Crimes and Trials of the Century

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VOLUME 1

From the Black Sox Scandal to the Attica Prison Riots

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Preface to the Set

Crimes and Trials of the Century covers a little over one hundred years of American history, from 1900 to the present. The cases in this two volume set appear in roughly chronological order, based on the starting point of the events described. The reader will note that some cases, such as the 1955 Emmett Till case, are revisited by criminal justice authority years later. The Till case, the Columbine High School shootings case, and many of the other cases that appear in this set had an intense impact on public consciousness at the time of occurrence and remain a part of our ''cultural memory.'' These cases are prone to be referenced during current social and political debates.

In the introductions to the two volumes in this set, we discuss the social and historical contexts in which the cases appearing in the volume occurred. We discuss the evolution of the criminal justice system and the legal issues that were dominant during that time period. We also provide an overview of the popular culture and mass media, examining in brief the nexus between news/entertainment and the criminal justice system. In each introduction, we also identify the common threads weaving through the cases in the volume.

As suggested above, the cases featured in these two volumes provide examples of what Robert Hariman (1990) describes as ''popular trials,'' or ''trials that have provided the impetus and the forum for major public debates'' (p. 1). As we note elsewhere, cases generally achieve celebrity status because they somehow encapsulate the tensions and the anxieties present in our society; or, at least, this has been the case until the recent past. In the past half-century, the increasing importance of television (and more recently the Internet) in delivering the news to the public, and the voracious appetite of the media for news stories to feed the twenty-four-hour news cycle, has meant that stories—particularly crime stories—move quickly into, and sometimes as quickly out of, the public eye. The cases we have selected for this two-volume set are those that arguably deserve the title of a ''crime of the century'' because of the social and legal issues that each case embodies.

These cases for one reason or another touched a public nerve at the time when they occurred and continue to resonate with modern readers. We think that readers will agree that the cases included in these two volumes are among the most important of the

twentieth and early twentieth-first centuries. Since space was limited, some famous cases had to be excluded. The chapters about the cases that are included cover the crime, the setting, and the participants; the actions taken by law enforcement and the criminal legal system; the actions of the media covering the case; the trial (if there was one); the final resolution of the case; the relevant social, political, and legal issues; and, finally, the significance of the case and its impact on legal and popular culture.

The reader will notice that each contributor has included ''sidebars'' to accompany his or her case. These sidebars provide additional information that will assist the reader in placing the case in context. The sidebars in the various chapters provide a variety of information, including timelines, additional background on key persons, related cases, key terms and concepts, and ''fun facts.''

Each contributor also provides a short list of books of ''Suggestions for Further Reading'' at the end of his or her chapter. These lists are provided for readers who would like to go beyond the overview and discussion of the case provided in the volume. Although each contributor has been thorough, each case could well be the subject of a book and many of them have been. Readers intrigued by a case may enjoy pursuing their interest with the suggested books.

Finally, at the end of Volume 2 in this set, readers will find a ''General Bibliography'' that provides a longer list of books compiled by the co-editors of this set. These books and articles are provided for readers who have a broader interest in crime history and the media. A comprehensive index completes the set.

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Introduction to Volume 1

FRANKIE Y. BAILEY AND STEVEN CHERMAK

On September 14, 1901, Theodore Roosevelt became the twenty-sixth president of the United States. He rose to the presidency not by election but because President William McKinley, with whom he had served as vice president, had died from complications following surgery. McKinley had been the victim of an assassin, a young man named Leon Czolgosz. Czolgosz had shot McKinley twice with a gun concealed in a handkerchief when McKinley reached out to shake hands as he greeted Czolgosz in a receiving line. The attack happened during McKinley's visit to the Pan-American Exposition in Buffalo, New York.

The fallen president was taken to a hospital on the Exposition grounds in an electric ambulance. That he should travel in such a modern invention was in keeping with McKinley's status as the first president of the twentieth century. McKinley was the first president to use the telephone for campaign purposes. He was also the first president to be followed about by newsreel cameramen who recorded his comings and goings. Although he himself had served in the Civil War, McKinley at his death presided over a country that, for better or worse, in the aftermath of the Spanish-American War had become an imperial power with colonial possessions.

The life story of the man who assassinated him reflected the waves of immigration to the United States that occurred in the nineteenth century. Leon Czolgosz's father had arrived from Prussia in 1873, and Leon himself was born in Michigan. Although the family seemed to be pursuing the ''American dream,'' Czolgosz's growing disillusionment with capitalism eventually led him to his encounter with the president (Butler, 2004). McKinley's death and Czolgosz's subsequent trial and execution at Auburn Prison in New York State set the tone for a century of violent crimes that would sometimes shock the nation.

Although the assassination of McKinley plunged the country into mourning and attracted massive media coverage, the first murder case that was widely identified as ''the crime of the century'' was the Harry Thaw–Stanford White murder case. The heir of a vast Pittsburgh coal and railroad fortune, Thaw shot the famed New York City architect Stanford White to death. Thaw claimed that he had been avenging the lost chastity of his wife, Evelyn Nesbit, the beautiful ''Gibson Girl'' model and former *Floradora* chorus girl who had been involved with White prior to her marriage to Thaw. Evelyn Nesbit

had also grown up in Pittsburgh. After moving with her mother to Philadelphia to begin her career, Nesbit arrived in New York City. The two women hoped that Evelyn's beauty would be the key to their upward mobility. Evelyn married a wealthy man, but with Stanford White's murder, she found herself at the center of a scandalous triangle.

Notoriously unstable, Thaw shot White to death on June 25, 1906, in the rooftop theater at Madison Square Garden (a building that White had designed), in front of a roomful of witnesses. Bringing the wealth of the family fortune to bear, the Thaw family launched a public relations campaign aimed at portraying Thaw, the murder defendant, as a man defending his wife's honor. *The New York Times* observed that Thaw's trial was being reported "to the ends of the civilized globe" (Carlson, 2003).

During the trial, Evelyn Nesbit Thaw took the stand to describe her drugged rape by White and the relationship that had ensued. She provided titillating details of White's fancies that led the press to dub her "the Girl in the Red Velvet Swing." This was a case that was ideal for the "yellow journalism" of the period that thrived on sensation and violence. Readers were offered a peek into the lives of the occupants of the opulent houses that White had designed and in which he and his clients lived. Readers also were presented with a portrait of New York City, a metropolis that even mid-nineteenth century observers had described as a city of both opportunities and dangers.

Twenty years later another New York City murder triangle tantalized the public. This time, there was no hint of wealth or fame. The story in itself was rather mundane; a housewife and her lover had killed her husband. But the Ruth Snyder–Judd Gray murder trial occurred during the "roaring twenties," when "jazz journalism" was the new phrase coined to describe the sensational coverage of sex, violence, and scandal (Emery & Emery, 1984, pp. 387–389). The impact of Freudian psychoanalysis on American culture was evident in the testimony of "alienists" (psychiatrists) as expert witnesses who offered their evaluations of the two murderers who had turned on each other after confessing to the crime and now faced each other in a courtroom (Douglas, 1995, pp. 126–127)

Ruth Snyder was unsuccessful in her attempt to present herself as a loving mother and the wife of a cold, abusive husband. With the increasing importance of photographs, Ruth Snyder was unable to overcome the media images of a woman who was alleged to be "too stylish" and a "brassy blonde." The final photograph of Snyder is the most famous. It is the one that a photographer who had gained admission to the death chamber with press credentials snapped of Snyder at the moment of her death in the electric chair. The photograph gave the public a forbidden glimpse of the executions that in the twentieth century occurred behind prison walls (Bailey & Hale, 2004, pp. 128–133).

Other crimes in the early twentieth century were equally scandalous and attracted as much media coverage. The chapters in this volume cover crimes of the twentieth century that are worthy of note for what they tell us about their eras and about the interaction of media and the criminal justice system. As we note in the Introduction to Volume II, examination of these famous cases reveals certain recurring themes. In these cases from 1900 to 1972, the themes include: (1) the falls of celebrities; (2) national security; (3) notorious gangsters; (4) legal debates; and (5) turbulent social change.

The Falls of Celebrities

The century had begun with a president, Theodore Roosevelt, who epitomized rugged masculinity. Young men and boys were increasingly involved in competitive team sports. For spectators, these team sports were sources of both entertainment and civic pride as

they rooted for the "home team" (Chudacoff, 1999, pp. 224–228). In Chapter 1, Jason Ingram recounts the fall from glory of the famed Chicago White Sox baseball team. In 1919, eight players from the team were accused of throwing the World Series against the Cincinnati Reds. With its reputation darkened by the scandal, the team was nicknamed "the Black Sox."

Two years later, in another widely heralded fall from grace, Roscoe "Fatty" Arbuckle, a beloved film comedian, found himself at the center of a scandal following a Labor Day weekend party in his hotel room. In the glare of the media, Fatty Arbuckle stood trial, accused of a sexual attack on one of his female guests that led to her death. As Matthew Pate relates in Chapter 4, the case was cast as symbolic of Hollywood decadence. It came at a time when critics were expressing increasing concern about sex and violence in the budding Hollywood film industry. The case would be linked in the censorship debates to other scandals involving celebrities, including the unsolved murder of film director William Desmond Taylor in 1922.

In another celebrity case, Colonel Charles A. Lindbergh, the man who had become an American hero by flying solo across the Atlantic, became a grieving father when his young son was kidnapped and murdered. Before the tragedy, Lindbergh and his beautiful and accomplished wife, Anne Morrow Lindbergh, had been in the media spotlight as a young couple who seemed to have a charmed life. In Chapter 9, Kelly Wolf discusses the kidnapping/murder and its aftermath, when the accused, Bruno Hauptmann, stood trial. Hauptmann, an illegal immigrant from Germany, faced a hostile public. At the same time, Lindbergh and his wife were dealing with the intense and pervasive media presence that had threatened to hamper the kidnapping investigation as it was underway and now gave them no privacy. The presence of newsreel cameras offered the public who could not be present in the crowded courtroom in New Jersey an opportunity to witness the trial. The carnival atmosphere surrounding the trial became an example of what observers saw as the dangerous impact of the media on the criminal justice process.

NATIONAL SECURITY

In Chapter 2, Lisa Sacco examines the Sacco and Vanzetti case in which two Italian immigrants were accused of a payroll robbery and the murders of the paymaster and his guard. Nicola Sacco and Bartolomeo Vanzetti went to trial in the aftermath of the 1919 "Red Scare." During the "Scare," United States Attorney General A. Mitchell Palmer ordered the roundup of suspected communists and anarchists who he believed were threatening the security of the United States. The fact that Sacco and Vanzetti were Italian immigrants and alleged anarchists worked against them as they stood trial in Massachusetts and as they appealed their death sentences.

In 1948, Alger Hiss also faced doubts about his loyalty to the United States. However, Hiss's circumstances were markedly different from those of immigrants Sacco and Vanzetti. In Chapter 10, Matthew Pate recounts the complex story of Hiss, who had served with distinction in the federal government and found himself accused of being a spy. As the House Un-American Activities Committee conducted its investigation of suspected Communists, Hiss was accused of being an operative who had passed classified government documents to agents of the Soviet Union.

By 1951, Cold War tensions between the United States and the Soviet Union prompted increased concern about the possibility of betrayals by American citizens. Ethel and Julius Rosenberg stood accused of giving secrets to Russian agents that might have aided an

enemy of the United States in developing its atom bomb. As Ernest Nickels discusses in Chapter 11, the question of the Rosenbergs' guilt or innocence remains a matter of debate decades after their deaths. The same may be said of Sacco and Vanzetti and Alger Hiss.

NOTORIOUS GANGSTERS

Cultural historians assert that Americans (in common with people of other nations) have always been ambivalent about "outlaws." In the mythology of the American west, the legends of outlaws such as Billy the Kid and Jesse James rivaled those of lawmen such as Wyatt Earp and Bat Masterson. The dime novels and pulp fiction of the nineteenth and early twentieth century featured "good bad men" as heroes. As print tales about lawmen and outlaws became the basis for films about cops and robbers, this fascination with outlaw protagonists remained. Prohibition and the rise of gangsters who supplied the liquor that many Americans were still eager to consume gave impetus to the depiction of gangsters in the news and entertainment media.

In Chicago, Al Capone eliminated his rivals to rise to the top among Prohibition gangsters. In Chapter 3, Joseph Deleeuw examines Capone's involvement in episodes such as the "St. Valentine's Day Massacre," which enhanced Capone's reputation as a ruthless gangster. Capone's exploits inspired both newspaper coverage and radio and film versions of his story. Federal agent Elliot Ness was cast as Capone's arch nemesis and was determined to bring Capone to justice.

The reputation of the Federal Bureau of Investigation (FBI), headed by J. Edgar Hoover, grew as the Bureau pursued urban mobsters such as Capone and rural gangsters such as John Dillinger. In Dillinger's case, his fondness for smiling into a camera enhanced his reputation as a dapper outlaw. In one episode, Dillinger posed for a photo with the female sheriff who had arrested him. This photo became a mocking testament to Dillinger's slipperiness when he later escaped in the sheriff's car (Bailey & Hale, 1998, p. 157).

In similar fashion, Bonnie and Clyde contributed to their own reputation as outlaws by helping to construct their media images. In Chapter 7, Leana Allen Bouffard examines the life and times of Clyde Barrow and Bonnie Parker, Depression-era outlaws who robbed banks. They were immortalized for a modern film audience in *Bonnie and Clyde* (1967), starring Warren Beatty and Faye Dunaway. During her lifetime, the real Bonnie Parker wrote ballads about the Barrow gang's exploits.

LEGAL DEBATES

In the same era that Bonnie and Clyde were engaged in their crime spree, another less likely pair of felons made front-page news. As Diana Proper discusses in Chapter 5, Nathan Leopold and Richard Loeb, two wealthy Chicago teenagers decided to commit the "perfect crime." Influenced by the "Superman" theory of Friedrich Nietzsche, Leopold and Loeb killed a 14-year-old boy in what was described as a "thrill killing." Their attorney, the renowned Clarence Darrow, acknowledged their guilt but made an impassioned plea that they not be put to death for their crime. In his argument, Darrow offered a still-famous denouncement of the death penalty.

Clarence Darrow was also the defense attorney in the Scopes "Monkey Trial." In Chapter 6, Ernest Nickels describes the trial in a small town in Tennessee that pitted the proponents of evolutionary theory against fundamentalist Christians who believed in the biblical account of the Creation. In the courtroom, John Scopes, a schoolteacher who

had taught evolutionary theory in his classroom, was defended by Darrow. The prosecutor in the case was William Jennings Bryan, and the encounter between Darrow and Bryan was both dramatic and riveting for spectators.

Six years later, in the midst of the Great Depression, another Southern case attracted international attention. The "Scottsboro Boys," nine young black males, were riding the rails as they looked for work. When the train on which they were illegally riding stopped in Scottsboro, Alabama, the two young white women who were also discovered aboard accused the black youths of gang rape. The actions of a sheriff prevented the youths from being lynched by an angry mob, but the Scottsboro Boys stood trial in a segregated courtroom. As the Communist Party entered the case and provided a Jewish defense attorney from New York, the various racial, gender, religious, and regional tensions in the case became even more explicit. As James Acker, Elizabeth Brown, and Christine Englebrecht discuss in Chapter 8, the case became the basis for two major Supreme Court decisions about the rights of the accused.

In the 1954 case involving Dr. Samuel Sheppard, the environment in which the investigation and the trial proceeded was equally hostile. In Sheppard's case, the issue was the hostility of the local media that pushed for his arrest and prosecution. Sheppard was accused of the murder of his wife Marilyn. He claimed that she had been killed by an intruder. In Chapter 12, Kathy Warnes examines Sheppard's case, focusing both on the story itself and the issue raised by the case of the impact of prejudicial pretrial coverage by the media on due process.

Turbulent Social Change

A year after the Sheppard case, in 1955, an African American mother in Chicago used the media to bring her son's murder to the attention of the country. Defying the instructions she had received from the Mississippi sheriff who had returned her son's body to her, Mamie Till insisted that her son's coffin be opened for viewing by mourners. In Chapter 13, Marcella Glodek Bush tells the story of Emmett Till, the 14-year-old boy who violated the racial etiquette of the South during a visit to a general store in Money, Mississippi. The *Jet* magazine photo of Till in his coffin helped to galvanize a generation of young people as Civil Rights activists.

The decision by the United States Supreme Court in *Plessy v. Ferguson* (1896) gave the stamp of approval to the Southern system of racial segregation known as "Jim Crow." Reversing itself, the year before the murder of Emmett Till, the Court held in *Brown v. Board of Education* (1954) that racially segregated public accommodations were "inherently unequal." The Court ordered desegregation "with all deliberate speed." In the South, African Americans began what would be a prolonged struggle to implement the Supreme Court ruling. Rosa Parks's refusal to give up her seat on a bus launched a bus boycott in Montgomery, Alabama, and brought a young Black minister, Martin Luther King, Jr., to media attention. As the Civil Rights movement gained momentum, boycotts, sit-ins, marches, and other acts of "non-violent civil disobedience" by African Americans and their white allies would be covered by the media. In a relationship that might well be described as symbiotic, television news brought the Civil Rights movement to America, and the Civil Rights movement helped to build an audience for television news. The violence of water hoses and police dogs unleashed on peaceful marchers and jeering crowds harassing students were images that helped to make viewers aware of what was at stake.

