Healy, a specialist in juvenile delinquency, added,

It is very clear that each came with peculiarities in his mental life; each arrived at these peculiarities by different routes; each supplemented the other's already constituted abnormal needs in a unique way. In regard to the association, I think that I ought to say that the crime in its commission and its background has features that are quite beyond anything in my experience.¹⁹¹

Summing up the defense view of Franks' murder, when asked specifically to state the motive, Hulbert concluded, "It was a desire on the part of

187. *Id.* at 15-16.

188. *Id.* at 16. In his 1958 autobiography, Leopold adopted a similar account of delayed emotional development to account for his own actions. He wrote:

It seems to me that when I was a boy my emotional development lagged far behind my intellectual growth. My emotions did not reach maturity for some years after my reasoning powers; at nineteen they were still too weak to make me recoil from the suggestion that I help commit the crime.

LEOPOLD, *supra* note 9, at 33.

189. THE LOEB-LEOPOLD CASE, *supra* note 4, at 16. In its analysis of Loeb, the defense psychologists' joint report stated:

The opinion is inescapable that in Loeb we have an individual with a pathological mental life, who is driven in his actions by the compulsive force of his abnormally twisted life of fantasy or imagination, and at this expresses himself in his thinking and feeling and acting as a split personality, a type of condition not uncommonly met with among the insane.

We therefore conclude that Richard Loeb is now mentally abnormal and was so abnormal on May 21st, 1924, and, in so far as anyone can predict at this time, will continue, perhaps with increasing gravity as times goes on.

MCKERNAN, *supra* note 157, at 163.

190. THE LOEB-LEOPOLD CASE, *supra* note 4, at 24.

191. *Id.* at 19-20.

Richard Loeb to commit a perfect crime, a desire on [Leopold's] part to do whatever Richard Loeb wanted him to do."¹⁹² Not so disordered as to be insane, these two disturbed personalities and their destructive relationship would become infamous.

In a three-day closing argument widely hailed as the best speech of his career,¹⁹³ Darrow crystallized the image of Leopold and Loeb as deeply troubled boys whose death would not serve any just purpose. In a representative passage, he said about his clients:

How insane they are I care not, whether medically or legally. They did not reason; they could not reason; they committed the most foolish, most unprovoked, most causeless act that any two boys ever committed, and they put themselves where the rope is dangling above their heads. Why did they kill Bobby Franks? Not for money; not for spite; not for hate. They killed him as they might kill a spider or a fly, for the experience. They killed him because they were made that way. Because somewhere in the infinite processes that go to the making up of the boy or the man something slipped, and those unfortunate lads sit here hated, despised, outcasts, with the community shouting for their blood.¹⁹⁴

Darrow's plea worked. Attributing the murder to the abnormalities of the defendants and citing their youth as his justification, rather than impose the death penalty, Judge Caverly gave both Leopold and Loeb life sentences for murder plus separate prison terms of ninety-nine years for kidnapping.¹⁹⁵ Under Illinois law, they would be eligible for parole in 1957.¹⁹⁶ By that time, they had become cultural icons.

Launched by Darrow and the defense psychiatrists, the enduring image of Leopold and Loeb as fragile, deeply disturbed youth emotionally scarred from childhood received a classic restatement in Meyer Levin's 1956 bestselling historical novel, *Compulsion*,¹⁹⁷ which inspired a 1958 Broadway play¹⁹⁸ and 1959 motion picture starring Orson Wells in the Darrow role.¹⁹⁹ Like *Rope*, *Compulsion* used pseudonyms for the characters but unlike *Rope*, *Compulsion* so closely tracked the original case that even Leopold, who read the novel in prison, had difficulty separating fact from fiction.²⁰⁰

192. *Id.* at 30.

193. See HIGDON, *supra* note 1, at 235.

194. Speech of Clarence Darrow, *supra* note 4, at 133-34.

195. HIGDON, *supra* note 1, at 264-67.

196. HIGDON, *supra* note 1, at 311.

197. MEYER LEVIN, *COMPULSION* (1956). The book, which sold 130,000 copies in hardback and more than one million copies in paperback, long remained high on bestseller lists. HIGDON, *supra* note 1, at 316 (number of copies); "*Compulsion*" *Outsize, Interesting Offering*, L. A. TIMES, Oct. 26, 1957, § B, at 3 ("high on the best-seller lists").

198. There were two plays adapted from the book, both called *Compulsion*. One played on Broadway, but Levin publically broke with its producers during production and eventually wrote his own. Levin gives his history of both plays in the Forward to the published version of his play. MEYER LEVIN, *COMPULSION: A PLAY* (1959), v-xxxix.

199. *COMPULSION* (20th Century Fox, 1959).

200. In his autobiography, Leopold complained about Levin and his book, stating

He has taken a large amount of fact, and to it he has added an even larger amount of fiction—or pure balderdash. And he has done it in such superbly artistic fashion that the

As a University of Chicago campus correspondent for the Chicago *Daily News* and self-styled college chum of Leopold and Loeb, Levin played a minor role covering the crime in 1924.²⁰¹ In *Compulsion*, Levin blurred his role in the original episode with that of other cub reporters involved with the case to create a single character, Sid Silver. As a seasoned journalist in the 1950s assigned because of his prior connection with the case to interview a fifty-year-old Judd Steiner (Levin's name for the Leopold character) about his application for parole, Silver narrates the story in the first person.²⁰² The Loeb character, Artie Straus, had no role in the framing scene because years earlier, as reader of *Compulsion* would likely know,²⁰³ the real-life Loeb had been slashed to death in prison by a male cellmate who claimed (probably falsely) that Loeb had propositioned him.²⁰⁴ As Sid, the seasoned reporter and former classmate of the killers, Levin retells the Leopold-Loeb story in the first person.²⁰⁵

Freudian psychology had gained widespread cultural acceptance by the 1950s and, in this respect, *Compulsion* reflected the era of its composi-

seams don't show. No general reader can possibly know what is true and what contrived. I confess that I, on several occasions, had to stop and think hard to be sure whether certain details were true or imaginary.

LEOPOLD, *supra* note 9, at 370. Reviewing *Compulsion* for the *New York Times*, mystery writer Erle Stanley Gardner, who later wrote the forward for Leopold's autobiography, noted Levin "follows the established facts of the Loeb-Leopold case so closely that any libelous statement would still be actionable." Erle Stanley Gardner, *Killers for Kicks*, N. Y. TIMES, Oct. 28, 1956, § 7, at 7 (book review). Placing the book in the tradition of Fyodor Dostoevsky's *Crime and Punishment* and Theodore Dreiser's *An American Tragedy* as a crime novel inspired by a real case, Levin comments in the Forward about the historical accuracy of his characters:

If I have followed an actual case, are these, then actual persons? Here I would avoid the modern novelist's conventional disclaimer, which no one fully believes in any case. I follow known events. Some scenes are, however, total interpolations, and some of my personages have no correspondence to persons in the case in question.

LEVIN, *supra* note 202, at ix.

201. Levin wrote one feature article for the *Daily News* before leaving on a summer vacation in Europe. See HIGDON, *supra* note 1, at 139.

202. LEVIN, *supra* note 202, at 3-4 (story assignment). For a telling example of Levin's exaggeration of his role in the case, in *Compulsion*, Sid is one of two reporters sharing in reward money for solving the case while in reality this money went to Mulroy and Goldstein. Compare *Id.* at 479, with HIGDON, *supra* note 1, at 276.

203. See Martin, *supra* note 79, at 17 (a feature article on Leopold in a general circulation magazine simply noted in passing, as if readers would know, that "Richard Loeb is long since dead").

204. On Loeb's death in 1936, see HIGDON, *supra* note 1, at 291-303. The manner of Loeb's death led one Chicago reporter to begin his account of the event with the quip, "Richard Loeb, a brilliant college student and master of the English language, today ended his sentence with a proposition." *Id.* at 298 ("many newspapermen consider [this] the classic lead paragraph of all time"). Leopold denied that Loeb made sexual advances to his assailant. LEOPOLD, *supra* note 9, at 266-279; see also Fass, *supra* note 8, at 941.

205. For the bracketing of the story around Sid's assignment to interview Judd in prison, see LEVIN, *supra* note 202, at 3-4, 495. In connection with writing *Compulsion*, though not by assignment of his newspaper, Levin did visit Leopold in prison; driven there in the Leopold family car by Sven Englund, who still worked for the family. HIGDON, *supra* note 1, at 314.

tion.²⁰⁶ In the novel, play and movie, the actions and personalities of the killers appeared as Freudian products of their childhood, deep emotions and sexual drives. The title reflected this: *Compulsion*.²⁰⁷ “Are any of the great questions of guilt, of free will and of compulsion, so burningly debated at trial—are any of these questions resolved?” Levin asked at the outset and then set about tackling them in his book.²⁰⁸ For example, in addition to showing Judd as dependent on a psychopathic partner, *Compulsion* offers a further explanation for Judd’s participation in the crime by having a fictional college friend who subsequently studied psychology under Sigmund Freud in Vienna, Willie Weiss, piece together various scarring childhood experiences supposedly suffered by Judd (all drawn from court testimony and psychological reports about Leopold) to speculate that Judd had a repressed “girl-part of himself” that he sought to kill by murdering Franks.²⁰⁹ Sid replied to Weiss:

Then Judd was not merely Artie’s accomplice. He wasn’t there only because he was in love with Artie. He had to do the murder because of some compulsion in himself. Just as Artie did.²¹⁰

Presumably to underscore this message, Sid mused, “there were individuals, people like Freud and even Willie, who held keys to inner knowledge.”²¹¹

In this and other passages, *Compulsion* went far beyond the defense psychologists in giving a Freudian account of Franks’ murder.²¹² At the time, one book reviewer praised Levin’s “ability to make the dark recesses of perverted abnormality seem so thoroughly logical.”²¹³ Levin’s play, another reviewer noted, “unravels the psychotic and paranoiac characteristics of the two thrill-seeking sons of Chicago wealth.”²¹⁴ A review of the movie described Artie as “the sneering, arrogant youth who can no longer distinguish between reality and his dreams” and Judd as “an impressionable, sensitive youth, caught up in the spell of his strong-willed companion.”²¹⁵ In presenting the courtroom phase of the case, the book, play and movie borrow generously from the words of defense psychiatrists and

206. Fass, *supra* note 8, at 944.

207. Levin originally planned to call his book *Compulsion and Free Will* but opted for just *Compulsion*. MEYER LEVIN, *THE OBSESSION* 166 (1973).

208. LEVIN, *supra* note 202, at 4.

209. *Id.* at 481-89 (quote at 486).

210. *Id.* note 202, at 489.

211. *Id.* at 484.

212. See HIGDON, *supra* note 1, at 325.

213. Gardner, *supra* note 205, at 255. See also, *Boucher’s Best of ’56*, N. Y. TIMES, Dec. 2, 1956, Book Reviews, at 30 (book review describing *Compulsion* as a “psychoanalytic adaption of Leob-Leopold case, superb both in quality as fiction and in fidelity to fact.”); Charles Shapiro, *The Crime of Our Age*, THE NATION, Dec. 1, 1956, at 483 (book review) (“So Levin retells the Leopold and Loeb story to recapture a sickness that is part of our times; retells this tale of murder and depravity to teach us about ourselves.”).