There were casualties in this battle for civil rights. Among them were the four children who were attending a Sunday morning church service. When a bomb exploded, they were killed. The story would later be told in a documentary by director Spike Lee titled *4 Little Girls* (1997). In Chapter 15, Marcella Glodek Bush discusses the impact of this violence against innocent victims on the nation's conscience.

The film *Mississippi Burning* (1998) offered the Hollywood version of the story of the murders of three men who were involved in voting registration in the South. In Chapter 14, Shani Gray presents the story of the murders, the search for the bodies, and the aftermath. The murders of the three men, two white and one black, occurred in an atmosphere in which there was increasing concern among civil rights activists about the safety of those involved in the movement. By the end of the decade of the 1960s, assassins had killed both Martin Luther King, Jr., who had taken his message to the ghettoes of the North and began to discuss the Vietnam War, and Malcolm X, the charismatic Black Muslim leader, who had advocated change "by any means necessary" until a life-altering pilgrimage.

The assassinations of President John Kennedy, Robert Kennedy, Martin Luther King, Jr., and Malcolm X, the war in Vietnam, and the clashes between citizens and police in the streets of Chicago during the Democratic Convention in 1968 were among the events that contributed to the sense of disillusionment among many as the decade of the 1960s ended. Radical political groups, such as the Black Panthers and The Weather Underground (Weathermen), challenged the activities of the government, offered their own social programs, and had violent encounters with the police. The FBI initiated COINTELPRO, a counterintelligence program that targeted individuals and groups identified as "subversives" and "terrorists" and involved infiltration by FBI informants and agents, disinformation, surveillance, and other disruptive tactics.

As Marie Balfour discusses in Chapter 16, the social tensions of the 1960s were reflected in the plot that Charles Manson described as "Helter Skelter" and that allegedly involved starting a race war. The leader of the cult known as the "Manson Family," Manson led his followers in carrying out two brutal murder events. The media coverage of the trials of Manson and his Family offered the public a view of the workings of the mind of a man who many believed insane and/or evil.

The year after the Manson Family murders, students at Kent State University were responding to the Vietnam War with protests. Increasingly unpopular, the war had led Lyndon Johnson not to seek another term as president and inspired resistance by those young enough to face the draft. In Chapter 17, Kathy Warnes discusses the events that led up to the encounter between Kent State students and members of the Ohio National Guard on the university campus.

The next year, 1971, at Attica Correctional Facility in upstate New York, another bloody encounter between Americans occurred in the prison yard. In Chapter 18, Sidney Harring and George Dowdall describe the uprising by prisoners who took correctional officers hostage and demanded improved conditions in the prison. The decision by Governor Nelson Rockefeller to retake the prison by force rather than to continue to negotiate or to wait out the prisoners has continued to be a matter of debate decades after the incident.

The presence of the media at Attica and at the scenes of the other cases discussed in this volume illustrates the importance of the media in informing the public. At the same time, as will become evident in reading these chapters, the presence of the media also raises

issues that continue to be relevant about matters such as due process in the context of massive media coverage of criminal cases.

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1

The Black Sox Scandal: More than a Story of "Eight Men Out"

JASON R. INGRAM

On October 26, 2005, the Chicago White Sox swept the Houston Astros to win their first World Series title since 1917. To many who followed the White Sox throughout this 88 year title drought, the 2005 championship team was believed to have finally lifted a curse that had reigned over Chicago's South Side: The curse of the "Black Sox." Perhaps not as well known as other, more famous, baseball curses such as the Red Sox's "Curse of the Bambino" or the Cub's "Curse of the Billy Goat," the origin of the Black Sox curse stemmed from what has been described as the "greatest scandal in the history of sports" (Ginsburg, 1995, p. 100) in which eight members of the White Sox conspired with gamblers to fix the 1919 World Series against the Cincinnati Reds.

Having won the 1917 title and being heavy favorites to win it again in 1919, the White Sox ended up losing the nine game series to the Reds in eight games. Rumors that members of the White Sox had agreed to throw the series surfaced even before the first game. Over time, the eight infamous players—Arnold "Chick" Gandil (first baseman), George "Buck" Weaver (third baseman), Fred McMullin (infielder), Charles "Swede" Risberg (shortstop), Oscar "Happy" Felsch (centerfielder), Eddie Cicotte (pitcher), Claude "Lefty" Williams (pitcher), and "Shoeless" Joe Jackson (leftfielder)—would be indicted for their roles in the scandal by a grand jury, but later acquitted of all charges at trial. Despite their legal innocence, all eight players received a lifetime ban from professional baseball by newly appointed commissioner, Judge Kenesaw Mountain Landis (Asinof, 1963; Gropman, 1979). When one is asked to recall the Black Sox scandal, it is these "eight men out" that likely come to mind. However, by focusing attention on the eight banned ballplayers, one can overlook many of the larger issues embedded within the scandal that has made it such a highly contested and popular topic for over 85 years (Carney, 2006).

Much debate still exists as to what exactly took place during the fall of 1919. It has been noted that "more words have been written about the World Series of 1919 than any other

played, yet it still remains the series about which we know the least. From its very beginning the entire affair was characterized by confusion, deception, and lies'' (Gropman, 1979, p. 158). As will be seen, the sheer number of people involved, double crosses, and cover-ups make it virtually impossible to determine what actually took place. In addition to the mysteries surrounding the incident, the scandal also raises issues of justice as the appropriateness of banning all eight players for life has remained a highly debated topic as each player's involvement in the fix varied (Carney, 2006). It has also highlighted the importance of the media (e.g., newspapers) to baseball at the time, as they have had a substantial impact on how the scandal has been portrayed. This chapter focuses on these issues and examines the complexities of the Black Sox scandal in terms of the incidents surrounding it as well as the effect it has had on American society. Collectively, these issues are some of the main reasons why the incident has remained a fixture of American popular culture as it has inspired novels, movies, and household phrases to this day. Before this is done, however, it is necessary to discuss the historical context in which the scandal took place to show how it was even possible to successfully pull off something as large as fixing the World Series.

The Setting: Professional Baseball Heading into the 1919 World Series

By 1919, baseball had been an established, professional sport for only approximately 16 years. Before this time, it had been marked by periods of instability associated with the growing pains that the game had experienced as it evolved from an ''exclusive team sport for urban gentleman'' to a ''commercialized spectacle'' where players began to be paid for their services (Voigt, 1976, pp. 4–5). As it moved towards professionalism, a number of different leagues were formed and many were subsequently disbanded as they failed to compete with the dominant National League that had been created in 1876. Control over the game during this time also shifted from the players to club owners with the owners set on profiting from the sport (Voigt, 1970). As a result of these changes, professional baseball was eventually organized into two leagues, the National and American leagues, in 1903 with the winners of each league facing each other in the World Series (Voigt, 1976). As such, it marked the beginning of modern day baseball, and as the sport's popularity increased so did its recognition as America's national pastime by the fans and as big business by the owners.

During this time, fans perceived the sport as ''America's greatest game'' (Cottrell, 2002, p. 5). Such a perception was due in large part to the belief that baseball characterized traditional American values such as democracy, a strong work ethic, competitiveness, and honesty (Cottrell, 2002; Ginsburg, 1995). The rise of organized baseball took place during the Progressive Era in which the American public grew adamantly opposed to corruptive practices, particularly within government and businesses. Thus, in addition to the fact that the public could readily relate to the game, baseball also benefited from the fact that it had a rather clean reputation and image; something that other popular sports of the time, boxing and horse racing, lost when it was found that gamblers readily fixed these events (Anderson, 2001; Carney, 2006). The state of baseball as the national pastime, then, was appropriately summarized by Boyer (1995) who noted that:

> Baseball, during the Progressive Era, had become more than a game. It had become emblematic of America's social structure. Its teamwork showed democracy in action; its fans were

> found among all classes of society; it taught American values to successive waves of immigrants; and it served as an annual ritual which united cities behind their teams. (p. 332)

Baseball's appeal to the fans significantly increased ticket sales and, as a result, also increased the revenue of the owners. By 1917, the sport was the "biggest entertainment business in America" (Asinof, 1988, p. 12). While it was apparent that fans loved baseball, they did not necessarily have the same feelings for club owners, who were often viewed as selfish and profit driven (Voigt, 1976). While a complete discussion of the effect of owners' drive for profit on labor relations within the game is beyond the scope of this chapter, two important events must be mentioned as they bear insight into the reasons behind the 1919 World Series fix: the implementation of the reserve clause and the owners' methods for handling the financial crisis that World War I would have on the game.

The reserve clause was implemented in 1879, three years after the National League had formed. Even then, owners were concerned with profits and the reserve clause served as a way to protect their biggest assets: the players. National League owners encountered problems when their players left their team and signed with another, sometimes even leaving the league for a competing one. To control this, the owners mutually agreed to allow each team to protect five players from signing with other teams. This reserve clause worked so well that eventually it expanded and was included in virtually every player's contract (Asinof, 1963; Calpin, 1996). After merging with the American League, the owners would essentially have complete control over players' salaries because the crux of the clause was that "the club owner would employ the player's services for one year, holding in reserve the right to renew his contract the following year. And so on, in perpetuity" (Asinof, 1963, p. 21). Thus, if the players chose not to accept their contract, they could not play anywhere else and they would be out of Major League Baseball (Carney, 2006, p. 150). The clause allowed the owners to pay the players whatever they wanted and created a monopoly by doing so that was regarded as perfectly legal. Legal challenges of the reserve clause failed as the courts ruled that organized baseball did not violate the Sherman Antitrust Act because baseball was not considered interstate commerce, and therefore not a trust (Carney, 2006; Cottrell, 2002). In other words, baseball was big business to the owners, but to the courts it was a sport. While the reserve clause allowed the owners to continue to reap significant financial rewards from the players' efforts, World War I posed a financial threat to them.

America's involvement in World War I began in April 1917, and it impacted every aspect of society including baseball. Although the government allowed the 1917 season to finish, many players either enlisted in the war or took jobs that qualified as assisting the war effort after the season ended. The 1918 season was the game's worst financial year as attendance figures significantly dropped. Facing similar losses after the war in 1919, the owners agreed to cut players' salaries while extending the season (Asinof, 1963; Voigt, 1976). Attendance in 1919, however, skyrocketed, and it was said that "trouble disappeared and war weary fans returned in droves, bringing unprecedented profits" (Voigt, 1976, p. 124). Even though profits returned for the owners, the players' salaries remained low. While the impact of both the reserve clause and World War I undoubtedly affected all players, they particularly affected the players on the Chicago White Sox due to the management practices of their owner, Charles Comiskey.

Charles Comiskey was one of the most famous owners in baseball history. A former major league player, Comiskey became owner of the White Sox in 1901 and was one of the few who were highly regarded by the public. Unlike other owners of the time, baseball



Figure 1.1 Charles Comiskey, owner of the White Sox, 1914. Comiskey implemented many policies that made him popular with the fans, but the players held a different view. Courtesy of the Library of Congress.

was Comiskey's sole source of income, and so he put a lot of time and money into building a winning team and ball park. He implemented many policies that made him popular with the fans, such as letting the public use the ball park for free when there were no games scheduled (Asinof, 1963; Voigt, 1976). While he was highly esteemed by fans, his players did not hold similar views of him.

Much has been written about how Comiskey paid his players. Although he would spend the money to sign the best players, he took full advantage of the reserve clause when re-signing them in subsequent years. For example in 1919, Shoeless Joe Jackson, one of the greatest hitters of the era, was re-signed for $6,000. In comparison, Ed Roush, Cincinnati's best hitter, had a $10,000 contract (Asinof, 1963). It was often noted that "[m]any second-rate ballplayers on second-division clubs made more than the White Sox" (Asinof, 1963, p. 21). As expected, White Sox players were often upset about their salaries. In addition to their salaries, Comiskey's players were also unhappy with his other cost-cutting strategies. He often held back on players' meal allowances for road trips and on laundry services for uniforms. In 1917, he offered a $10,000 bonus to pitcher Eddie Cicotte, one of the players involved in the scandal, if he won 30 games but had him benched when he reached 29 wins. That same year he offered the entire team a bonus if they won the pennant; when they won, they received only a case of champagne in the locker room (Asinof, 1963). Although the players were often upset with their salaries, they were still one of the best teams in baseball. They won the 1917 championship and played again in the 1919 series.

Comiskey's stringent use of the reserve clause combined with the lower salaries caused by the effects of World War I have generally been described as important motivating factors for the eight players' attempt to throw the 1919 World Series (Asinof, 1963; Carney, 2006; Ginsburg, 1995). While the players had money in mind when agreeing to fix the series, they still needed the means by which to do so. Professional gamblers who were secretly invading the inner dealings of the game provided these means. Gambling and baseball have been connected since the game's inception (Asinof, 1963). Before the 1919 series, there were many documented instances of players working with gamblers to throw games, and there would be many more following the scandal (Ginsburg, 1995). Still, in order for something as sophisticated as a nine game World Series to be thrown, it would take a number of major players on the team to be involved, as "the game's uncertainty . . . would hardly guarantee the desired outcome" (Cottrell, 2002, p. 10). When the White Sox won the 1919 American League

pennant sending them to the World Series to face the Cincinnati Reds, this is precisely what happened.



Figure 1.2 White Sox first baseman, Chick Gandil, 1913. The idea for throwing the series was first conceived by Gandil and his acquaintance, professional gambler Joseph "Sport" Sullivan. Courtesy of the Library of the Congress.

How the 1919 World Series Was Fixed[1]

The idea for throwing the series was first conceived by Sox first baseman, Chick Gandil, and his acquaintance, professional gambler Joseph "Sport" Sullivan, in Boston three weeks before the start of the series. From this conversation, it was proposed that Gandil would recruit other team members to throw the series in exchange for $80,000. While nothing had been finalized, the fix had been set in motion as Sullivan left to try and obtain financial backing for the players' payment, and Gandil tried to recruit other Sox players to join him.

Gandil is often credited as the organizer of the scandal, and the first person he sought to join him was the Sox's star pitcher, Cicotte, who was in financial trouble. Cicotte reluctantly agreed to take part for $10,000 cash to be paid before the series started (Linder, 2001). With Cicotte on board, Gandil used the team's shared dislike of Comiskey's ownership practices to recruit the remaining six players: Risberg, Felsch, McMullin, Williams, Weaver, and Jackson. On September 21, 1919, all eight players met in Gandil's hotel room during the team's stay in New York. While the result of the meeting had the players agreeing in principal to participating in the fix, it is at this point where things become more complicated (Linder, 2001).

Shortly after the players' meeting in New York, Cicotte ran into a former major league pitcher, "Sleepy" Bill Burns. Burns had heard rumors of the fix and wanted a part in it. After some questioning, Cicotte told Burns of the plan, but that the money for the players' payment had yet to be raised. Burns told Cicotte that he could get the players $100,000 and would find a way to raise the money. Burns employed the services of another small-time gambler, Billy Maharg. Although two sets of gamblers were working to raise money (e.g., Sullivan and Burns/Maharg), both ended up proposing the scheme to the same man: Arnold Rothstein.

Rothstein was a prominent figure in America's underworld. He was nicknamed "the Big Bankroll" and was regarded as the "first great financier of organized crime" (Boyer, 1995, p. 437). He owned a number of gambling establishments and was the only one with access to the amount of money needed to fund the players' request. Burns and Maharg were the first to propose the fix to Rothstein, who had his associate, Abe Attell, speak with the two. When Attell told Rothstein of the two gamblers' plan, Rothstein declined to become involved, noting that throwing the series could not be done. Attell, on the other hand, wanted in on the fix, and, after initially relaying Rothstein's decline to the two, he told Burns that Rothstein had changed his mind. In essence, Attell deceptively



Figure 1.3 One of the eight infamous players, Eddie Cicotte (pitcher), 1917. He would be indicted, along with the others, for his role in the scandal by a grand jury. All eight, however, would later be acquitted of all charges at trial. Courtesy of the Library of Congress.



Figure 1.4 Undated photo of Arnold Rothstein, aka "the Big Bankroll," a reluctant participant of the scandal. Courtesy of the Library of Congress.

used Rothstein's name to lead Burns and Maharg to believe that Rothstein had agreed to the fix.

On September 26, Sullivan contacted Rothstein with his proposal. Having heard of Sullivan's name before within gambling circles, Rothstein became optimistic and agreed to fund $40,000 to the players up front and the remaining $40,000 after they lost the series. Rothstein sent the cash and his partner, Nat Evans, to Chicago to meet with Sullivan and the players. When the details had been agreed upon, Evans left the $40,000 with Sullivan to be paid to the players. While it would seem that the fix had been set, greed and double crosses between the two sets of gamblers and the players would lead to anger and confusion throughout the series.