214. Ray Loynd, “*Compulsion*” Staged at Theater of Arts, L. A. TIMES, July 21, 1969, § A, at 5.

215. *Compulsion*, VARIETY, Jan. 1959, at Variety Review Database, ProQuest document ID 1002150371.

counsel—with the movie devoting twelve minutes to an Orson Welles soliloquy drawn heavily from Darrow’s closing argument.²¹⁶

Despite its fictional form, many reviewers saw *Compulsion* as an essentially accurate expos of Leopold and Loeb’s true persona.²¹⁷ Far from supermen in control of their destiny, they had become virtual puppets in a Freudian psychodrama. Leopold was paroled from prison in 1958, while *Compulsion* was still a bestselling novel and playing on Broadway.²¹⁸

III. A FOURTH PERSONA COMES OUT OF THE CLOSET

Although the media’s initial coverage of the case sensationalized the crime²¹⁹ and some later accounts promised a full exposure of it,²²⁰ for

216. John L. Scott, “*Compulsion*” Proves Grim but Compelling, L. A. TIMES, Apr. 25, 1959, § B, at 2.

217. E.g., Shapiro, *supra* note 218, Dec. 15, 1956, at 484 (book review concluding that, despite the book being a work of fiction, “Levin is writing his way to the truth.”). In her analysis of the film version of *Compulsion*, Jessica Sibley noted that it was promoted and presented as a tell-all movie experience that would expose the true nature of the relationship between Leopold and Loeb. Jessica Sibley, *Truth Tales and Trial Films*, 40 LOY. L.A. L. REV., 551, 570-72 (2007). See, e.g., the film’s publicity trailer asked about the two main characters, “Do you know the strange relationship that existed between them?” and goes on to say of the book, play and movie: “*Compulsion* as a sensational best seller their story electricified the world! As a Play it shocked Broadway. Now it’s on the screen!” *COMPULSION* DVD (20th Century Fox 2006) (emphasis in original trailer). In his autobiography, Leopold rejected the *Compulsion* version of his character. He wrote, “Mr. Levin’s long-distance, do-it-yourself psychoanalysis of Artie and Judd strikes me, at least, as ludicrous.” LEOPOLD, *supra* note 9, at 370. Defending Levin from Leopold’s charges, Higdon commented that “one suspects that Nathan Leopold was most angered that Meyer Levin had got into his brain, deeper even than had Darrow’s alienists, uncovering motives that Leopold himself was not aware existed.” HIGDON, *supra* note 1, at 325.

218. Levin believed that the portrayal of Leopold in *Compulsion* helped to win his release from prison. LEOPOLD, *supra* note 9, at 376. Leopold disagreed, but appreciated Levin’s subsequent efforts to free Leopold. *Id.* Levin testified before the parole board on Leopold’s behalf, as did Illinois poet Carl Sandberg. HIGDON, *supra* note 1, at 318, 320. In his own testimony before the board, Leopold gave a psychological explanation for his crime that shifted the primary blame on Loeb:

I committed the crime because I admired Loeb extravagantly, because I didn’t want to be a quitter, and because I wanted to show that I had the nerve to do what he insisted on doing. . . . This horrible crime was not a thing I had the least desire to commit. But I was a boy of nineteen, not old enough to vote, not old enough to make a legal contract. And I was completely carried away by my admiration for Loeb. I had not learned to control the fierce emotions of adolescence; I did what he wanted.

HIGDON, *supra* note 1, at 318-19. Leopold’s autobiography, which focused on his exemplary life in prison, and a sympathetic series of articles in Saturday Evening Post about Leopold as a model prisoner who had voluntarily participated in a dangerous World War II malaria experiment probably helped as well. See *id.* at 314-16.

219. *Leopold and Loeb*, *supra* note 18, at 669 (“During the ten days between the discovery and the confessions the Press spread itself over the hunt for clues. When the mystery was at an end there began the exploitation of Leopold and Loeb on a scale and with a recklessness going beyond anything hitherto known.”)

220. E.g., Sibley, *supra* note 222, at 570-72 (*Compulsion* promoted as “tell-all movie experience”).

decades, little was published about the sexual side of Leopold and Loeb's relationship.²²¹ From the outset, people speculated about pedophilic motives for Franks' abduction and whispered about what bound together two such different killers,²²² but gay love and repression only emerged as central aspects of their public image much later. The three faces of Leopold and Loeb, which first appeared in the summer of 1924 and dominated the public understanding of them for a half century, did not portray either of them as gay. In her 1993 cultural study of the episode, historian Paula Fass concluded, "Despite the reputation of the 1920s as an era of sexual revolt, the sexuality in the Leopold and Loeb case was not fully explored then."²²³

To the extent that the media emphasized sexuality in its initial coverage of the case, it stressed Loeb's many girl friends and his appeal to women.²²⁴ Leopold, the Chicago *Tribune* speculated at the time, had a weaker sex drive than Loeb.²²⁵ Darrow privately opined that Leopold was gay and that Loeb was straight,²²⁶ but he never mentioned their sexuality in his closing argument.²²⁷ Although the Hulbert-Bowman report detailed the sexual practices and preferences of both defendants, including their mutual masturbation and Leopold being exclusively attracted to men,²²⁸ at the time even writers with access to it did not mention these matters in their published articles and books.²²⁹

The situation was much the same in court. Defense psychiatrist William Healy explained the nature of the crime pact between the defendants, noting that "Leopold was to have the privilege of inserting his penis between Loeb's legs . . . if they continued their criminalistic activities together,"²³⁰ and testified about the defendants that "they experimented

221. E.g., Darrow's 1932 autobiography, which includes two chapters on the case, noted that Leopold "had an exalted opinion of Loeb" without mentioning anything about their sexuality. DARROW, *supra* note 103, at 228. A 1955 feature article about Leopold's prison years published in a popular magazine comments: "Leopold entered into a sexual relationship with Loeb. It was a childish relationship and did not involve acts usually thought of as adult homosexuality. Leopold was in no sense a 'true homosexual.'" Martin, *supra* note 79, at 87.

222. E.g., in his closing statement to the court, the States' Attorney declared, "These two defendants are perverts . . . I want to tell your Honor, bearing in mind the testimony that was whispered in your ear, one of the motives of this case was a desire to satisfy unnatural lust." Speech of Robert E. Crowe, *supra* note 54, at 246-47.

223. Fass, *supra* note 8, at 940.

224. E.g., Maureen McKernan, *Weeping Girls Mourn Plight of Richard Loeb*, CHI. TRIB., June 4, 1924, § 1, at 2.

225. An image from the Chicago Tribune using phrenology to show Leopold's weaker sex drive is reprinted in Fass, *supra* note 8, at 935. The Hulbert-Bowman report found just the opposite: Loeb has a low sex drive, the defense experts wrote, and Leopold "has a marked sex drive, and has not been able to satisfy it in the normal heterosexual relations." HIGDON, *supra* note 1, at 202-03.

226. HIGDON, *supra* note 1, at 147.

227. See Speech of Clarence Darrow, in *supra* note 4, at 118-214.

228. See HIGDON, *supra* note 1, at 201-04.

229. Fass, *supra* note 8, at 940-41.

230. BAATZ, *supra* note 2, at 316 (quoting from Healy's testimony).

with mouth perversions.”²³¹ He also noted about Leopold, “Even in jail here, a look at Loeb’s body or his touch upon his shoulder thrill him so, he says, immeasurably.”²³² The court took this testimony in whispers, however, out of the hearing of reporters.²³³ When Crowe’s closing argument raised the matter of pedophilia as a motive for the crime, Judge Caverly ordered women, including female reporters, to leave the courtroom.²³⁴ Detailed depictions of gay sexual acts never appeared in the press reports of the day and they did not become part of the defendants’ initial public persona.²³⁵

Until the 1980s, elaborations of the three initial public images of Leopold and Loeb also played down the homosexual aspects of their relationship. Alfred Hitchcock’s *Rope*, for example, never broached the topic even though the plot revolves around two young male friends acting under the influence of a bachelor former teacher. Arthur Laurents, who wrote the screenplay, later explained:

What is curious to me, *Rope* is obviously about homosexuals. The word was never mentioned. Not by Hitch[cock], not by anybody at Warner, where it was filmed. It was referred to as “it.” They were going to picture about “it,” and the actors were “it.”²³⁶

Laurents noted that Hitchcock originally wanted Cary Grant and Montgomery Cliff, closeted lovers in real life, to act in *Rope* but “they did not want to be associated with ‘it,’” so he chose James Stewart, whose clean screen image removed the sexual element from the movie.²³⁷

Despite the advance billing that *Compulsion* would fully expose the Freudian sexual drives underlying “the crime of our century,”²³⁸ that book, play and movie kept the spotlight mainly on heterosexuality. In the novel, prior to their arrest, both killers were shown as sexually attracted to

231. *Id.* at 317 (quoting from Healy’s testimony).

232. *Id.* at 317 (quoting from Healy’s testimony).

233. *Id.* at 316-17.

234. *Id.* at 380-83.

235. *E.g.*, in 1926, when one publisher reprinted Crowe’s closing argument in an edited book of testimony and arguments from the Leopold and Loeb trial, it omits the State’s Attorneys’ depiction of the defendants as “perverts” and his reference to the coroner’s report on Franks’ “distended” rectum. Compare Speech of Robert E. Crowe, *supra* note 54, at 247 (Crowe jumps from commenting on the defendants undressing Franks to them steeling a typewriter to type the ransom note without ellipses or any other indication of material being omitted) with BAATZ, *supra* note 2, at 381-83 (summarizing Crowe’s argument with extended excerpts). Given the yellow journalism of the day, the absence of such material from the newspapers is telling. Attempting to explain it, Fass writes, “Perhaps to this was because the story that became central in the press was about childhood, and because the boys’ story was normalized at the time when heterosexuality dominated public discussions of youthful misbehavior.” Fass, *supra* note 8, at 940.

236. *Rope Unleashed*, in *ROPE DVD* (Universal Studios Home Video, 2006) (commentary by Arthur Laurents).

237. *Id.*

238. Levin gives this title to the first section (or “book”) of his novel. LEVIN, *supra* note 202, at vii.

women.²³⁹ When they pick up prostitutes, it was Judd (the Leopold character) who could perform.²⁴⁰ Levin even developed a female companion for Judd, Ruth Evans, who he attempted to rape and was convinced that he “really” loved.²⁴¹ She played a major role in the plot. Levin also tried to normalize Judd’s attraction to Artie (the Loeb character). In response a friend’s comments about Judd’s feeling toward Artie, for example, Sid (in the role of author/narrator) played down its peculiarity by declaring, “We all have kid crushes like that. . . . It didn’t make us all homosexual. Or did it?”²⁴² The movie version of *Compulsion* does not contain any scenes of sexual intimacy between Leopold and Loeb. One commentator characterized its portrayal of them as depicting “narcissism and ego-mania” rather than “homoerotic love.”²⁴³ While *Compulsion* fleshed out the sexual and psychological sides of Leopold and Loeb more than previous popular portrayal of them, the homosexual aspects of their bond remained muted. Rather than Gatsby-like youth of the Twenties, they became Fifties rebels without a cause.²⁴⁴

The public image of Leopold and Loeb changed dramatically by the end of the century, however, as homosexuality became more openly discussed and accepted in popular American culture. For example, Logan’s 1985 play about the case, *Never the Sinner*, incorporated sexually explicit portions of defense psychologist William Alanson White’s testimony:

CROWE. I beg your pardon, Dr. White. Are you referring to a homosexual pact made between Leopold and Loeb?

White. Yes.

(Pause, There is absolute silence in the courtroom.)

CROWE. (Quietly.) When was this pact created?

239. *E.g.*, *id.* at 134.

240. *Id.* at 134.