Instead of giving the players their share, Sullivan bet approximately $30,000 of it on the series and gave the other $10,000 to Gandil two days before the start of the series. While Gandil was angry, there was not much he could do at this point. He took the money and gave it to Cicotte who had agreed to take part in the scandal only if he was given $10,000 up front. The day before the series, Gandil ran into more problems securing the players' money as Attell entered back into the picture and met with those involved (except Jackson who did not attend the meeting) at the players' hotel in Cincinnati. Attell told the players (falsely) that Rothstein would back the fix for $100,000, but that it would be paid in $20,000 increments for each loss. Again, the players reluctantly agreed and to show the gamblers that they would hold up their end, the Sox were to intentionally lose the first three games; Cicotte was to hit the first batter of Game 1 to signal that the fix was on.

On October 1, 1919, Maurice Rath, lead hitter for the Cincinnati Reds, took a Cicotte curve ball "squarely in the back" in the first game of the series (Asinof, 1963, p. 64). The fix was officially underway and the Sox lost

the first two games by a combined score of 13 to 3. While the players were holding up their end of the bargain, the gamblers were not, as Gandil only received another $10,000 for the two losses. Frustrated, the Sox went against their word, won Game 3, and threatened to call off the fix if they did not receive their money. Sullivan resurfaced and managed to raise $20,000 to give Gandil before Game 4 to keep the fix alive, but Gandil was adamant about receiving another $20,000 before Game 5. This was a problem for Sullivan as the money originally reserved for the players was still out on bets, and he had to pull every string he had to raise the $20,000 he had already given to Gandil. The Sox lost both Games 4 and 5, but when they did not receive any more money, Gandil called off the fix and the team ended up winning the next two games.

With the Reds up 4 games to 3 and the White Sox threatening to come back and take the series, Rothstein had seen enough. He made it clear to Sullivan that the Sox were to lose Game 8. Sullivan knew what this meant, so he hired a gangster to threaten Lefty Williams, the starting pitcher in Game 8. The threat worked as Williams gave up four runs in the first inning and the Sox lost both the game and the series. After the series, Gandil received the other $40,000 from Sullivan. The final distribution of the money to the players went as follows: Gandil ($35,000), Risberg ($15,000), Cicotte ($10,000), and Jackson, Williams, Felsch, and McMullin ($5,000 each) (Anderson, 2004). Gandil refused to give Weaver any of the money because he had done nothing to aid in the fix besides attending the initial meetings. With the exception of Burns and Maharg, who lost a large amount of money on Game 3, the major gamblers involved also pocketed significant amounts of money. This is how the 1919 World Series was thrown.

The (In)Action of Major League Baseball

After the World Series, it seemed that both the players and the gamblers involved would get away with fixing the games. This was not, however, due to the fact that the scandal had been kept a secret. Rumors of the fix had circulated throughout the country before the series had even started. Such rumors had affected gambling circles because when Sullivan initially bet the players' half of the money, the odds on the series had already dropped from favoring the Sox 7–5 to even money (Asinof, 1963). Because gambling and baseball were so closely tied, it was almost certain that people in baseball, particularly Comiskey, had heard the rumors as well.

Indeed, reports indicated that Comiskey had learned of the rumors either just before or after Game 1. There would be additional evidence that Comiskey knew that some of his players had thrown the series, the most notable being Jackson's attempt to meet with Comiskey after the series to discuss his involvement. For whatever reason, Comiskey chose not to hear Jackson's story. Besides Jackson's attempt, sources have noted that the team's manager, Kid Gleason, confronted the players during the series. Also, after the series Comiskey held the paychecks of the eight suspected players for weeks before his lawyer advised him to pay them, and he was also hesitant to offer the eight players their 1920 contracts (Asinof, 1963; Carney, 2006). If Comiskey knew that his players threw the series and cost him money in doing it, he did nothing to expose them. The question then becomes: Why?

The answer arises out of the state of baseball at this time. In order for baseball to remain big business, the fans had to believe that the game was being played honestly. If the scandal was exposed and the extent of gambling in baseball surfaced, significant

TIMELINE

9-18-1919	White Sox first baseman Chick Gandil meets with gambler Sport Sullivan to discuss throwing the World Series.
9-21-1919	The eight Sox players involved meet in Gandil's hotel room in New York City to discuss fixing the series against the Reds.
10-1-1919	White Sox pitcher Eddie Cicotte hits Cincinnati Red's lead-off hitter, Maurice Roth, signifying that the fix was on.
10-9-1919	The White Sox lose Game 8 and the series.
12-15-1919	Sportswriter Hugh Fullerton publishes the article, ''Is Big League Baseball Being Run for Gamblers, with Players in the Deal?'' in the *New York Evening World,* which called for baseball to take a stance against gambling.
9-22-1920	A Cook County Illinois grand jury convenes to examine gambling issues in baseball and leads to investigations into the 1919 World Series.
9-28-1920	Cicotte confesses to the grand jury about the fix. A few days later, both Shoeless Joe Jackson and Lefty Williams would also confess.
10-22-1920	The grand jury indicts the eight players and four gamblers on charges of defrauding the public and White Sox owner Charles Comiskey.
11-11-1920	In response to public exposure of the fix, Major League Baseball appoints Federal Judge Kenesaw Mountain Landis as the game's first commissioner.
6-27-1921	The trial begins for the players and gamblers.
8-2-1921	All players and gamblers are acquitted of the charges. The next day Commissioner Landis rules that despite the verdict all eight players would be banned from professional baseball for life.

damage would be done to the game. Furthermore, Comiskey had a lot at stake as he had large sums of money invested in his players (Ginsburg, 1995). Ultimately, Comiskey decided he needed to protect his team and his income, while at the same time making it seem that he was investigating the matter. He publicly supported his players and offered a $10,000 reward for information concerning the scandal. Thus, he started his own investigation, but not for exposure as it would be pointed out that "[i]f there was evidence, Comiskey wanted it. And as soon as it started coming his way, he buried it" (Carney, 2006, p. 48).

Besides Comiskey, others within baseball also started their own investigations. Ban Johnson, a member of the National Commission, which was baseball's governing body at the time, started his own investigation, as did some of the other team owners as well. At this point, nothing ever came out of these investigations, and rumors of the fix had dwindled by the start of the 1920 season. The way that investigations into the scandal were handled screamed cover-up. As the 1920 season started, it was said that the owners "had dodged an enormous bullet that might have shattered baseball's image and sharply reduced the value of their teams" (Carney, 2006, p. 60). For the moment the extent of gambling in baseball remained hidden, but as the 1920 season moved along another incident of gambling would take place that would reopen investigations into the 1919 World Series and this time bring actions by the legal system.

A GRAND JURY CONVENES

On August 31, 1920, suspicions arose that players on the Chicago Cubs

were set to throw a game against the Philadelphia Phillies. Circumstances were peculiar because large amounts of money were being bet on a rather unimportant game. This was not the first time during the season that games were rumored to have been thrown, and some of these rumors again involved the White Sox (Asinof, 1963). As a result of the increased problems with gambling in baseball, Ban Johnson of the National Commission convinced Judge Charles McDonald to form a grand jury in Cook County, Illinois, to look into the matter. While the initial aim of the grand jury was to look into the Cubs-Phillies game, many believe that Johnson's real ambition was to look into the 1919 World Series (Carney, 2006).

The grand jury convened on September 22, and through the testimony of other major league players who had heard of the fix, evidence was mounting against those involved in the Black Sox scandal. A breaking point in the case came when Cicotte, feeling his own guilt and pressure from the state attorney's office, confessed to his involvement in the fix to Comiskey's lawyer, Alfred Austrian. Austrian had Cicotte appear before the grand jury and also had him sign a waiver of immunity, which would allow his grand jury statements to be admissible in any further legal proceedings. After Cicotte confessed and gave the names of the other players and gamblers, Jackson and Williams followed Cicotte's lead and voluntarily went before the grand jury, also signing waivers of immunity. As a result of the confessions and implications, Comiskey had no choice but to suspend the eight players indefinitely (Carney, 2006).

The testimony and players' confessions presented to the grand jury also began to implicate Rothstein, Attell, and Burns. Rothstein's attorney felt it would be best if Attell and Burns left the country. Rothstein then volunteered to testify before the grand jury "to set the record straight" and implicated Attell, who he said had unknowingly used his name to start the proceedings that led to the fix (Asinof, 1963, p. 219). The grand jury believed Rothstein, and he was cleared of any involvement.

The grand jury concluded in late October and, based upon the hearings, indicted the eight White Sox players and the gamblers, Attell, Burns, Sullivan, and Nat Evans. Among other things, those indicted were charged with conspiring to defraud the public and conspiring to injure the business of Comiskey (Linder, 2001). Despite the fact that it had been almost a year since the 1919 World Series was thrown and despite considerable efforts by those within baseball to keep the rumors quiet, the case against the players and gamblers was set to go to trial.

Baseball Forced to Respond

The grand jury hearings, confessions, and indictments were a significant blow to baseball as both the media and the public denounced the sport. The owners had to do something to save the image of the game, and the current structure of organized baseball was inadequate. As Ginsburg (1995) noted, the owners' stance was that the National Commission had failed and "[w]ithout strong central leadership, baseball had floundered, providing an opening to evil gamblers and crooked ball players" (p. 141). Before the trial took place, baseball made drastic efforts to clean up its image by forcing the head of the National Commission to resign and putting the governance of baseball into the hands of an outside party (Anderson, 2001). The two leagues essentially remained intact, but they needed to appoint a commissioner. On November 11, 1920, the baseball team owners gave the job to Kenesaw Mountain Landis, a Federal Judge who had knowledge of baseball

and would prove to rule with a heavy hand (Asinof, 1963). While his appointment gave the impression to the fans that baseball was working to curb corruption within the game, it also soon had a dramatic impact on the now uncertain careers of the indicted ball players.

The Trial: *People of the State of Illinois v. Edward V. Cicotte et al.*[2]

Although both the players and the gamblers had been indicted, it was unknown if an actual criminal trial would take place. First, even though gambling was now exposed as rampant in baseball, ''cases involving bribery to influence the outcome of games had not been routinely brought into the court system'' (Carney, 2006, p. 138). Furthermore, because conspiring to fix baseball games was not a crime, it was not even probable that the burden of proof could be met for charges of defrauding the public and Comiskey. There were also some mysterious proceedings that took place after the grand jury hearings. Most notable was the disappearance of the signed confessions of Cicotte, Jackson, and Williams. Many believed that the disappearance of the papers was due to the combined efforts of Rothstein and Comiskey, as this would be a significant advantage for both of them. Getting rid of the confessions would further distance Rothstein from the scandal as the players had implicated him in the fix, and it would allow the players to refute their statements, giving Comiskey the hope that his players would be reinstated.

This was not the only aspect of the legal proceedings that Comiskey was peculiarly involved in. It was also said that he had hired the best lawyers in Chicago to defend the players, some of whom were originally slated to work on the prosecution's side. If the players were charged with injuring his business, why would he provide the assistance to defend them? To many this was further evidence that ''Comiskey held out hope that some or all of the players would be reinstated after they were acquitted, perhaps after paying fines or serving suspensions'' (Carney, 2006, p. 146).

Because of these circumstances, an actual trial was still in doubt until Ban Johnson once again intervened. He tracked down gamblers Burns and Maharg and gave them to the prosecutors, who in exchange gave them immunity. While preparations for the trial were still slowly moving along, it eventually began on June 27, 1921. After two weeks of jury selection, opening statements finally began on July 18.

The prosecution made a strong case with their witness Sleepy Bill Burns. Burns recounted his involvement with the players and the other gamblers. It was said later that ''Burns was a convincing witness on the stand, and his confidence seemed to grow the longer he testified. This was even more evident when he was cross-examined'' (Anderson, 2004, p. 43). He became the prosecution's star witness. The prosecution also benefited from the fact that copies of Cicotte, Jackson, and Williams's confessions were in existence even though the signed originals were missing. A battle took place over the admissibility of these papers, but because the players all admitted to the judge that they had initially signed the immunity waivers, the copies of the confessions were admitted into court. While this was a break for the prosecution, the confessions could only be used as evidence against the three players, not the other five (Asinof, 1963).

The defense focused on Comiskey's wealth and Ban Johnson's role in the trial. They showed through the records of Comiskey's secretary that Comiskey had significantly increased his profits in 1920, and so the players could not possibly have injured his business (Anderson, 2004). The defense also questioned Johnson's intentions as it was clear

the focus of the trial was on Comiskey's players and not the gamblers. They argued that a growing feud between Comiskey and Johnson gave Johnson incentive to seek legal action against the players in order to ruin Comiskey's team. Finally, the defense also benefited from the fact that there was virtually no hard evidence against the players. Other than the testimony of gamblers and the copies of the confessions, hardly anything connected those involved directly to the charges against them. The presiding judge even noted that he would not be able to let a conviction against Weaver or Felsch stand.

As the trial came to an end, the chances that there would be any convictions decreased as the judge specifically instructed the jury to decide only on whether there was proof that the players and gamblers had committed fraud and had not just conspired to throw baseball games (Asinof, 1963). Thus, on August 2, 1921, the players and gamblers were acquitted of all charges. To many the trial was described as "superficial" and "farcical" (Carney, 2006, p. 148). This became more apparent as the players celebrated their victory in the company of the jury at a nearby restaurant after the trial (Asinof, 1963).

Eight Men Out

Despite their acquittal and much to the dismay of Comiskey, the players still paid severely for their roles in the 1919 World Series fix. The newly appointed commissioner of baseball, Judge Landis, placed a lifetime ban on the players the day after the trial had ended to ensure that baseball's image would remain clean and to show that it would no longer allow corruption to occur (Carney, 2006). None of them would ever play professional baseball again, and none of them have ever been reinstated. Landis's ruling impacted the players in different ways.

Jackson, Cicotte, and Risberg tried to continue to play semiprofessional baseball under aliases. Each time their real identity was discovered, and they were often removed from the

THE "SYNTHETIC CHAMPIONS"

Much of what we know about the 1919 World Series has come from accounts that have focused heavily on the roles of the Black Sox and how the scandal affected them. Less emphasis has been placed on the effect that the scandal had on those who took the field against the Sox: the Cincinnati Reds. After the series ended, the Reds were in a celebratory state after winning their first ever title by upsetting the heavily favored White Sox. The players returned home to a hero's welcome by the fans. Less than a year later though, the scandal was exposed and the "what ifs" surrounding the series followed the Reds players throughout the rest of their lives. Their once heroic feat was forever questioned as critics stated that the only way the Reds could have won was because the eight Sox players chose to lose. The scandal particularly affected Reds' star outfielder, Ed Roush. He claimed until his death that the Reds were better than the White Sox and that the best team did win the series. It is important to remember that there is more than one side to every story, and Roush's granddaughter, Susan Dellinger, offers interesting insight into how the Black Sox scandal was perceived by Roush and the other Reds' players in her book *Red Legs and Black Sox.* In it she describes how the players dealt with their treatment as "synthetic champions" after the scandal broke.

teams as fans protested. After their playing days were over, many of the banned players moved out west and almost all of them worked odd jobs. Lefty Williams, for instance, moved to Laguna Beach, California, and operated a garden nursery. Gandil, who actually retired from baseball after the 1919 season, became a plumber in California. Cicotte moved to Detroit and became a game warden. Happy Felsch became a bartender in Milwaukee. Jackson moved back to Greenville, South Carolina, and owned a dry cleaning service, restaurant, and liquor store before his death at the age of 62. Swede Risberg became a dairy farmer in California and was the last living member of the eight men out until his death in 1975. Of the eight, only Buck Weaver remained near Chicago. As will be discussed later, his minute role in the fix has led to the belief that he was an innocent victim. As such, he petitioned for reinstatement a number of times before his death in 1956, being denied each time (Chicago Historical Society, 1999; Cottrell, 2002).

The Role of the Media

The incidents surrounding the Black Sox scandal have focused here largely on the people involved, baseball's response, and the subsequent legal proceedings in order to describe the case. While such a focus provides adequate insight into the scandal, it gives only a partial outlook on the case. The media also played a significant role in how it handled the information on the 1919 World Series fix as it surfaced. The media's treatment of the case also has had a dramatic impact on how the Black Sox scandal has been portrayed and affects how we understand the case today. Although considerable growth in the use of different media outlets occurred during the time of the Black Sox scandal, such as the rise of the cinema and magazines, newspapers were still the primary news source in the country. Around the time of the scandal, circulation of newspapers rose substantially, making them ''preeminent cultural institutions'' (Nathan, 2003, p. 14). Thus, they were the primary way in which Americans came to view and interpret important events. The years preceding the scandal also saw an increase in the importance of sports journalism to the papers. As such, sportswriters became the agents by which sporting news was relayed to the public and, as a result, had significant influence on how the game was perceived by fans (Nathan, 2003).