241. *Id.* at 154-56, 184. In his autobiography, published two years after *Compulsion*, Leopold claimed to be “head over heels in love” with a girl named Connie at the time of Franks’ murder. LEOPOLD, *supra* note 9, at 30. This claim contradicted the Hulbert-Bowman report, prepared for Leopold’s criminal defense in 1924, which stated that never had either a “true love” or “puppy-love” affair. MCKERNAN, *supra* note 157, at 124. At the time of Franks’ murder, Leopold occasionally dated Susan Lurie, who was the basis for Ruth Evans in *Compulsion*. HIGDON, *supra* note 1, at 30, 49, 63, 67, 72, 325. Describing his feelings for Loeb in 1924, Leopold in his autobiography never admitted to having a sexual relationship with Loeb and wrote as if Loeb were simply his best friend in the typical fashion of two young boys: “He was aces with me. I wouldn’t trade his little finger for any six other people I knew.” LEOPOLD, *supra* note 9, at 27. After his release from prison in 1958 at age 53, Leopold moved to Puerto Rico, married a middle-aged widow and boasted of visiting “most of the better whore-houses” in San Juan. HIGDON, *supra* note 1, at 336-37. All this made it less likely that people saw him as gay. He died in 1971 at age 66. *Id.*

242. HIGDON, *supra* note 1, at 486. In her analysis of the book, Paula Fass concluded, “Levin proposes sexual drive as the motive force for Leopold’s involvement [in the crime], making the homosexual dimension of the boy’s relationship just one facet of a more complex sexual energy that propels Leopold.” Fass, *supra* note 8, at 943.

243. Sibley, *supra* note 222, at 571, n.91.

244. For an account from the Fifties reflecting this view, see also Martin, *supra* note 79, at 87 (“For Loeb, like Leopold, was a phantast, but it happened that Loeb’s phantasies had a criminal bent”).

WHITE. Around the middle of November, 1923.

CROWE. Well, Dr. White, what was the substance of this contract?

WHITE. This compact, as told to me by both of the boys, consisted of an agreement that Leopold would be able to . . . Do you want me to be specific?

CROWE. Absolutely.

WHITE. Well, in essence, their agreement was an even exchange of sexual activity for criminal activity. Leopold would take part in crimes primarily to accommodate Loeb and Loeb would take part in sexual acts primarily to accommodate Leopold. Leopold had the days of sexual interaction marked on a special calendar and on these certain days Leopold, who has had for many years a great deal of fantasy life surrounding sexual activity, usually with Loeb himself, was to have the opportunity of exploring certain areas that he found to be of . . .²⁴⁵

At this point in the play, the light shifts to Leopold and Loeb acting out one of their special days, with Leopold pressing Loeb to deliver on his part of the bargain.²⁴⁶

Far from seeking to shock, this scene from *Never the Sinner* was central to Logan's effort to normalize Leopold and Loeb. Discussing the main characters as presented in his play, Logan explained,

It came down to a question of what each one needed from their relationship, and how, given the right circumstances, anyone could be capable of going to such an extreme. . . . Leopold and Loeb are not evil; they are simply subject to the forces of their universe.²⁴⁷

Logan offered a new take on established characters and his play became an off-Broadway hit during the 1990s.²⁴⁸ "The relationship of Leopold and Loeb is like a gem: you can hold it up, twist it in the light, and see different facets illuminated," he noted.²⁴⁹ By twisting it once again, Logan helped to give his lead characters a new public persona for the 1990s: repressed gay lovers.

In developing Leopold and Loeb's gay persona, *Swoon*²⁵⁰ picked up where *Never the Sinner* left off. An avant-garde, low-budget movie released in 1992, *Swoon* garnered critical acclaim, Sundance Film Festival honors and commercial success.²⁵¹ For *Swoon*, the *Los Angeles Times*

245. LOGAN, *supra* note 142, at 29-30.

246. *Id.* at 30-31.

247. Matt Wolf, *History Man from Chicago*, THE TIMES (London), Mar. 28, 1990, at 16.

248. See *Fall's Fresh Faces*, L. A. TIMES, Sept. 10, 1998, § F, at 8 ("off-Broadway hit"). Only 22 when he wrote *Never the Sinner* as a Northwestern University student, Logan went on to win Oscar nominations as a movie screenwriter. See Sid Smith, "Aviator" Writer's *Career Takes Off*, L. A. TIMES, Dec. 31, 2004, § E, at 22.

249. Wolf, *supra* note 252, at 16.

250. SWOON (American Playhouse, 1992).

251. See, Caryn James, *At the Sundance Film Festival, Art and Commerce Square Off*, N. Y. TIMES, Jan. 22, 1992, § C, at 15 ("not only a Fine Line release, but it will also eventually turn up on PBS's 'American Playhouse'"); Kenneth Turan, *Popular Films Take Top Prizes at Sundance Fest Movies*, L. A. TIMES, Jan. 27, 1992, Calendar, at 1 (cinematography award); Susan King, *Daniel Schlachet's "Swoon" Role Makes Believers of Casting Agents*, L. A. TIMES, Oct. 3, 1992, Calendar, at 2 ("acclaimed film"); Caryn James, *Dangerous Liaisons Are All the Rage*, N. Y. TIMES, Nov. 22, 1992, at § 2, at 13 ("long playing"). *Swoon* turned a profit and appeared on television. See Kevin Thomas, *Prime-Time Flicks*, L. A. TIMES, July 6, 1997, TV Times, at 4.

reported shortly after the movie's release, director Tom Kalin "has immediately been pigeonholed as a frontrunner in the "New Queer" or "PoMo Homo" (postmodern homosexual) cinema" and "hailed as a new hero for homosexuals."²⁵² Filmed in black and white counterposing newsreel footage from the Twenties with modern scenes and props, *Swoon* transformed the crime of the century into a dark love story.