Recall that a major benefit for owners was the portrayal of baseball as the national pastime. The relationship between owners and the press was a major reason why fans perceived the game to be so as this was how the game was portrayed in newspaper articles. During this time, sportswriters had developed close relationships with baseball owners and players. This was due to the fact that such relationships were mutually advantageous because it created a profitable partnership. It was noted that ''sportswriters increased the amount of baseball coverage, which helped increase attendance at baseball games, which boosted newspaper circulations'' (Anderson, 2001, p. 107). In other words, organized baseball and newspapers were allies as baseball could count on the sportswriters' support and the newspapers could count on baseball selling papers.

This alliance initially caused members of the news world to ignore gambling allegations made prior to the 1919 World Series. Even after rumors of the Black Sox scandal began during the series, newspapers were hesitant to publish articles on it. In addition to the close relationship between the media and baseball, rumors of the scandal were ignored due to the fact that many sportswriters refused to believe that it was possible to throw even a single game, let alone a World Series. This, coupled with the news media's fear of libel

suits for publishing what was at this point still speculation, led to little coverage of the scandal until much later (Anderson, 2001).

This does not mean, however, that members of the media did not work to uncover and expose the scandal. One sportswriter in particular, Hugh Fullerton, is often given just as much credit for attempting to expose the fix as the events surrounding the 1920 Cubs-Phillies game that eventually placed the scandal in the national spotlight. Fullerton, who wrote for the *Chicago Herald and Examiner,* was a famous baseball writer of the time and, like many others, had heard rumors of the fix before the series had started. During the series, he asked for the assistance of former pitcher, Christy Mathewson, who was also covering the series for another paper. Together, the two documented every questionable play during the games that may have suggested that the players were not playing to the best of their ability and possibly throwing ball games (Carney, 2004). Fullerton's findings were not well received, but his journalistic efforts played a significant role in shedding light into the scandal.

Fullerton wrote about seven questionable plays made by Sox players during the series and tried to expose the players involved. The newspaper, however, severely edited his work out of fear of a libel suit. In another column on October 10, 1919, Fullerton made a foreboding proclamation when he wrote that seven Sox players would likely not return to baseball the following year.[3] One of his most significant contributions came on December 15, 1919, when his article entitled "Is Big League Baseball Being Run for Gamblers, with Players in the Deal?" appeared in the *New York Evening World* and called for baseball to take a stance against gambling. His subsequent writings named many of the gamblers who were eventually indicted. For his work, Fullerton was no longer well received as the rest of the media criticized him, and the reactions of the public were so harsh that an attempt was made on his life (Carney, 2004). Even though his work to publicly expose the fix had largely failed, Fullerton deserves credit as others have noted that he "at least brought to national attention the very real problem of baseball being strangled by gamblers" (Carney, 2004, p. 48).

After the grand jury hearings began and the players confessed, the media's stance on the scandal changed from support of baseball to attacking the profession. As a result, the scandal broke publicly and the newspapers extensively covered the scandal so much that it was now on the front page of every newspaper across the country for months afterwards (Nathan, 2003). The subject now became the hot topic to write about, and many tried to uncover the plot themselves. Jimmy Isaminger, reporter for the Philadelphia *North American,* procured gambler Billy Maharg for an exclusive interview where he told his side of the story. The title of the article ran as "The Most Gigantic Sporting Swindle in the History of America!" Furthermore, Harry Reutlinger of the Chicago *American* tracked down Happy Felsch and was able to get him to confess to the press (Asinof, 1963). Thus, in addition to the legal proceedings, the media now also played a significant role in uncovering the scandal, and much of what was written at the time impacts how we presently understand the case.

For starters, the referral of the players involved and the subsequent scandal as *Black* Sox, was first coined in the headline of the October 1, 1920, issue of the *Chicago Herald and Examiner,* which read "Here's hope for Black Sox, Let 'Em Grow Beards and Change Names." The phrase caught on, and by the middle of 1921 it was the primary way in which the players and scandal would be referred to (Nathan, 2003, p. 23). The media,

however, not only influenced what the scandal was called but also how the players and gamblers were portrayed.

The players, for example, fell hard from their celebrity status because of how they were subsequently described in the newspapers. In the course of a little over a year the players went from ''heroic athletes'' to ''loutish, distasteful dolts'' as they were condemned by the media (Nathan, 2003, p. 39). Although still largely despised by the media, the players also eventually came to be treated in a sympathetic light. Many reports highlighted the fact that the players were unrefined, poorly educated dupes, which made them in some sense victims of the situation (Nathan, 2003). They were believed to have been taken advantage of by both the gamblers during the fix as well as organized baseball due to the current labor relations between the owners and players.

The gamblers, however, fared much worse in print. This stemmed from their portrayal as the scapegoats for the underlying problems of gambling in baseball and their religious backgrounds. Nathan (2003) aptly summarizes this when he stated that ''given the nation's nativist temperament during the early twentieth century and the conspicuous presence of professional gamblers from Jewish backgrounds at the 1919 World Series, it is not surprising that an undercurrent of anti-Semitism is detectable in the media's Black Sox scandal coverage'' (p. 33). Some media outlets, then, decided to portray the Black Sox scandal as a ''Jewish conspiracy to corrupt Anglo-Saxon institutions'' and identified them as not only the underlying cause for the fix but also for the problems of gambling in baseball as a whole (Nathan, 2003, pp. 35–36). This was obviously an incorrect assessment as not all the indicted gamblers were Jewish and gamblers were not the sole cause for the extent of corruption in baseball. These were not the only inaccurate facts reported by the media that would affect the public's later understanding of the events surrounding the scandal.

Even those unfamiliar with the Black Sox scandal have likely heard the phrase, ''Say it ain't so, Joe.'' The popular phrase originated from a widely held exchange between Shoeless Joe Jackson and a boy on the street who went up to him as he exited the courthouse after his grand jury confession. Jackson's response to the boy's inquiry was ''Yes, kid, I'm afraid it is.'' The exchange was included in every major newspaper and seemingly confirmed the occurrence of the scandal to the public. Much debate now exists on the extent to which the encounter ever took place. While some argue that the exchange did indeed take place, others believe that the news story was at best embellished and at worst completely made up (Carney, 2006, pp. 128–129). This is perhaps one of the most notable debates in the media's portrayal of the Black Sox scandal that has influenced how it has been perceived until this day. The media, however, are not the only institution from which debates over the scandal have arisen.

The Debate on the Lifetime Bans

The Black Sox trial is unique in the sense that all the indicted players and gamblers were treated the same by the court system, even though each individual's involvement in the scandal varied. The same can be said about Judge Landis's lifetime banishments for the eight acquitted players. While the ban was implemented as a way for baseball to clean up its image for the American public, Landis's harsh ruling has often been criticized on the grounds that ''by failing to give consideration to the different degrees of participation in the fix, and by pretending that banning eight ball players solved the whole problem,

baseball officialdom has perpetuated a cover-up'' (Carney, 2006, p. xiv). Others have argued that the lifetime bans for all the players is ''preposterous'' (Voigt, 1976, p. 130). Such criticisms have particularly been made for two of the eight players: Jackson and Weaver.

Throughout the time when the scandal unfolded up until his death, Joe Jackson maintained his innocence. He contended that he had played every game to win, and his statistics during the series seemingly indicate this as he had a .375 batting average, a series record 12 hits, the series' only home run, and no fielding errors (Kindred, 1999). He also took other actions to show that he had tried to distance himself from the fix. For instance, he attempted to get Sox manager, Kid Gleason, to bench him before the first game of the series, and after the series he had tried to meet with Comiskey to tell his side of the story and to give him the $5,000 he had received (Asinof, 1963). Although his actions indicate that he must have known of the fix, many would argue that his actions and his role during the series do not fit the punishment that he received.

Weaver, on the other hand, is generally considered innocent by most accounts. In addition to the fact that the judge in the trial explicitly acknowledged that there was virtually no evidence against him that would uphold a conviction, his only documented connection to the scandal was his presence at the players' initial meetings to plan the fix. Despite this, Landis would uphold Weaver's ban based on the fact that he had ''guilty knowledge'' of the scandal (Cottrell, 2002). Despite attempts by both the players, and even in some cases members of the U.S. Congress, to petition for their reinstatement to baseball and make them eligible for the Hall of Fame, neither Landis nor any of the subsequent baseball commissioners have overturned their bans.

The Scandal's Impact on American Popular Culture

The Black Sox scandal has permeated throughout American popular culture. Aspects of the scandal, for example, have appeared in popular literary works. In F. Scott Fitzgerald's novel, *The Great Gatsby,* the character Meyer Wolfsheim is said to represent the gambler Arnold Rothstein. When Gatsby speaks of Wolfsheim to character Nick Carraway he describes him as the gambler who fixed the 1919 World Series. References to the scandal were also made in Bernard Malamud's novel, *The Natural,* where Malamud tells the story of Roy Hobbs, a ballplayer who is pressured to throw a playoff game. Although fictional, many of the events that occurred in the book closely parallel the events of the Black Sox scandal. The book was later made into a movie of the same name starring Robert Redford as Hobbs.

This was not the only reference to the Black Sox scandal that would hit the big screen. In 1988, *Eight Men Out* was adapted from Eliot Asinof's popular account of the scandal of the same name. The movie is often credited for ''its stark realism and historical veracity'' in documenting the scandal and the events leading up to it (Nathan, 2003, p. 179). The movie also proved to be a big break for actors John Cusack and Charlie Sheen who portrayed Buck Weaver and Happy Felsch, respectively, in the film. A year later, *Field of Dreams* was released starring Kevin Costner. From this movie the often cited phrase, ''if you build it, he will come,'' was born, which referred to the mysterious voice that Costner's character heard urging him to build a baseball field in his cornfield. After the field was constructed, the ghosts of Shoeless Joe Jackson and the other banned players emerged to play ball once again. Hugely popular, the film was nominated for three Academy

Awards. In addition to novels and movies, aspects of the incident have also been incorporated into plays and musicals (e.g., *Out!* and *1919: A Baseball Opera*) as well as numerous biographies of individuals involved in the scandal from Arnold Rothstein to Shoeless Joe Jackson. It is undoubtedly Jackson who has received the most notoriety of any of the individuals involved, and as such has received a substantial following. The Shoeless Joe Jackson Society, for example, was formed to petition for Jackson's removal from baseball's ineligible list to make him eligible for induction into the Hall of Fame and currently maintains a virtual Hall of Fame Web page dedicated to Jackson that takes the name of his now mythical bat, blackbetsy.com. While the scandal has become a popular story to portray and maintain in popular cultural mediums such as books, movies, and the Internet, these are not the only ways by which the incident has become ingrained into America's "collective memory" (Nathan, 2003, p. 60) as subsequent real-life events have also made it a permanent fixture in American history.

The historical impact of the Black Sox scandal is most notable within the realm in which it occurred: professional baseball. It has not been the only incident of gambling in baseball, and on August 23, 1989, it was another such incident that conjured up past memories of the Black Sox. On this date Pete Rose, baseball's all-time hits leader, was banned for betting on baseball. The Pete Rose scandal was almost automatically christened as the "biggest and most controversial since the 1919 Black Sox scandal" (Ginsburg, 1995, p. 239). Rose's actions have precluded his induction into the Hall of Fame, a sanction that others have noted forever ties him to Shoeless Joe Jackson (Nathan, 2003).

References to the Black Sox scandal have also resurfaced in light of baseball's recent steroids scandal. Those who have investigated the steroids scandal have noted its similarities to the Black Sox scandal, especially the fact that initial evidence of the presence of steroids in baseball was ignored in much the same way as evidence concerning the 1919 World Series was. They have also used the actions of baseball to compare how the two commissioners, Landis and Bud Selig, have handled the two incidents (Wada & Williams, 2006).

Historical references to the Black Sox scandal, however, are not limited to professional baseball. Interestingly, such references have also been made in American politics. When Watergate unfolded in the 1970s, journalists of the time compared the scandal to that of the Black Sox (Nathan, 2003). More recently, the incident has been compared to the 109th Congress as one journalist wrote that "[i]n its waning months, the 109th Congress has finally achieved a status in politics that the 1919 Black Sox achieved in sports: It is a symbol of utter corruption" (Turley, 2006, p. 13A). The significance of the scandal, then, is the fact that it serves as a reference point for almost every major corrupt act that has taken place since. As Nathan (2003) points out, "acts of corruption remind people of previous acts of corruption" (p. 139), and, as a result, the Black Sox scandal has become an important aspect of American history.

When the 2005 White Sox team won the World Series, journalists were again quick to reference the scandal, but this time to finally lay to rest the curse associated with it. Although the curse may have been lifted, it is highly unlikely that memory of the scandal will ever fade away because of its historical significance. To be sure, at the time this chapter was written, Mark McGwire had just fallen well short on his first attempt to be inducted into the Hall of Fame due in large part to his perceived role in the current steroids scandal. Members of the media again mentioned the Black Sox incident as a reference point for the corruption associated with baseball's newest scandal. At this point,

only time will tell if McGwire becomes tied to Jackson much in the same way that Rose has over the past 18 years.

Suggestions for Further Reading

Accounts of the Scandal

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Additional Perspectives

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Notes

1. Unless otherwise cited, information provided in this section is based on Eliot Asinof's (1963) book, *Eight Men Out: The Black Sox and the 1919 World Series.*
2. Information provided on the trial is based on Gene Carney's (2006) book, *Burying the Black Sox: How baseball's cover-up of the 1919 World Series fix almost succeeded,* unless otherwise cited.
3. It should be noted that while Fullerton's statement did foretell of the fact that players would eventually be suspended, it is not 100 percent accurate as Carney (2006) points out that technically only Gandil did not return to baseball at the start of the 1920 season.

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2

The Sacco-Vanzetti Trial: Judging Anarchy

LISA N. SACCO

On April 15, 1920, a paymaster and his guard were carrying payroll boxes from one building to another when they were shot dead by two men. The two murderers picked up the payroll boxes and fled the scene with a third man to a getaway car, where an additional two men were waiting for them. Five men were involved in this shocking crime, but ultimately only two men would be executed for it—Nicola Sacco and Bartolomeo Vanzetti. The incident took place in South Braintree, a small suburb south of Boston, Massachusetts, but the entire world would come to know the story of Sacco and Vanzetti. History would remember the case as a gross miscarriage of justice and a tragic example of prejudice and intolerance, and the Commonwealth of Massachusetts would continue to make amends for this apparent injustice even 70 years after Sacco and Vanzetti were electrocuted under its authority.

The Political Climate of the Early 1920s

At the time the South Braintree murders took place, America was recovering from the aftermath of World War I, which had officially ended in 1918. Patriotism was strongly emphasized throughout the war period, and most of the world seemed to be in political turmoil as communist, fascist, socialist, and anarchist movements were spreading quickly, especially in Europe. The Russian Revolution of the Bolsheviks, a socialist party, occurred in 1917, and the subsequent civil war in Russia between the Bolsheviks and the anti-Bolsheviks did not end until 1920 (Karpovich, 1930). This political unrest did not go unnoticed by the United States, and President Woodrow Wilson, a leading pioneer for worldwide democracy, was keenly aware of what was transpiring in the rest of the world.

Wilson's resolve to create democracy throughout the world was not supported by all Americans and, importantly, not by all foreign immigrants who were entering the United States in record numbers at the time. Those who had views that were alternative to democracy were labeled radical, unpatriotic, and dangerous. This generated fear among the American public and in many cases resulted in the display of hatred and bigotry.

THE RED SCARE

After World War I, the United States experienced an economic depression. Many workers joined unions, and, as working conditions worsened with the poor economy, workers went on strike. Strikers were immediately labeled ''Reds,'' and many were arrested and denied their civil liberties. These strikes were viewed as conspiracies against the government. In January 1912 one of the more infamous strikes took place at the Lawrence textile mill in eastern Massachusetts, not far from where Sacco and Vanzetti were arrested and tried. Earning extremely low wages and facing starvation and poor living conditions, the strike was led by Italian workers and the Industrial Workers of the World, a radical union that had strong socialist support (Morreale and Carola, 2006). The Bureau of Investigation (later the Federal Bureau of Investigation), under the direction of William J. Flynn, compiled over 200,000 files on radicals living in the United States. Thousands were arrested or deported, and on just one day, January 20, 1920,[1] 4,000 alleged radicals were arrested all over the United States. Many state and local governments, including Massachusetts, passed laws against radical activity (Burnett, 2000b). The Red Scare lost momentum by the summer of 1920, but Sacco and Vanzetti had been arrested in May of that year, and their case would forever be tainted by the fear and hatred that plagued the justice system during this time period.

The Sacco-Vanzetti case fell during a hostile period for those in America who did not believe in democracy. This period would later be termed the ''Red Scare.''