In interviews conducted during 1992, Kalin explained his purpose for repackaging the oft-told tale of a nearly seventy-year old crime for a 1990s audience. He stated:

The Leopold and Loeb case is the place where homosexuality and pathology became linked in the American mind and in psychoanalytic discourse. It was used as evidence that when two men get together and have a tangled relationship, it will inevitably lead to violence. I wanted to unpack that myth in a way that separated the pathology from the homosexuality by showing that the two had different motivations for what they did.²⁵³

Given that homosexuality was played down in earlier portrayals of the killers, Kalin may have exaggerated this link—but he felt it. With *Swoon*, he tried to present the gay relationship between Leopold and Loeb much like other movies depict straight liaisons that lead to murder. He commented on *Swoon's* plot:

It's the same dynamic you get in other films, it's just that there the obsessive desire always involved women. Nobody says: "These pathological heterosexuals are having too much sex and it leads them to murder." Yet Leopold and Loeb became the basis of a long-lasting myth of the pathological homosexual.²⁵⁴

Underscoring his ambitious aim of remaking the Leopold and Lobe persona, Kalin stated, "The idea was to reframe the historical material for a more modern reading of the case."²⁵⁵ As such, he added, *Swoon* "questions the way history is written."²⁵⁶

In line with the goal of equating the crime with other killings rooted in pathological relationships, and unlike *Rope* and *Compulsion*, *Swoon* vividly presented both Franks' murder and the killers' intimacy.²⁵⁷ Opening with Leopold and Loeb exchanging gold rings drawn from their mouths, the movie mixed erotic scenes of their sexual passion, many of them fictional,²⁵⁸ with violent images of their crimes, mostly drawn from the historical record. Throughout, *Swoon* depicted Loeb as addicted to crime and Leopold as addicted to Loeb.

252. Kate Muir, *On Location in Queer Street*, THE TIMES (London), Sept. 25, 1992, at 4.

253. Stephen Holden, *A Film with an Eye for Offbeat Relationships*, N. Y. TIMES, Mar. 20, 1992, § C, at 1.

254. Muir, *supra* note 257, at 4.

255. Joseph P. Kahn, *Love, Murder & History: The Leopold Loeb Case Led to the Most Sensational Trial of the Roaring Twenties—A New Movie Aims to Explore Its 'Perverse' Subtext*, BOSTON GLOBE, Oct. 25, 1992, § B, at 7.

256. Holden, *supra* note 258, at 1.

257. See Sibley, *supra* note 222, at 581-82; see also Muir, *supra* note 257, at 4.

258. Referring to these details of the daily lives of Leopold and Loeb together, Jessica Sibley noted, "I have found no historical accounts that verify this level of detail." Sibley, *supra* note 222, at 581, n.108.

Swoon does not show Leopold as a mere accomplice in murder, however, or a passive partner in his relationship with Loeb. Giving a deeply selfish explanation for his role in the crime, *Swoon's* Leopold declared, "Murdering Bobby Frank would join Richard and me together for life." When Loeb became aware of this motive, *Swoon* had him charge Leopold with deliberately leaving clues to their crime, such as his eyeglasses and the typewriter, in terms familiar to movie portrayals of obsessive heterosexual relationships: "You want to get caught, don't you. If you could get pregnant, you would."²⁵⁹ In graphically depicting this relationship and its fatal consequences, one admiring reviewer noted, "Kalin is not concerned to blame or justify; he simply records, almost clinically, a bizarre piece of human psychology."²⁶⁰

Also breaking with many earlier portrayals of the case, the court scene in *Swoon* emphasized Crowe's aggressive prosecution rather than Darrow's compassionate defense. Through "abundant courtroom quotation" and other devices, one reviewer explained, "Kalin aims to reveal the homophobia that swirled round the case in 1924."²⁶¹ Spotlighting Crowe's aggressive attacks on the defendants served this purpose better than reenacting Darrow's sympathetic and successful defense. Commenting on public reaction to the film, Kalin later noted that he "got in some trouble with the Clarence Darrow crowd" for casting the legendary defense attorney as "a little bit of a buffoon . . . [who] was not really this impressive a character the way he was in the real case."²⁶² In *Swoon*, the criminal proceedings take on the trappings of a surreal homophobic inquisition with women barred from hearing sexually explicit testimony, the murder attributed to "the desire to satisfy unnatural lusts" and the defendants abruptly appearing in bed together in the courtroom.²⁶³ The portrayed bias of these

259. *SWOON* DVD (Strand Releasing, 2004) (includes a feature giving running commentary by Kalin and others connected with making the film). In his commentary, Kalin noted that the film was "trying to get at the relationship between Nathan Leopold and Richard Loeb" and answer the question, "who is in control of this relationship?" As Kalin described it, both were involved, both had passion and leadership in the relationship passed back and forth. *Id.* See also Sibley, *supra* note 222, at 579-86 (additional quotes and scene descriptions from film).

260. David Robinson, *Visionaries at the Crossroads*, THE TIMES (London), Feb. 24, 1992, Life and Times, at 3.

261. Geoff Brown, *Foul Play in the CIA vs. IRA Match*, THE TIMES (London), Sept. 24, 1992, Life and Times, at 3. Expressly comparing *Swoon* to earlier films about the case, another reviewer made a similar point:

Loeb and Leopold have been portrayed in the movies before—most notably by Alfred Hitchcock and Arthur Laurents in "Rope" and Richard Fleischer and Mever Levin in "Compulsion"—but "Swoon" takes a different tack from either. It doesn't view them from outside. It pulls us into their world, revels in their passion—and while it doesn't short-change the horror of their crime, it's more concerned with the tidal wave of homophobia breaking around them.

Michael Wilmington, *Lust, Crime United Doomed Teen-Age Lovers in 'Swoon'*, L. A. TIMES, Sept. 25, 1992, Calendar, at 18.

262. *SWOON* DVD, *supra* note 264 (commentary of Tom Kalin).