THE ACCUSED

Nicola Sacco[2] was born in a small village in southern Italy; and Vanzetti, also from a remote village, was from the northern part of Italy. Both men came from large conservative Catholic families. While living in Italy, neither strayed from his family's traditional republican political views at a time when many of their fellow countrymen turned to radical politics and religion. Although one day Sacco and Vanzetti would both call themselves atheists and anarchists, they left Italy as traditional conservative men with no controversy surrounding their soon-to-be famous names (Avrich, 1991).

Sacco and Vanzetti both left Italy in 1908 but did not meet until 1917. Like many at that time, they were drawn to America by promises of freedom and opportunity. Sacco was the lesser educated but more excited of the two. He was later quoted while in prison as saying he was ''crazy to come to this country,'' because it was a free country—''the country that was always in my dreams'' (Sacco and Vanzetti, 1997, p. 10). This notion of freedom is, ironically, what attracted them to anarchism.

Italian anarchist groups had existed in the United States for nearly 30 years when Sacco and Vanzetti arrived in America. They adhered to a branch of anarchism that was the most radical of all, and they advocated for a violent retaliation against an oppressive government. The use of dynamite and assassination was an approved method of action for this group, justified by its belief that its actions were in response to an even more violent state (Avrich, 1991).

A well-known Italian anarchist, Luigi Galleani, was living in Lynn, Massachusetts, in the early 1900s, and was the publisher of an Italian anarchist newspaper called *Cronaca Sovversiva* (Subversive Chronicle). Galleani was the mentor of many anarchists in the area, and Sacco and Vanzetti were close followers of his ideals and principles. They not only subscribed to his periodical but also contributed articles and aided in its distribution (Avrich, 1991). Galleani attracted attention from federal investigators when he wrote in a May 1917 issue about whether immigrants should register for the draft for World War I.

In this piece he stated that anarchists who did register would most likely not be sent into the military anyway because they would not be trusted. The Bureau of Investigation launched a serious investigation into Galleani, and this is how the government came to know of Sacco and Vanzetti, who were subscribers to the *Cronaca Sovversiva* (Young and Kaiser, 1985).

In 1917, during the height of the Red Scare, both Sacco and Vanzetti moved to Mexico along with several anarchist friends for a short time to escape the draft for World War I. Sacco had already begun a family with his wife, Rosina, whom he had married in 1912. They had a son, Dante, and Rosina later gave birth to a daughter, Ines, only months after Sacco's arrest. Vanzetti never married. When they left for Mexico, they both assumed different names. Vanzetti did not keep his pseudonym upon returning to the United States, but Sacco would forever be known as Nicola, rather than his true name, Ferdinando Sacco. After living in Mexico for several months, Sacco returned to his family in Stoughton, Massachusetts. Vanzetti moved around the United States and eventually settled in Plymouth, Massachusetts, where he became a fish peddler (Burnett, 2000a). During the three-year period preceding their arrest in 1920, many of their friends, who also subscribed to Galleani's periodical, were arrested and deported back to Italy. The clear message from the government was that radicalism would not be tolerated.

However, Sacco and Vanzetti held steadfastly to their radical beliefs until their deaths in 1927. From Dedham Prison they continued to write for anarchist newspapers and sent hundreds of anarchist-themed letters and pamphlets to those outside the prison. In one letter to Sarah Adams, Vanzetti wrote this of Sacco and himself:

> Both Nick and I are anarchists—the radical of the radical—the black cats, the terrors of many, of all the bigots, exploitators, charlatans, and oppressors. Consequently, we are also the more slandered, misrepresented, misunderstood, and persecuted of all. After all we are socialists as the social-democrats, the socialists, the communists. . . . The difference . . . between us and all the other is that they are authoritarian while we are libertarian; they believe in a State or Government of their own; we believe in no State or Government. (Sacco and Vanzetti, 1997, pp. 274–275)

Further on in this letter, Vanzetti stated that he and Sacco did not believe in religion. He told Adams that he and Sacco could have stayed in Italy and grown rich off the poor but they chose freedom instead and denounced that other way of life. Many scholars feel that because they chose anarchism, they were targeted by the government and subsequently eliminated for a horrible crime that they may or may not have committed.

THE CRIME

The robbery and murders took place at the Slater and Morrill shoe factory in South Braintree, Massachusetts, at approximately 3 p.m. on April 15, 1920. Several people witnessed the crime, and these people later provided the crucial testimony that helped to convict Sacco and Vanzetti. The shoe factory had two buildings, and between the two buildings was a railway station. At around 9:30 in the morning, a train arrived at the station and an employee of the American Railway Express delivered money from the train to the factory. This money was intended for distribution to the Slater and Morrill workers. The railway employee later testified that he had seen two strangers in a car, and he claimed that this was the car the murderers used that day. Other people around town had seen the

car in various places that day as well and were able to give general descriptions of the men in the car. The railway employee described one of the men as thin and blonde. Other witnesses gave this description, and later in court the prosecution claimed that this description fit Sacco. Just prior to the shooting, these same two men from the car were seen standing against a fence on the shoe factory grounds on Pearl Street. What people did not know was that these two men were waiting for a scheduled delivery of the factory's payroll that had just arrived on the morning train (Fraenkel, 1969).

The money had been separated into pay envelopes and was parted into two separate metal boxes, and these boxes were given to the shoe factory's paymaster, Frederick Parmenter, and his guard, Allesandro Berardelli, to bring to the other factory building. They left the building together with the two metal boxes filled with $15,776.51 in cash. As they approached the next factory building on Pearl Street, the two men who had been standing against the fence jumped from their positions and confronted Parmenter and Berardelli. Berardelli struggled with one of the men, who then shot him three times. This same armed man shot Parmenter twice. The other man picked up the cashboxes that had been dropped and waited for the getaway car as it was driven up the hill toward them. Berardelli, still struggling, tried to get up from the ground when a third man sprang from the car and shot him point blank in the chest. The first two robbers were already in the car, the third bandit joined them, and as they drove away they fired several more shots at the factory windows (Russell, 1971).

One witness, Jimmy Bostock, saw Berardelli and Parmenter fall to the ground from a distance and was even shot at when he tried to approach the scene. Witnesses inside the factory buildings had heard the shots even though the windows were closed, and some had peered through a slit in a jammed window to see the final part of the crime take place. As the car drove away, a barrier blocked its path before the train tracks because a train was nearing the station. After being threatened with a pistol by one of the men in the car, Mike Levangie raised the barrier to let them pass. Other witnesses were able to generally describe the bandits, but few could give specific details. The length of the incident was less than a minute from the time the first shots rang out to when the car disappeared from the scene (Russell, 1971).

There were more than 50 witnesses to the crime, and there were many differing accounts of what took place that afternoon as ''the actuality faded and the myth took over'' (Russell, 1971, p. 41). Many believe that none of the eyewitness accounts can be taken seriously, because there were so many different stories told to the police:

> The car was black, it was green, it was shiny, it was mud-streaked. There were two cars. The men who did the shooting were dark, were pale, had blue suits, had brown suits, had gray suits, wore felt hats, wore caps, were bareheaded. Only one had a gun, both had guns. The third man had been behind the brick pile with a shotgun the whole time. Anywhere between eight and thirty shots had been fired. (Russell, 1971, p. 42)

The witnesses agreed upon some details. There had been five men inside the car, which they identified as a touring car, and the driver was fair-skinned. The two bandits who had initiated the shooting were short and clean-shaven. Three witnesses, including Bostock, identified the man who had been hanging outside the getaway car from a picture that police showed them, but as it turned out that man was in jail in western New York State at the time the crime took place (Russell, 1971). The case was primed to become one of the most controversial in history, because, despite conflicting eyewitness accounts and

ITALIAN IMMIGRANTS IN AMERICA

The large wave of Italian immigration to the United States began in 1880. Around 80 percent of these immigrants were from southern Italy, an area stricken by poverty, shortage of food, droughts and floods that worsened the already imperfect farming terrain, and cholera epidemics. Facing this devastation and prejudice as well as unfair taxes from their government, thousands of southern Italians left their homes for Western countries. Those who chose the United States were welcomed by the Statue of Liberty and the promise of a new life, but prejudice and scorn awaited them as well. As nationalists pushed for severe restrictions on immigration, Congress failed many attempts to mandate literacy tests for immigrants, but eventually succeeded in 1917. President Woodrow Wilson stated that southern Italians came from the lowest class of Italians, and they lacked both skill and intelligence. President Wilson, who was in office when Sacco and Vanzetti were arrested, made many derogatory comments about Italians. He once said, ''hyphenates have poured the poison of disloyalty into the very arteries of our national life . . . Such creatures of passion, disloyalty, and anarchy must be crushed out'' (as quoted in Morreale and Carola, 2000). Despite Wilson's charge of disloyalty, Italian Americans strongly supported the American cause in both World Wars, and most embraced the democratic way of life in America (Morreale and Carola, 2000).

lack of evidence, the Massachusetts authorities were, nonetheless, able to arrest, convict, and execute two men for this heinous crime.

EVENTS LEADING TO THEIR ARREST

Sacco and Vanzetti were well known by Massachusetts law enforcement officials by the time of their arrest in 1920 because they were Galleanistis.[3] Galleani had been deported in 1919, but he continued to publish the *Cronaca Sovversiva* from Italy with monetary support from Massachusetts anarchists (Young and Kaiser, 1985). All Galleanistis were under heavy scrutiny because of a series of bombings that had occurred in the Massachusetts area in 1919 and 1920. This group was suspected of having set off these bombs. Andrea Salsedo, a Galleanisti and close friend of Sacco and Vanzetti, had been arrested by federal authorities in March 1920 on suspicion that he was one of the men behind the explosions. Two months after his arrest and while being detained, Salsedo committed suicide[4] by throwing himself out of a window in New York. The newspapers reported his death and the news that Salsedo had supposedly given the names of all those involved in the bombings before leaping to his death. The *Boston Herald* headline read: ''Salsedo Gave Names of All Terrorist Plotters Before Taking a Death Leap'' (Avrich, 1991, p. 198). Many Galleanistis fled the country in the two months following his arrest. Sacco was planning to return to Italy but was arrested before he could do so.

In March, Sacco learned of the death of his mother in Italy. When that was coupled with the arrest and deportation of many friends, he decided it was time to move back to Italy with his family. He had made the necessary arrangements with the Italian consulate, he had quit his job at the 3-K Shoe Factory, and he and his family were to leave the weekend following his arrest. Many suspect that Sacco and Vanzetti believed their names had been given to the authorities by Salsedo before he died, and this is why they were ''acting guilty'' the night of their arrest. Many also believed that they were plotters

of the 1919 and 1920 bombings in Massachusetts. Although police believed that Sacco and Vanzetti were involved in these bombings,[5] this belief is not why they were arrested on May 5, 1920.

On December 24, 1919, several months prior to the shoe factory murders, there had been an attempted robbery at the L.Q. White Shoe Factory in Bridgewater, Massachusetts. In this case, no one was injured, and the four men involved managed to escape but without the $30,000 payroll they were seeking (Avrich, 1991). Chief Michael Stewart of the Bridgewater police believed he knew two men who were guilty of both holdups: Feruccio Coacci, a Galleanisti and a shoe worker who had worked at both the L.Q. White and Slater and Morrill shoe factories; and Mario Boda, a man who was sharing a home with Coacci and his family.

Coacci had been arrested in 1918 and was marked for deportation, but was temporarily released on bond while awaiting a deportation date. He had received notice to report for deportation on April 15, 1920, the day of the South Braintree holdup and murders, but he failed to appear at the immigration station in East Boston. He had telephoned saying that his wife was ill, and as it turned out this alibi was false. When officers arrived at his house, they offered to allow him to postpone his deportation for an additional week, but Coacci refused and left the country on April 18. Stewart heard of this case and immediately suspected Coacci of having committed the South Braintree crime. Stewart also heard an informant's story that a group of Italian anarchists had committed the Bridgewater holdup and believed that both crimes were committed by the same men; Coacci was one of them (Avrich, 1991).

Coacci had already left the country, but Stewart searched his home and found Boda. Stewart questioned him and learned that Boda's car was being repaired at a local shop and that he owned a gun. That Boda owned a car and that he was an associate of Coacci placed him under suspicion (Fraenkel, 1969). Stewart suspected that Boda had hidden the Buick used in the South Braintree crimes in a shack behind the house before it was abandoned. When Stewart returned to question Boda again, he had already escaped through the back door. Stewart located Boda's car at the shop he had specified earlier and told the shop owner, Simon Johnson, to call him if someone came to retrieve Boda's car.

So it came to be that police in southeastern Massachusetts[6] were searching for the perpetrators of both holdups. Since Chief Stewart believed that the perpetrators were the same for both incidents and that they were Italian anarchists, police of the area were on the lookout for Italians who were acting suspiciously and who were looking for a car. Stewart's theory was supported by the Norfolk district attorney's office. However, the Massachusetts state police believed that the South Braintree holdup was the work of professionals. Nevertheless, on the evening of May 5, 1920, when Boda arrived at Johnson's repair shop with three other men—Sacco, Vanzetti, and Riccardo Orciani—to retrieve Boda's car, Johnson's wife called the police. Johnson did not greet them, and because they were unable to retrieve the car, they left. Sacco and Vanzetti boarded a streetcar while Orciani and Boda left separately. Shortly after, Sacco, Vanzetti, and Orciani were arrested by police in Brockton, Massachusetts. Boda was never caught by the police and escaped to Italy later that year (Avrich, 1991).

When they were arrested, Sacco had a loaded Colt automatic with 23 extra cartridges in his pocket and Vanzetti had a .38-caliber Harrington & Richardson revolver and shotgun shells in his pocket. Sacco was marked as one of the shooters in the South Braintree robbery, and Vanzetti was pegged as the "shotgun bandit"[7] from the Bridgewater attempted

robbery (Avrich, 1991). They were brought to the police station for questioning but were not told why they were being held. Stewart asked Sacco and Vanzetti why they were out on the streets so late at night; they replied that they had been visiting a friend and were on their way home. They both denied knowing Boda or Coacci, and before the guns were found on them they had denied having guns. They were asked whether they were anarchists and whether they supported the government. Vanzetti simply replied that he was different and that he liked things different. When asked why he carried a gun, Vanzetti replied that he needed it for protection because he was in business.[8] Sacco denied being an anarchist and said he needed a gun because there were many bad men around (Russell, 1971). After this questioning, they were locked up at the Brockton police station. The next day Frederick Gunn Katzmann, the district attorney for Norfolk and Plymouth counties, questioned them again, and they repeated the same answers they had given to Chief Stewart. They were brought to Brockton police court, where they pled guilty to carrying concealed weapons, and the judge ordered that they be held without bail.[9]

Over the next several days, many witnesses were brought to Brockton to view the three men. They were not placed in a lineup but rather brought into a viewing room and told to position themselves in various ways. They were told to pretend that they were holding a gun and to crouch in firing position. One witness identified Orciani as one of the men in the South Braintree holdups and another identified him as a gunman in the Bridgewater holdup (Russell, 1971), but the police released him because he had a substantiated alibi for both dates. He had been at work on April 15 and on December 24 and could not have been involved in the crimes (Young and Kaiser, 1985). Sacco and Vanzetti were not so fortunate.

Most of the witnesses could not identify Sacco or Vanzetti as perpetrators in the South Braintree incident. Bostock, one of the witnesses who had been closest in distance to the crime, could not identify either man. One witness thought Sacco resembled the man he saw shoot the guard, Berardelli, and two other witnesses thought Sacco resembled a man they had seen in the getaway car. One witness identified Vanzetti as the driver of the getaway car, but the most common reply from the South Braintree witnesses was that they did not recognize either Sacco or Vanzetti. One of the three eyewitnesses from the Bridgewater holdup who came to the station believed Vanzetti was the man carrying the shotgun, although he had previously given a description different from that of Vanzetti. Of the other two witnesses, one was not sure that Vanzetti was the ''shotgun bandit,'' and the other did not believe Vanzetti was the one he had seen (Russell, 1971). Vanzetti was first prosecuted for the Bridgewater holdup in Plymouth but will forever be known because of the trial held in Dedham a year later.

THE PLYMOUTH TRIAL

On June 11, 1920, Vanzetti was indicted for assault with intent to rob and assault with intent to murder for the attempted holdup in Bridgewater. The trial commenced in Plymouth on June 23 with Katzmann and Assistant District Attorney William Kane representing the Commonwealth of Massachusetts (Joughin and Morgan, 1948). Sacco and Vanzetti's comrades aided the two men by locating lawyers for them. Vanzetti's friends chose Judge John Vahey of the local district court, and Sacco's associates selected James Graham, who was known for getting along well with politicians and helping to exonerate Italians in trouble with the law (Russell, 1971). Both men defended Vanzetti in Plymouth.

The presiding judge was Judge Webster Thayer, who had a reputation for disliking foreigners but nonetheless was considered a fair judge (Russell, 1971).