263. *Id.*

proceedings made the defendants, despite their guilt, appear as victims of homophobic persecution.²⁶⁴

The third major work developing a modern gay persona for Leopold and Loeb was the award-winning musical by Stephen Dolginoff, *Thrill Me: The Leopold and Loeb Story*, which opened in New York in 2005.²⁶⁵ Comparing this presentation of the Leopold and Loeb story with an earlier film version, one reviewer noted:

In his 1948 movie "Rope," Alfred Hitchcock filtered the proceedings through the perspective of a determined man out to bust the duo, at the same time keeping the homoerotic overtones strictly covert.

Times have changed. Dolginoff renders Leopold and Loeb's twisted affiliation as, first and foremost, a love story. . . . [The actors in the lead roles] are so convincingly boyish that they resonate not as mere monsters, but as kids trapped in an escalating game of triple dare.²⁶⁶

The performance was framed by scenes of a middle-aged Leopold telling his parole board why he murdered Franks. "Richard and I were very close—from the beginning. We did everything together. Everything," Loeb began after his opening song, "Why," which asserted, "I went along with Richard, that's the reason why."²⁶⁷

Like *Swoon*, *Thrill Me* mixed scenes of escalating criminal violence with growing sexual intimacy, but with a lighthearted air. Leopold and Loeb sign their crime-for-sex pact in their own blood, like youthful blood brothers, and brag about showing it to their contracts law professor during their school's next semester.²⁶⁸ They sing their way through luring Franks into the car, writing the ransom note and looking for Leopold's lost eyeglasses.²⁶⁹ Having maintained that Loeb drew Leopold into crime in return for sexual favors, the musical concluded with a twist. On the van to prison after being sentenced, Leopold explained to Loeb:

NATHAN. . . . I am a superior being.

RICHARD. What? (Music begins.)

264. See Sibley, *supra* note 222, at 584-85. Comparing the courtroom scene in *Swoon* with the heroic portrayal of Darrow's defense in *Compulsion*, Sibley wrote, "Side by side the resulting effect of these films is to demonstrate the possibility for the same trial and the same verdict to mean different things." *Id.* at 569.

265. The Off-Broadway production of *Thrill Me* was repeatedly extended and received numerous awards and award nominations. See *Footnotes*, N. Y. TIMES, July 9, 2005, § B, at 8; see also HAVOK THEATER COMPANY, *THRILL ME*, (2006) (Los Angeles Stage Bill). Other recent plays and movies have developed this persona as well, but none have received as much public attention or critical acclaim as *Never the Sinner*, *Swoon*, and *Thrill Me*. See, e.g., David Ng, *The Plot Thickens*, L. A. TIMES, Jan. 27, 2008, § F, at 4 (reviewing *Dickie and Babe*, a new play about the case, and comparing its portrayal of Leopold and Loeb's "gay relationship" with how the relationship was portrayed in *Never the Sinner* and *Swoon*); David C. Nichols, *Lively Company Lifts 'Leopold'*, L. A. TIMES, May 2, 2003, § E, at 28 (reviewing *Leopold and Loeb*, which the article described as personifying the title characters' "sodomasochistic relationship and murder of teenager Bobby Franks via gender-bent multiplication.").

266. Charlotte Stoudt et al., *Theater Beat*, L. A. TIMES, Feb. 1, 2008, § E, at 26.

267. Dolginoff, *supra* note 4, at 12-13.

268. *Id.* at 24-25.

269. *Id.* at 35-36, 41, 45.

NATHAN. I'm superior to you. After all, I stayed one step ahead of you.

RICHARD. What do you mean "ahead"? You followed me . . . all the way here.

NATHAN. Is that what you think? It's funny how the whole world keeps saying the murder had no reason. Because it did have a reason. For me to have you all to myself. Even in prison. You know that's what I always wanted.

RICHARD. (Almost frightened.) But, you dropped your glasses . . . otherwise we never would have . . .

NATHAN. Don't you get it. I dropped them on purpose.²⁷⁰

Leopold then sang the upbeat closing song, with Loeb ultimately joining in the chorus, "We'll be together for life plus ninety-nine years."²⁷¹ From their initial portrayal as two self-styled Nietzschean supermen led by the super-brilliant Leopold, through being presented as mere boys or deeply troubled youth propelled by Loeb's criminal compulsion, to lovers embedded in a mutually destructive relationship, with *Thrill Me*, Leopold finally ended up back on top.

IV. LEOPOLD'S OWN STORY

Leopold did not idly concede the shaping of his public image to others. While still in prison and at least in part to improve his chances for parole, he became interested in enhancing it.²⁷² Of the period prior to 1944, Leopold wrote, "Every bit of the enormous amount of publicity I had received over a period of twenty years had been bad."²⁷³ Acknowledging that he was known solely as a kidnapper and murderer, Leopold declared, "I was more than that. I was a human being too."²⁷⁴ In a manner depicted by historian Hal Higdon as "conscious, calculated, but subtle,"²⁷⁵ Leopold began promoting his human side.

Leopold was always an active prisoner. He studied languages, reclassified books in the prison library, took correspondence courses, became an X-ray technician and nurse at the prison hospital, co-founded a prison school with Loeb and held various clerical positions.²⁷⁶ Initially, he did not seek publicity and refused media requests.²⁷⁷ In 1944, however, when he joined other inmates in volunteering to test new malaria drugs devel-

270. *Id.* at 59.

271. *Id.* at 59. In *Thrill Me*, Darrow's part is further reduced to a passing reference by the main characters on their way to prison. "But Darrow's speech, arguing against 'an eye for an eye' . . . literature! I thought even Bobby Frank's [sic] parents bought into it!" Loeb commented, "He's exactly the kind of lawyer I'm going to be." *Id.* at 58.

272. HIGDON, *supra* note 1, at 309-10.

273. *Id.* at 310 (quoting Leopold).

274. *Id.* (quoting Leopold).

275. *Id.* at 309.