The prosecution built a case around the eyewitnesses to the crime, and they succeeded in discrediting Vanzetti's alibi. Several witnesses testified in court that they believed Vanzetti was involved in the attempted holdup. When Vanzetti was arrested, he was carrying shotgun shells in his pocket, and this was additional circumstantial evidence used against him, since there was a similar exploded shell found at the scene of the crime. Later, in the Dedham trial, Vanzetti stated that he had taken the shells from the Sacco home on May 5 so he could sell them to fund propaganda. In a separate room, the jury opened the shells that were used as evidence against Vanzetti, thereby violating his right to be tried on evidence in an open court. But Judge Thayer never declared the incident, and Vanzetti's lawyers discovered the violation only after the trial was over (Ehrmann, 1969).

The defense had 21 witnesses testify on Vanzetti's behalf. Most of these witnesses were Italian, and some of them required an interpreter. Vanzetti was a fish peddler in Plymouth, and the Italian witnesses testified in court that Vanzetti had sold them eels on December 24. The date is important because, in Italian Catholic tradition, eel is the essential part of the feast that is celebrated to end fasting on December 24, Christmas Eve. The prosecution attacked these testimonies as substantial alibis for Vanzetti, asserting that they could not possibly remember specific times from so long ago. Other witnesses for Vanzetti testified that he never kept his mustache short and "cropped" as the prosecution witnesses had described the "shotgun bandit" (Joughin and Morgan, 1948).

Vanzetti did not testify on his own behalf, and he later harshly criticized his Plymouth lawyers for not having allowed him to do so. Some believe this influenced the jury in convicting Vanzetti. He was found guilty on July 1, 1920, and Judge Thayer sentenced him to 12 to 15 years in prison. This trial did not receive much publicity. There was only brief mention of it in the newspapers, and very few people attended the trial itself. The case seemed inconsequential to the public, but it was a significant strike against Vanzetti in his upcoming trial with Sacco. In 1927, the year of the executions, Governor Alvan Fuller was presented with new evidence that substantiated Vanzetti's alibi for December 24. A record of an eel delivery for Vanzetti surfaced from an old box of American Express delivery receipts, thus proving that Vanzetti was selling eels that day as witnesses had testified. Fuller did not exonerate Vanzetti, however. He said it was possible that Vanzetti could have sold eels in Plymouth and committed the crime in Bridgewater that same morning, since Bridgewater and Plymouth were only 20 miles apart (Ehrmann, 1969). Vanzetti's lawyers thought the governor's theory was ludicrous. Many people believe that Vanzetti was wrongly convicted of both crimes and that the only conclusion that can be drawn today is that both trials proceeded in a biased and prejudicial manner.

THE TRIAL IN DEDHAM

Sacco and Vanzetti were indicted for the South Braintree murders on September 14, 1920. Their trial began on May 21, 1921, at the Norfolk County Courthouse in Dedham, Massachusetts. The presiding judge was once again Webster Thayer. Defense counsel had changed since Sacco and Vanzetti were arrested. The lawyers representing Sacco were Fred H. Moore and William J. Callahan. Moore was from California and was well known for his defense of radicals and workers. Callahan had represented Sacco at a preliminary hearing in Quincy. Jeremiah and Thomas McAnarney, two brothers and well-known

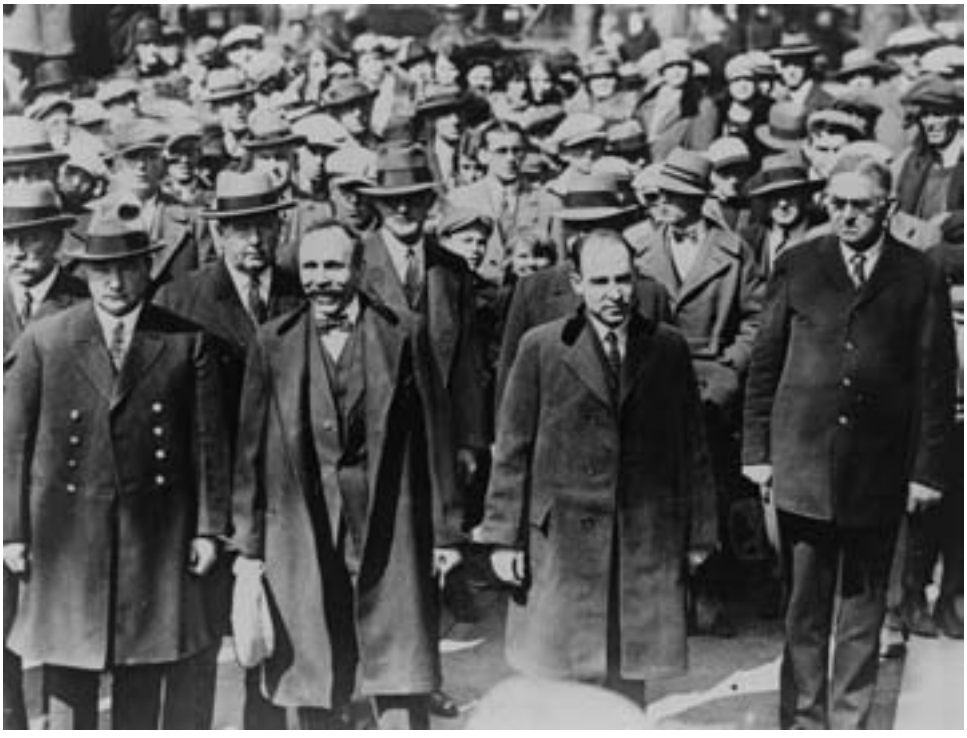


Figure 2.1 Bartolomeo Vanzetti (left) and Nicola Sacco, about to enter the courthouse at Dedham, Massachusetts, where they received the death sentence for murder. Courtesy of the Library of Congress.

lawyers from Norfolk County, represented Vanzetti. Prosecuting for the Commonwealth again was District Attorney Frederick Gunn Katzmann.

The prosecution went forward with Chief Stewart's theory that the same group of men committed the crimes in both Bridgewater and South Braintree. Holes in the theory were ignored, and this is partly why the case became extremely controversial. The money taken from the Slater and Morrill shoe factory was never recovered. Stewart assumed that Coacci had taken it back to Italy with him, but it was learned that the Italian police had stopped Coacci upon his return to Italy, searched his belongings, and found nothing. Sacco was able to prove that he had been at work on December 24 and therefore could not have been involved in the Bridgewater crime. However, records showed that he was not at work on April 15, which bolstered the prosecution's argument that he was in South Braintree that day committing robbery and murder with four other men (Avrich, 1991).

This theory was not supported by all officials involved in the case. The state police never backed down from their theory that professionals had committed the South Braintree crime. Nevertheless, the prosecution continued with Stewart's theory and brought evidence before the court against Sacco and Vanzetti. The jurors were brought to the scene of the crime, and on the sixth day of the trial they began to hear evidence against the defendants. The state presented 16 witnesses to identify Sacco. Three of the witnesses placed him at the shoe factory before the crime took place. Of these three witnesses, the defense, upon cross-examination, discovered that one of them had previously failed to

identify Sacco's photograph. Another witness put it this way: "While I wouldn't be positive, I would say that to the best of my recollection, that was the man" (W.S. Tracy as quoted in Joughin and Morgan, 1948). The third witness was "pretty sure" that Sacco was the man he saw. Of those who witnessed the shooting, none could positively say that Sacco was the man they saw. Bostock was unable to identify either man at the police station or at the trial. Lewis Wade, who had positively identified Sacco at the police station, expressed his doubts at the trial. Most of the witnesses could only generally describe the men they saw. Some called them short, stout, or dark-skinned, and some said that two of the men were wearing dark hats (Joughin and Morgan, 1948).

A cap found near Berardelli's body was used as additional evidence against Sacco. Sacco's employer and friend George Kelley was asked in court if the cap was Sacco's. He could not say either way. Kelley knew that Sacco's cap was dark and that he hung it on a nail at work every day (Russell, 1971). The cap that had been admitted into evidence was torn in the back, and Judge Thayer concluded that this was a result of Sacco hanging it on a nail. However, it was later learned after the trial's conclusion that a police officer had torn the hat while searching for an identifying mark. When Sacco tried the cap on in court, it appeared to be too small, and this aspect of the case was made famous by cartoonists from the *Boston Post* and the *Boston Herald* (Ehrmann, 1969). Some newspapers mocked the lack of evidence against Sacco and Vanzetti, and cartoons were a popular way to do so.

A bullet found in Berardelli's body was further evidence provided by the prosecution to prove Sacco's guilt. Captain William H. Proctor of the state police was unsure but said it was possible that the fatal shot could have originated from a gun such as the one Sacco carried (Joughin and Morgan, 1948). The defense presented expert witnesses who claimed that the fatal bullet found in Berardelli could not have been fired from Sacco's gun. The ballistics evidence became one of the most controversial issues surrounding the Sacco and Vanzetti case.

The final evidence used against Sacco and Vanzetti involved their actions on the night of their arrest. Evidence of lies and an apparent guilty manner on that night was presented to the jury. Katzmann and Chief Stewart had questioned them and were witness to their deliberate deceit. Later, author Paul Avrich argued that this elusive behavior was logical, considering that Sacco and Vanzetti most likely believed that they were being arrested for anarchy. Only two days before their arrest, they learned that Andrea Salsedo had given up the names of his anarchist comrades who were part of the 1919 and 1920 bomb plots in Massachusetts. Fear that their names had been given to officials may have caused them to lie about their political beliefs and their weapons (Avrich, 1991).

Overall, there was less evidence presented against Vanzetti. The prosecution connected Vanzetti to the crime by stressing his association with Sacco, presenting eyewitnesses who believed that one of the men in the car looked like Vanzetti, and claiming that the gun found on Vanzetti the night of his arrest had originally belonged to Berardelli. Those witnesses who identified Vanzetti were unable to describe anyone else with Vanzetti. The testimony of one of the witnesses, Mike Levangie, was impeached because he had previously given different testimony. He had claimed in court that Vanzetti was the driver of the getaway car, but had previously said that he was a passenger. The prosecution then admitted that Vanzetti was not driving the car but perhaps Levangie was confused as to Vanzetti's location in the car. The eyewitness testimony against Vanzetti was not strong (Joughin and Morgan, 1948).

The defense and prosecution presented conflicting testimony as to whether Berardelli had been armed at the time of the robbery. It was known that he had left his gun at a shop a few weeks prior to the incident so that the broken hammer could be replaced. Testimony was given that Berardelli's gun was similar to Vanzetti's gun, which had been presented as evidence. Vanzetti, however, was able to show when and where he had purchased his gun, and expert testimony showed that Vanzetti's gun did not have a new hammer (Joughin and Morgan, 1948). The final evidence presented against Vanzetti was his display of guilt on the night of his arrest.

Vanzetti's alibi was deemed ''overwhelming'' by Felix Frankfurter, a lawyer and future Supreme Court justice who had been following and assisting with the case. Thirty-one eyewitnesses testified in court that Vanzetti was not one of the men they saw in the get-away car. There were 13 witnesses who testified that they had seen Vanzetti selling fish in Plymouth on the day in question (Frankfurter, 1954). Sacco claimed to have been in Boston. Several witnesses supported this claim and remembered the day because it was the day of an Italian feast in the predominantly Italian north end of Boston. Sacco had met with an Italian consulate to discuss the paperwork necessary for his upcoming return trip to Italy with his family. The consulate also testified on Sacco's behalf. Katzmann, as he had done with previous defense witnesses, asked the alibi witnesses to recall other events and people from that day and they could not (Ehrmann, 1969). The trial, which lasted nearly seven weeks, did not go well for Sacco and Vanzetti. On July 21, 1921, they were convicted of murder in the first degree.

THE APPEALS PROCESS AND THE WORLD'S REACTION

Two men who came to America to realize a dream unintentionally divided a nation and mobilized the world around them. While many spoke out against Sacco and Vanzetti, millions rallied to their side. After their conviction in 1921, most of the country still had not heard of Sacco and Vanzetti. The *New York Times* only briefly mentioned the conviction in a small piece several pages into the newspaper (Trasciatti, 2003). It was only after six years of appeals and extraordinary defense strategy that international fame came upon these two men. Their plight attracted widespread media attention and their names appeared in headlines all over the world. But newspapers were not the only venue through which their story was told. One of the chief defense attorneys to serve for Sacco and Vanzetti, Fred H. Moore, transformed the traditional means of defending murder suspects by not solely disputing the facts surrounding the crime. Moore heavily politicized the case by openly discussing Sacco and Vanzetti's anarchist beliefs in court, and he tried to establish that his clients were prosecuted solely because of their radical beliefs. The prosecution, of course, denied these accusations, but Moore went further and claimed that this was all part of a government plan to halt the anarchist movement in the United States (D'Attilio, 1999).

Moore's efforts involved contacting unions around the world, distributing many thousands of defense pamphlets throughout several countries, and organizing public meetings. Moore also managed to gain the aid of the Italian government despite the defendants' anarchist background. Italian dictator Benito Mussolini had taken office in 1922 and was well known for his repression of anarchists in Italy. Surprisingly, he was more than eager to defend Sacco and Vanzetti. He recognized the importance of Sacco and Vanzetti's

case and witnessed the insurrections among the Italian people after they had read about the fate of their comrades in the Italian newspapers (Cannistraro, 1996).

Moore had sent a young liberal journalist, Eugene Lyons, to Italy hoping to stir up emotions in favor of Sacco and Vanzetti. Lyons helped set up organizations to gather support and sent countless numbers of articles to leftist newspapers in Italy. The Sacco-Vanzetti Defense Committee, which had been formed in Boston shortly after their arrest, coordinated efforts with those of Lyons in Italy and sent letters and leaflets to Italy declaring that Sacco and Vanzetti had been arrested as a result of their political beliefs. Lyons was later expelled by Mussolini after anarchists, in an unrelated matter, detonated a bomb that killed 21 people. The Italian protests nevertheless continued, as did the Italian government's support for Sacco and Vanzetti, even after their executions in 1927 (Cannistraro, 1996).

The Italian government's involvement did not please many anarchist comrades, but it became very apparent that the cause was backed by more than just radical left-wing groups such as socialists and anarchists. Moore's tactics had transformed a small-town case into an international affair, gathering support from every corner of the world. This outreach did not come without costs, however, and Moore's unprecedented methods of defending this case eventually led to his dismissal:

> His manner of utilizing mass media was quite modern and effective, but it required enormous sums of money, which he spent too freely in the eyes of many of the anarchist comrades of Sacco and Vanzetti, who had to raise most of it painstakingly from working people, twenty-five and fifty cents at a time. Moore's efforts came to be questioned even by the two defendants, when he, contrary to anarchist ideals, offered a large reward to find the real criminals. (D'Attilio, 1999, p. 11)

By the time of his dismissal, however, his goal had been accomplished, and Sacco and Vanzetti were international celebrities.

William Thompson and Herbert Ehrmann succeeded Moore and continued the attempts to receive a new trial. During the six years after the conviction, many new issues came to light and were raised in appeals. These issues further enraged the public and reinforced the notion that these men had not received a fair trial. Judge Thayer was undoubtedly a prejudiced man, although he did not reveal this prejudice in court records. Before the trial commenced, Thayer, while in the company of several newspaper reporters, learned of the leaflets being distributed in support of Sacco and Vanzetti. In his anger over this public support, he declared before several witnesses, "You wait till I give my charge to the jury. I'll show 'em!" (as cited in Ehrmann, 1969, p. 462). The foreman of the jury, Walter Ripley, had spoken candidly with a friend who had expressed his belief in their innocence, and to this Ripley replied, "Damn them, they ought to hang anyway!" (as cited in Feuerlicht, 1977, p. 202). While Governor Fuller was considering the clemency appeal, he received a letter from a conservative Dartmouth professor, James Richardson, who had spoken with Thayer after the trial ended. Richardson revealed Thayer's comment: "Did you see what I did to those anarchistic bastards the other day? . . .They wouldn't get very far in my court" (as cited in Feuerlicht, 1977, p. 349).

The most intriguing new evidence that was brought before Judge Thayer, and later before an advisory committee, was the confession of a prisoner by the name of Celestino Madeiros. In 1925, while in Dedham Jail with Sacco, he confessed in a note to Sacco that he had taken part in the South Braintree robbery and murders with the four other

members of the Morelli Gang. The Morelli Gang was a well-known professional group of robbers from the area. It is important to note that the state police believed that the crime had been committed by professionals. This gang was known for stealing shoes and textiles from freight trains, and many of these crimes had occurred in South Braintree. They spoke English without accents because they were American-born Italians. Some of the witnesses had testified in court that the bandits had spoken perfect English without a trace of an Italian accent. Both Sacco and Vanzetti spoke broken English. Joseph Morelli, the leader of the gang, bore a striking facial resemblance to Sacco. All of the gang members were out of jail at the time of the crime, and two of them had just been released a few weeks before April 15, 1920. One of the Morelli brothers drove a Buick, and the getaway car was determined to be a Buick. Another brother owned a 32 Colt revolver, and it was this type of gun that was used to kill the two men from the factory (Ehrmann, 1969).

Thompson and Ehrmann spent a great deal of time interviewing Madeiros. One startling discovery they made was that Madeiros's account of the incident differed from the trial account in that he spoke of two separate getaway cars. He claimed they switched cars after the robbery, but the trial record shows that there was only one car. It was discovered a few months later that Madeiros was correct in his version of what happened, and the trial record was wrong (Ehrmann, 1969). Finally, Thompson and Ehrmann learned that Madeiros had $2,800 after he was released from jail in 1921. This was just under one-fifth of the money stolen from the shoe factory. In Thompson and Ehrmann's view, the case seemed very strong against the Morelli Gang. They presented this evidence on appeal for a new trial, but Thayer denied the motion (Ehrmann, 1969).

Six appeals for a new trial were made to Thayer, and he denied all of them. This system in which the trial judge ruled on appeals seemed absurd to many people at the time. Judge Thayer ruled on accusations of prejudice made against him. It was because of the Sacco-Vanzetti case that the appeals system was changed following their executions. However, on April 5, 1927, the Supreme Judicial Court of Massachusetts overruled all objections to Thayer's denials. On April 9, Thayer condemned Sacco and Vanzetti to death by electrocution.

An application for clemency was filed with Governor Alvan Fuller on May 4, 1927. In response to this and growing social pressure, Fuller appointed an advisory committee to review the case. The committee consisted of Abbott Lawrence Lowell, the president of Harvard University; Robert Grant, a former judge; and Samuel Stratton, president of the Massachusetts Institute of Technology. This committee became known as the Lowell Committee. Ehrmann and Thompson were dismayed at the Lowell Committee's reaction to evidence of prejudice by Judge Thayer. The committee condemned Thayer's prejudicial conduct, calling it a ''grave breech of official decorum'' (Lowell as quoted in Ehrmann, 1969, p. 501). However, they did not judge that it justified an order for a new trial. The Lowell Committee dismissed all issues raised before them, and they advised Governor Fuller that Sacco and Vanzetti were guilty. Upon this advice, Fuller denied the appeal for clemency.

After the Lowell report was made public, many newspapers, including the *New York Times,* applauded the decision, while many writers did not agree. Heywood Broun, a reporter for the *New York World,* referred to Harvard University as ''Hangman's House'' in criticism of its president and added, ''What more can these immigrants from Italy expect? It is not every prisoner who has the president of Harvard University throw on the switch for him'' (as quoted in Feuerlicht, 1977, p. 381).

THE EXECUTIONS

Many last-minute attempts were made to save Sacco and Vanzetti. An appeal made to the Supreme Judicial Court of Massachusetts was denied, and August 1927 became a tense month for most of the world. Newspapers reported their surprise at the growing international concern for the two anarchists. The Sacco-Vanzetti Defense Committee made a plea to liberals and intellectuals for support. Dorothy Parker, Jane Addams, John Dewey, Edna St. Vincent Millay, and Katherine Porter were among the hundreds of well-known figures of the time to rally to the cause. Letters were sent, petitions were signed and sent to the newspapers, thousands picketed the streets of Boston and other cities, and there were countless strikes and demonstrations for Sacco and Vanzetti (Feuerlicht, 1977). Governor Fuller granted a stay of execution for 12 days while final deliberations were made, but ultimately Sacco and Vanzetti were executed just after midnight on August 23, 1927. The streets of Boston were empty at the time due to strict city orders, but thousands turned out in New York City to protest their executions. After the executions, thousands rioted on the streets of cities all over the world, including Boston, Paris, New York, and Buenos Aires (Selmi, 2001). Thousands of supporters also marched with the funeral procession in Boston, and as the coffins passed, they strew flowers in the coffins' direction. In Massachusetts, however, the population seemed divided. The lower class was sympathetic to Sacco and Vanzetti, but the upper and middle classes were hostile toward them (Feuerlicht, 1977). To the dismay of millions all over the world, Sacco and Vanzetti were not saved, but this is not the end of their story.

THE AFTERMATH AND THE LEGACY OF SACCO AND VANZETTI

Many famous people at the time were convinced that Sacco and Vanzetti were two innocent men who were wrongly executed. Upton Sinclair was one such famous person. Four years after the executions, Sinclair traveled to Boston to gather facts surrounding Sacco and Vanzetti. He came to Boston under the impression that these were peaceful men and that they were merely "philosophical anarchists" (Sinclair as quoted in Avrich, 1991, p. 161). After learning a great deal from those who worked closely on the case, he concluded just the opposite: they were militant anarchists who believed in and preached the use of violence. Paul Avrich, author of *Sacco and Vanzetti: The Anarchist Background,* concluded that Sacco and Vanzetti were undoubtedly involved in the 1919 bombings in Massachusetts. He was uncertain of their roles in the crime, but their involvement was a "virtual certainty" (Avrich, 1991, p. 162).

Many books were written about the Sacco-Vanzetti case. Some authors believed they were guilty, but most firmly believed in their innocence. In 1969, Herbert Ehrmann published *The Case That Will Not Die,* and he shed new light on the ballistics evidence used against Sacco. He included photos of the bullets admitted into evidence, and he showed that bullets had been tampered with and possibly replaced before the trial began. Many academics and intellectuals have gathered at conferences to discuss the Sacco-Vanzetti case. The injustice that occurred has even stirred much discussion about the fairness and validity of the death penalty in the United States.

The media world has continued to cover the story even as it grows more distant in history. This is partly because of the lasting political and legal effects of the case. The Massachusetts appeals laws were rewritten so that trial judges could not rule on appeals. In 1977, fifty years after the executions, Governor Michael S. Dukakis declared August 23

"Nicola Sacco and Bartolomeo Vanzetti Memorial Day" in Massachusetts. He did not officially pardon them, but he declared that they had received an unfair trial and stated that any stigma attached to their names was removed that day (Young and Kaiser, 1985). In 1997, the first Italian American mayor of Boston, Thomas Menino, dedicated a bronze sculpture of Sacco and Vanzetti and ordered it placed in a public area of Boston. Gutzon Borglum, the creator of Mount Rushmore, had created this sculpture many years ago, but previous Massachusetts governors and Boston mayors had refused to display it (Gelastopoulos, 1997).

In the arts, many writers and directors have honored the memory of Sacco and Vanzetti. There were numerous plays written and acted out on television and in the theater. An opera, *The Passion of Sacco and Vanzetti,* was performed in New York City and other major venues. Several songs were inspired by their story. Documentaries, speeches, and newspaper articles have appeared in the media every year since their death. It is likely that the majority of Americans are still somewhat familiar with the story of the two men because of the attention it has received from the media.

The Sacco and Vanzetti saga will continue to be told in books, plays, periodicals, and television productions. No one can ever be truly positive about whether these men were guilty or innocent, but the majority support the latter. It is undeniable that Sacco and Vanzetti received an unfair trial, and this injustice stirred universal emotions and caused many to criticize the American criminal justice system. They could not possibly have realized in 1927 what their legacy would be, but perhaps Vanzetti had some hint. He found solace in knowing that their deaths would not be in vain, and three months before his execution, he declared in a letter to the *New York World:*

> If it had not been for these thing, I might have live out my life talking at street corners to scorning men. I might have die, unmarked, unknown, a failure. This is our career and our triumph. Never in our full life could we hope to do such work for tolerance, for joostice [*sic*], for man's understanding of man as now we do by accident. Our words—our lives—our pains—nothing! The taking of our lives—lives of a good shoemaker and a poor fish peddler—all! That last moment belongs to us—that agony is our triumph. (Vanzetti in Sacco and Vanzetti, 1997, p. lvi)

Their triumph was realized even before their deaths. The power and influence of these two men have been far greater than those of many other foreigners who moved to America to realize a dream.

SUGGESTIONS FOR FURTHER READING

Morreale, B., and Carola, R. (2006). *Italian Americans: The immigrant experience.* New York: Barnes & Noble.

Rappaport, D. (1992). *The Sacco-Vanzetti trial,* part of the *Be the judge–Be the jury series.* New York: Harper-Collins Publishers.

Sacco, N., and Vanzetti, B. (1997). In M.D. Frankfurter and G. Jackson (Eds.), *The letters of Sacco and Vanzetti.* New York: Penguin Books.

NOTES

1. Three months prior to the arrest of Sacco and Vanzetti.
2. His name given at birth and as he was known to his family is Ferdinando Sacco, but later while living in Mexico, he assumed the name of his older brother, Nicola, who was then deceased (Avrich, 1991).

3. A Galleanisti is a follower of Galleani's anarchist belief system.
4. Salsedo's death while being detained was considered highly suspicious, but was labeled a suicide by authorities.
5. After the deportation of Galleani, the police recovered a list that contained all subscribers to the *Cronaca Sovversiva,* and Sacco and Vanzetti were among the names they found.
6. Both South Braintree and Bridgewater are located in southeastern Massachusetts.
7. In the Bridgewater robbery attempt, one of the four men involved in the crime had been firing a shotgun at the truck carrying the $30,000 payroll.
8. Vanzetti was a fish peddler but worked for himself.
9. The Brockton judge had the power to do this because of a wartime act still in place. This act stated that men who were suspected of major crimes could be held in jail without bail (Russell, 1971).

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3

Alphonse Capone: The Man Behind the Legend

JOSEPH GREGORY DELEEUW

Throughout history there are few individuals who have become so closely tied to an event or period of time that the two become synonymous. The mention of Prohibition or 1920s Chicago is often followed by thoughts of Al Capone and his work as a bootlegger, a violent criminal, and the man who provided vices demanded by the people. Though his most widely acknowledged crimes included violations of Prohibition laws and the violence associated with organized crime during the 1920s, it was his violations of federal tax laws that would lead to his incarceration. Over 50 years after his death Al Capone remains a prominent criminal figure in the history of American crime.

Early Life

Gabriele Capone left the village of Castellmarre di Stabia, just south of Naples, and arrived in the United States in 1894. A barber by trade, Gabriele was unique among immigrants who arrived at the same time because he possessed the ability to both read and write in his native language. Along with his 27-year-old wife Teresina, 30-year-old Gabriele also brought his sons, two-year-old Vincenzo and the infant Raffaele, to America (Bergreen, 1994, pp. 24–31).

When the family arrived in the United States they established a residence in Brooklyn, New York. Initially unable to finance his own barbershop, Gabriele used his ability to read and write to gain employment in a local grocery store. In 1895 the family welcomed a third son, Salvatore, whom a pregnant Teresina carried during the family's voyage to America. Although the family would ultimately reach nine children, the next addition would leave a lasting mark on the early twentieth century and beyond. On January 17, 1899, Alphonse Capone was born (Kobler, 1971, p. 23).

The Capone family moved after Al was born, relocating to an apartment upstairs from a barbershop that Gabriele had recently opened. This move would have a major impact on Al later in life, as it exposed him to a diverse collection of cultures. With the move the Capones left their predominately Italian neighborhood to live in a culturally diverse area that mixed German, Irish, and Chinese cultures. Exposure to these different cultures at a young age helped Al avoid the prejudice and cultural divides that would fuel conflicts among the criminal organizations of Chicago two decades later (Kobler, 1971).

By all accounts the Capone family was a normal Italian family, average in every way. There were no indications that their son would one day rule a powerful criminal organization. Although the Capone family showed no signs of what might influence Al's behavior later in life, his childhood was not free of conflict.

As a boy Al had an average to above average intelligence. He met expectations in school and was generally a problem-free child until he reached the sixth grade. Fourteen-year-old Al was expelled from school after a confrontation with his teacher in which blows were exchanged. When his teacher struck him, Al returned the favor and hit her back (Schoenberg, 1992).

Following Al's expulsion from school, the Capone family moved again, this time to a new neighborhood that would introduce Al to two individuals who would change his life. The first was a young woman two years his senior named Mae Coughlin. The second was the businessman who would give Al an opportunity to begin his career in organized crime.

It was here that Al met Johnny Torrio. Known as a businessman's criminal, he was highly organized and used his savvy sense of business to create structure along with corporate leadership in his ventures. In a profession where violence often prevailed, the physically small Torrio used his intelligence rather than physical force to gain power and influence (Schoenberg, 1992, pp. 2–24). Torrio would become Al's mentor and, in the process, teach him a lesson that when violated would cause great problems for Al. Torrio believed that keeping a low profile was the key to survival in organized crime. Later in life Al's desire for public acknowledgement and social status would lead him to violate Torrio's simple rule.

Like many young men in the community Al began working for Torrio at a young age. He served as a runner, delivering packages and messages for Torrio's criminal organization. Al's desire for knowledge led him to observe his surroundings at all times. By watching closely Al learned from the day-to-day operations of the organization, an experience that would help to shape him as a future leader (Schoenberg, 1992, p. 27).

Torrio, the constant businessman, recognized the high level of competition in New York and what it meant for business. It was in 1909 that Torrio decided to pursue opportunities in Chicago, a town yet to be significantly divided by criminal organizations (Kobler, 1971, p. 52). The move would not mark the end of his relationship with Capone.

Without Torrio in New York to guide him, Al found a place among a string of several street gangs. Unlike gangs today, these were similar to social clubs where boys would gather to occupy their time. Minor offenses such as smoking and the occasional fistfight were common between rival gangs, but the structure they provided was vital in preventing the young men from moving on to more serious crimes. Al spent time with several street gangs including the South Brooklyn Rippers, the Forty Thieves Juniors, and the Five Point Juniors (Kobler, 1971, pp. 28–31). During this time Al still lived at home with his family and worked legitimate jobs in order to help support his siblings. For six years he held various jobs including positions in a munitions factory and as a paper cutter.

On the advice of Johnny Torrio, a rising criminal presence in New York by the name of Frankie Yale hired Al as a bartender at his newly opened establishment, the Harvard Inn. Al served as a bartender and bouncer at the club (Bergreen, 1994, p. 49). It was during his time as an employee of the Harvard Inn that Al earned the nickname that he would become known by for the rest of his life.

One evening at the Harvard Inn, an 18-year-old Capone approached an attractive young woman and her party. Attempting to get the attention of the woman, Al leaned close to her and said, ''You got a nice ass, honey, and I mean it as a compliment. Believe me.'' The woman's brother Frank Gallucio, a local thug, overheard the comment and demanded an apology from Capone. When he refused, Gallucio lunged at him, knife in hand. The smaller Gallucio landed a series of clean blows, slicing Capone's left cheek twice and his neck once. The cuts on his face measured four inches and two and a half inches. After nearly 30 stitches the wounds healed well, but the scars remained. It was these scars that would forever mark Capone with the nickname ''Scarface'' (Schoenberg, 1992, pp. 33–34).

MARRIAGE

A 19-year-old Capone met the young Irish woman named Mae Coughlin, who was two years older than Al, and quickly began a relationship. Their marriage took place shortly after the birth of their son Albert Capone, who was born on December 4, 1918 (Bergreen, 1994, pp. 52–53). Sonny, as the boy was called, found his godfather to be none other than Johnny Torrio.

In his new role as a family man and father, Al was compelled to pursue a legitimate career. Al and the family moved to Baltimore where he was employed as a bookkeeper for a construction firm (Bergreen, 1994, p. 56). Although the life-style of a legitimate bookkeeper worked for Al, it ended quickly in 1920 when tragedy called him back to New York. On November 14, 1920, Gabriele Capone died of a heart attack at age 55. This loss of his father signaled the beginning of several changes for Al.

While in New York to address the death of his father, Capone made a mistake that changed the course of his life. After severely injuring a man in a fight, it was discovered that Al's victim was a protected member of a local crime family. As the search began for the man with scars on his face, Frankie Yale devised a plan to save Capone's life. In order to protect him from the wrath of his victim's friends, Al and his family would have to leave New York. An arrangement was made with Johnny Torrio, who was eager to have the hardworking Capone join him in Chicago (Kobler, 1971, pp. 35–36).

In 1919, Al joined Torrio in Chicago. Torrio's operation was growing quickly thanks to the reduced level of competition in Chicago. With unchecked growth at hand, Al would have the opportunity to become a valuable member of the organization.

CHICAGO

In Chicago Johnny Torrio worked for a man named ''Big Jim'' Colosimo, who ran a large number of brothels. Big Jim and his wife were highly successful in the brothel business, but relied on Torrio to provide them with the organization skills and leadership necessary to operate their collection of ''businesses'' efficiently. Despite Big Jim Colosimo's success as a brothel owner, his death would become his most important contribution in shaping the future of Chicago's criminal organizations.

THE 18TH AMENDMENT

After receiving approval from 36 states, the 18th Amendment went into effect on January 16, 1920, making it illegal to manufacture, sell, or transport intoxicating liquors within the United States. In order to enforce this new amendment, the National Prohibition Act of 1919, also known as the Volstead Act, was passed and went into effect along with the amendment despite President Woodrow Wilson's veto (Allsop, 1961, p. 29). Nearly 14 years after the 18th Amendment went into effect it was repealed. On December 5, 1933, the 21st Amendment was passed, repealing the 18th Amendment and the Volstead Act as well as effectively ending prohibition (Coffey, 1975, p. 317).