276. BAATZ, *supra* note 2, at 428, 433-34; HIGDON, *supra* note 1, at 304. While noting these activities, neither author depicted Leopold as a model prisoner. See BAATZ, *supra* note 2, at 428; HIGDON, *supra* note 1, at 305-09.

277. LEOPOLD, *supra* note 9, at 335; HIGDON, *supra* note 1, at 309.

oped for American troops in World War II, Leopold let *Life* magazine show him being bitten by an infected mosquito.²⁷⁸ Two years later, he gave radio interviews and posed for cameras during a ceremony for inmates who agreed to donate their corneas to an eye bank upon death.²⁷⁹

These efforts to remake his public image intensified as the time approached when Leopold would become eligible for parole. In 1952, he began writing an autobiography (published in 1957) that portrayed him as a model prisoner.²⁸⁰ It included two chapters on the malaria project, for example, but little about his childhood or Franks' murder.²⁸¹ While writing, Leopold sought help from Chicago reporter Meyer Levin but their collaboration broke down in part due to Levin's interest in exploring psychological motives for the crime.²⁸² In 1955, Leopold cooperated in the preparation of a four-part feature article about his life in prison for the popular *Saturday Evening Post* magazine²⁸³—articles that Levin described as presenting Leopold as “a kind of saintly savant.”²⁸⁴ Commenting on these efforts, Higdon said of Leopold, “Through his attempts to obtain freedom, he had reestablished himself as a celebrity in the eyes of the general public. His efforts to rehabilitate himself were bearing fruit.”²⁸⁵

After his release from prison in 1957, Leopold continued to buff his public image. He moved to Puerto Rico, married, worked in a church-related community clinic, earned a master's degree in social medicine, taught at the University of Puerto Rico, published a book on local birds, conducted research on a cure for leprosy and, at his death in 1971, donated his body to science and his corneas for transplantation.²⁸⁶ Remarking on his public persona in the context of a proposed documentary motion picture about his life, Leopold wrote in 1964 to Abel Brown, a loyal childhood friend:

You advanced the idea, which I'll admit sounded crazy to me at the time, that I might some day succeed in making my name something to be proud of rather than a symbol of the ultimate in evil. All the rest of the folks involved agreed that this was Utopian—impossible. I certainly was convinced that it was how it was.

But, Abe, even now, after six years, my “public image”—at least down here in Puerto Rico—has begun to change. I am respected by many people, liked, I think,

278. LEOPOLD, *supra* note 9, at 310, 335; HIGDON, *supra* note 1, at 308-09. On Leopold's participation in the malaria project, *see also* BAATZ, *supra* note 2, at 434-35. Higdon suggests that Leopold joined the project to gain access to male inmates. HIGDON, *supra* note 1, at 308.

279. LEOPOLD, *supra* note 9, at 335-36.

280. *Id.* at 24-25; HIGDON, *supra* note 1, at 314.

281. *See* LEOPOLD, *supra* note 9, at 25, 305-38.

282. *See id.* at 367-68; HIGDON, *supra* note 1, at 314-15.

283. Martin, *supra* note 79, at 1-18, 85-90; John Bartlow Martin, *Murder on His Conscious*, pt. 2, SATURDAY EVENING POST, Apr. 9, 1955, at 31-32, 65-72; John Bartlow Martin, *Murder on His Conscious*, pt. 3, SATURDAY EVENING POST, Apr. 16, 1955, at 36, 198-202; Martin, *supra* note 24, at 28, 135-38.

284. LEVIN, *supra* note 202, at 117.

285. HIGDON, *supra* note 1, at 314.

286. *See id.* at 334-340. *E.g.*, Higdon wrote, “During his first years out of prison Leopold seemed to be trying to build himself an image as another Dr. Schweitzer.” *Id.* at 334.

by many people. And this picture, if it is really well done, and if it is not hooted down by such publications as *Time Magazine*, could just give that change in the public image a big, big boost.²⁸⁷

The motion picture project died. Nevertheless, near the end of his life, Leopold mused about what might happen to his public persona if he discovered a cure for leprosy. "Wouldn't THAT be a note to go out on," he wrote.²⁸⁸ This project failed too.

Ultimately, nothing Leopold could or did do following that fateful summer of 1924 would alter his public image. His private life no longer mattered for shaping how others perceived him. Through one sensationally notorious public act, his persona had passed out of his hands and into those of novelist, dramatists and other social commentators. They commandeered his public image. That most representative novelist of the Twenties, F. Scott Fitzgerald, famously wrote, "There are no second acts in American lives." Fitzgerald's aphorism certainly applies to that most reviled thrill-killer of the Twenties, Nathan Leopold. When he tried to wrest back some measure of control over how he was presented through a long running right-of-privacy lawsuit against Meyer Levin over the novel, movie and play *Compulsion* during the 1960s, the Illinois Supreme Court rejected the claim. "The plaintiff became and remained a public figure because of his criminal conduct in 1924. No right of privacy attached to matters associated with his participation in that completely publicized crime," the court ruled.²⁸⁹

V. CONCLUSION

Crimes, prosecutions and punishments fascinate Americans. They help us to understand ourselves, each other and our society. They have become part of our shared culture and folklore. This is demonstrably true for the 1924 murder of Bobby Franks and the subsequent prosecution and punishment of Nathan Leopold and Richard Loeb. These highly publicized episodes serve as a seemingly endless source of material and inspiration for American writers, dramatists and social commentators. With each retelling of their story, the leading characters in this American tragedy, Leopold, Loeb and Clarence Darrow, evolve in response to the changing hopes and fears of succeeding generations. Through their role in the so-called crime of the century, they remained celebrities during their century and beyond.

287. *Id.* at 338 (quoting Nathan Leopold to Abel Brown, Mar. 31, 1964).

288. *Id.* at 338 (quoting Nathan Leopold to Abel Brown, Dec. 17, 1970).

289. *Leopold v. Levin*, 45 Ill.2d 424, 442, 259 N.E.2d 250, 255 (1970).