When Big Jim left his wife and business partner for a young singer, a familiar face to both Johnny Torrio and Capone saw an opportunity to remove Colosimo from power. The weakness demonstrated by Colosimo's lack of focus on business provided the opening needed for Frankie Yale to make a move and establish himself in Chicago. Frankie Yale murdered Big Jim in his own nightclub in May 1920. A lack of witnesses prevented Yale from being prosecuted, and his attempt to move into Chicago was unsuccessful (Schoenberg, 1992, pp. 63–64). What had once been a working relationship between Yale and Torrio began to strain as Torrio himself took control of Colosimo's empire. Preventing Yale's effort to move into Chicago also forced Al to choose a side. He aligned with Torrio in a move that would foreshadow the future of his relationship with Yale (Coffey, 1975, pp. 34–35).

Now running Colosimo's empire alone, Torrio promoted Capone to partner. Capone's intelligence and experiences in New York helped him to adapt quickly to his new leadership roll. It was not long before Al was running Torrio's headquarters, a speakeasy named The Four Deuces. Al met a man named Jack Guzik while running the speakeasy, and they eventually became best friends. Although the men were different in many ways—Guzik came from an Orthodox Jewish family—they found common ground in the businesses they ran. Guzik's family made their living through prostitution, a business Al knew very well (Bergreen, 1994, p. 90).

Shortly after the death of his father, Al moved the remainder of his family from New York to his home in Chicago (Bergreen, 1994, p. 58). Although his family was aware of his business ventures and the company that he kept, Al was still concerned about the way he was perceived by the community. In order to maintain an image of respectability, Al posed as a secondhand furniture dealer to his neighbors. Not until later in life would Al be comfortable enough with his own profession to openly admit his role in the criminal world.

AN ELECTION VICTORY: AT WHAT COST?

An unfavorable mayoral election for the Torrio and Capone organization's preferred candidate in Chicago forced the two leaders to reconsider their base of operations. A new reform-minded mayor, focused on targeting their organization, and the lack of high-ranking political figures who could be influenced by their wealth was bad for business. The two men decided that a large portion of their operations would be moved out of the reach of the new leadership in Chicago.

The suburb of Cicero offered the perfect setting for their new center of operations. Moving to Cicero was viewed as a cost effective way of operating, as they would be able

to influence the entire city government with far less financial burden than what it had cost to influence a small number of officials in Chicago (Bergreen, 1994).

In 1924, with Torrio on an extended trip to Italy, Capone was left to run the organization, and he quickly moved to influence the upcoming elections in Cicero. Capone's men kidnapped election workers, threatened individual voters, and disrupted polling stations on election day in an effort to influence the vote. By midday word of the ''Cicero Takeover'' had reached Chicago, infuriating local authorities. The police department quickly sent a force of heavily armed plainclothes officers to Cicero in response. Although the group of out-of-town enforcers sent to target Capone's men were outside of their normal jurisdiction, they were about to cost Capone more than he could have imagined when the day began (Schoenberg, 1992, p. 98).

It was Al's brother Frank who would pay the ultimate price in the effort to win the election that day. When Frank Capone was spotted walking down the street, a number of the plainclothes officers approached him with their guns drawn. Possibly confused by the situation or as a reflex, Frank reached for his own weapon and was quickly killed (Schoenberg, 1992, p. 98).

When word of his brother's death reached Capone, he ordered a series of kidnappings that targeted election officials and the theft of ballot boxes. Although Al's candidates were successful in the election, Frank Capone's death would forever haunt Capone as his election day victories came at the cost of his brother's life. The often short-tempered Capone remained relatively calm and collected following the election as he refrained from engaging in counterattacks against the police.

The aggression that Capone had controlled following his brother's death could not be contained forever. Capone's anger got the best of him only a few weeks after the election when a local thug attacked his best friend, Jack Guzik. When Al confronted his friend's attacker, the man responded with a string of insults. What Al's response lacked in proportionality was made up for in raw violence. The man was swiftly shot in the head by an enraged Capone (Kobler, 1971, p. 120).

The murder of the street thug who assaulted Guzik did not go unnoticed. ''The Hanging Prosecutor,'' William H. McSwiggin, attempted to prosecute Capone for the murder but found that several eyewitnesses could not recall the event. This epidemic of ''faulty'' memories would plague witnesses of numerous crimes committed by Capone during his criminal career (Kobler, 1971, p. 120). Publicly, the 25-year-old Capone seemed to have succeeded in getting away with murder, but the publicity surrounding the case would permanently deny Al the anonymity that had protected him so far. The publicity that now surrounded Capone brought the attention of law enforcement as well as rival gangs. Capone's status in the public eye would force him to use all of his assets including his wealth, power, and intelligence to face the violent future that was ahead.

HIGH PROFILE MURDER

Dion O'Banion was a rising bootlegger and florist who was prone to erratic behavior. Initially, he was an associate of Torrio and Capone, but eventually began his own operations. After leaving the organization, it became clear that O'Banion lacked the self-control demonstrated by Torrio. His lack of self-control was bad for business, and there was little doubt between Capone and Torrio that O'Banion was capable of murdering a man over the smallest insult or disagreement (Schoenberg, 1992, p. 109).

Their fears were realized in February 1924 when O'Banion's uncontrolled behavior became a problem for Capone. Al was brought into a murder investigation after O'Banion killed a man he had met at The Four Deuces. The murder was brutal and the body was dumped on the side of the road, leading to a flurry of attention from police and the media. When police began to interview witnesses and suspects, Capone's club was mentioned. After turning himself over to police, Capone was released without being charged, but the danger of O'Banion and his temper had been made perfectly clear (Schoenberg, 1992, p. 109). O'Banion continued to be a growing problem as he engaged in feuds with other local bootleggers that included highjacking each other's alcohol trucks. Torrio had seen enough and offered to buy O'Banion's share of The Sieben brewery in order to create peace.

On the day that the deal was to be closed, O'Banion was nowhere to be found. While Torrio was at the brewery waiting to complete the deal, the location was raided and Torrio was arrested. Not only did O'Banion know about the raid beforehand, there was speculation that he had set it up. He later refused to return the money Torrio had paid him for the brewery that was now closed and openly bragged about the new owner's arrest (Allsop, 1961, p. 74).

A local union leader died in November 1924, and the funeral was a highly anticipated social event. When a man of great stature died, there was sure to be a long list of local celebrities, politicians, and criminals at the funeral. Funerals for fallen gangsters became more like high profile parties than opportunities for mourning.

On the day of the funeral three men arrived at Dion O'Banion flower shop under the guise of picking up flowers for the event. An employee overheard the men discussing business and then heard six gunshots. By the time the employee reached him, O'Banion laid dead on the floor of his own flower shop (Schoenberg, 1992, p. 108). A search for the three gunmen proved to be futile as none of the killers were ever captured. Shortly after the murders occurred, a familiar name was mentioned in connection with the crime. Speculation began to circulate regarding the whereabouts of Frankie Yale. It was believed that Yale, who was in town for the funeral, had been one of the three shooters.

Following Dion O'Banion's funeral, Torrio and Capone took over his lucrative bootlegging business, furthering their control of the industry in Chicago. The death of O'Banion seemed to solve several problems for Torrio and Capone including O'Banion's constant creation of conflict with rival gang members and business associates. What they did not realize was that O'Banion's close friend Earl Wajciechowski, better known as "Hymie" Weiss, would seek revenge for his friend's death.

Capone and Torrio became aware of Hymie Weiss very quickly and lived their lives accordingly. Weiss found a likely ally in George "Bugs" Moran, a man who got his nickname because of his "buggy" behavior (Asbury, 1940, p. 352). Both men were friends of Dion O'Banion, and both men had an interest in regaining the territory that was lost to Torrio and Capone following their friend's death.

The constant threat of retaliation from Weiss and Moran eventually got to Torrio, and the powerful gang leader decided that it might be time to leave Chicago for a bit. Torrio left the organization in the hands of Capone as he traveled to Arkansas (Bergreen, 1994, p. 139). Capone understood the concerns of Torrio and took every precaution to protect himself from his enemies. During the two years following the death of Dion O'Banion, his friends and associates made over ten attempts on Capone's life. Capone was able to survive the multiple assassination attempts by never traveling without at least two

bodyguards. Al also traveled in only his own vehicles, whenever possible at night, where he would sit between his two bodyguards.

The Fall of Johnny Torrio

Torrio returned from his vacation in January 1925, shortly after another attempt on Capone's life. As Torrio was returning to his apartment building from a day of shopping with his wife, gunshots rang out. Hymie Weiss and Bugs Moran opened fire on Torrio's vehicle first and then on the man as he escaped. Torrio was wounded four times but survived when Moran's gun went dry as he attempted to finish the job. With an empty gun placed to his head and four bullets inside of him, Torrio began to consider his future, if he were to have one (Bergreen, 1994, pp. 144–145).

Torrio recovered from his numerous wounds in short order. His recovery went so well that he arrived at court, four weeks after the murder attempt, to stand trial for his arrest at the Sieben Brewery. Still recovering from his wounds, he pleaded guilty to the charges and was sentenced to nine months in jail. While serving his sentence, Torrio was treated well and afforded privileges not given to the average prisoner (Kobler, 1971).

During his nine month stay in jail, Torrio reevaluated his position in Chicago. In March 1925, while still in jail, Torrio contacted Capone to let him know of his intentions to leave Chicago. The entire organization would be turned over to Al, making him the most powerful man in the city. Sole ownership of the breweries, speakeasies, brothels, and other ventures around the city would forever change Al's role in Chicago (Schoenberg, 1992, p. 127).

After taking control of the entire criminal empire he once shared with his longtime mentor, Capone adopted an openness and position in the public eye that would have been frowned upon by his former partner. Again violating his mentor's single rule of avoiding actions that draw attention, he sprung into the spotlight. Capone moved the headquarters of his operation to the Lexington Hotel. His operations were housed in a five-room luxury suite. Along with his new luxury headquarters, Al began to frequent social functions, sporting events, and the opera in an attempt to legitimize his status in the community.

From a young age Al had desired the approval of others, and now he sought the approval of the public. Al saw himself as a public figure who need not hide because of his business practices. In his mind he was the provider of services that the adult population desired. Providing alcohol, prostitution, and gambling to a consumer who wanted it was no different from supplying bread to a family in need.

New York, New York

On a trip to New York in December 1925 Capone began a new business partnership with his former associate Frankie Yale. Despite the conflicts that may have arisen in the past and the violence demonstrated recently in Chicago by Yale, he was capable of importing whiskey from Canada, something that was difficult for Al to accomplish in Chicago. The partnership called for Yale to import the whiskey to New York, where Al would then transport it to Chicago (Bergreen, 1994, pp. 155–160).

During his trip to New York, Al left a permanent mark on the city. When an invitation to Yale's Christmas party was put in doubt after threats from a rival gang to disrupt the celebration, Al took action. He assured Yale that he would handle any situation that arose during the celebration at the Adonis Social and Athletic Club. When the rival gang arrived

late in the evening, Capone initiated an attack on the men before they had the opportunity to assess their surroundings. The attack was brutal and demonstrated Capone's ability to exert his power outside of Chicago (Bergreen, 1994, pp. 155–160). This show of force was covered by the national media and seen as a declaration of superiority by Chicago's gangs.

After returning from New York, Al spent the first months of 1926 enjoying his recent successes and rise to self-perceived legitimacy in the public eye. Al continued to engage in the behaviors he enjoyed prior to going to New York, but the Christmas party and recent murders in Chicago were starting to catch up to him. There was a cost for the public notoriety, and Al was about to find out how quickly the tides of public opinion could change.

Death of the Hanging Prosecutor

On April 27, 1926, Capone's fragile public image was about to be dealt a severe blow. The man known as the "Hanging Prosecutor," who had unsuccessfully tried to prosecute Capone for a previous murder, was at a bar just blocks from the Hawthorne Inn where Al was dining. McSwiggin, the Hanging Prosecutor, was at the bar with the O'Donnell brothers, two sworn enemies of Capone (Bergreen, 1994, pp. 162–165).

When Al learned that the O'Donnell brothers were in his neighborhood, he took it as a direct threat to his territory. Not one to accept a blatant disregard for his authority Al and his men waited outside the bar for the brothers to emerge. As the men exited the bar, Al's men opened fire, killing the O'Donnell brothers and their associates, including McSwiggin (Bergreen, 1994, pp. 162–165).

The responsibility for the murder of the respected prosecutor fell on Capone. Although McSwiggin's death was not intended and the man was in the company of criminals, the public's response was unwavering: Capone was responsible. In the weeks that followed the murder of McSwiggin, the public demanded justice and a response to the violence that came with the gang culture of Chicago. Law enforcement, frustrated by an inability to prosecute Capone for the murders, conducted several raids on Al's businesses. These raids, which would unknowingly produce vital evidence in the eventual prosecution of Capone and the public backlash over the murder, were costly for Capone and his attempts to establish a legitimate public image.

In the summer of 1926, Capone left Chicago to withdraw himself from the hostile situation caused by increased attention from law enforcement and negative public perception. Al spent most of the summer in Lansing, Michigan, struggling with his future. Detectives were still investigating him in relation to the murder of McSwiggin, and he had recently seen his mentor effectively retire in order to save his own life. During this period, Al also struggled with a desire to be viewed as a positive public figure. It was this desire that would ultimately draw him back to Chicago.

When Capone finally returned to Chicago at the end of the summer he found that authorities were still unable to charge him with the murders. Having avoided prosecution once again Al moved to create a level of peace between himself and his enemies. If he was going to continue to be a criminal figure in Chicago, it would be done with the smallest amount of bloodshed possible, at least that was Capone's original plan.

In an attempt at peace, Capone offered Hymie Weiss an opportunity to end their conflict without violence. When Weiss rejected Al's proposed business deal, he was found

dead the next day (Schoenberg, 1992, pp. 162–165). Still hoping for peace, Capone called together a collection of criminals from around the city to participate in a ''Peace Conference.'' This meeting was well publicized and resulted in an agreement that there would be an end to the violence. Also, prior acts of aggression would not be used to justify retaliation. The peace agreement lasted for over two months before one of Capone's friends was found murdered.

MANLEY SULLIVAN

The tide was slowly turning against Capone in May 1927. While Al continued to operate as usual, the Supreme Court was in the process of opening the door that would eventually allow law enforcement to pursue a case against him. The Supreme Court ruled against a bootlegger named Manley Sullivan, deciding that although the requirement to pay taxes on money earned from bootlegging was self-incriminating, it was not a violation of an individual's constitutional rights. The Supreme Court effectively said that all income, even that earned illegally, was subject to taxation. This ruling would give the IRS the opening it needed to begin an investigation into Capone's obvious wealth that had not been taxed (Kobler, 1971, p. 271; Schoenberg, 1992, p. 230).

THE WINTER OF 1928

Al spent the winter of 1928 in Miami, Florida. The community was not excited about the presence of the famous bootlegger from Chicago. The cold reception he received did not deter Al as he enjoyed the weather and the change of pace from Chicago. During his time in Miami, Al bought a 14-room estate that came to be known as ''Palm Island.'' During the winter Al and his wife, Mae, spent time adding their own personal touches to their new home. Mae decorated the entire estate with the finest items she could find, while Al fortified doors and focused on creating a secure compound (Schoenberg, 1992, pp. 194–195).

The estate in Miami drew the attention of treasury agent Elmer Irey and the IRS Intelligence Unit. Irey began the investigation against Capone by assigning Frank Wilson to investigate his financial transactions. Capone was a wise man who was careful about conducting his business. A standard practice in his operation was to have all financial transactions conducted in cash and through a third party to avoid liability. Although Capone was careful about maintaining separation from his financial assets, the purchase of a major estate in Miami demonstrated his control of, and access to, a large amount of financial resources.

Throughout his time in Miami Al tried to establish himself as a respectable member of the community, just as he did in Chicago. Al worked throughout his first stay in Miami to establish a working relationship with the politicians and law enforcement of the area. He made himself available for questioning by authorities and continued to demonstrate nothing but good intentions. Although Al enjoyed Miami, he made his return to Chicago in April 1928 as business called. The primary elections of 1928 had begun, and it was Al's intention to assist his candidate in person.

After a victory for his candidate in the election, Al returned to Miami to address a growing problem on the East Coast. A continuous string of hijackings involving the whiskey shipments from Frankie Yale in New York raised Al's suspicions. After having a friend investigate the string of costly strikes on Al's shipments, he determined that Yale

himself was behind the hijackings. It seemed as though Yale was looking to cover losses in his own business ventures. The hijackings continued for over a year until Al found time to plan a suitable response (Bergreen, 1994, pp. 286–290).

In June 1928 Capone met with a collection of friends at his Miami estate. Jack Guzik and Jack "Machine Gun" McGurn were present along with several trusted killers whom Al had used in the past (Coffey, 1975, p. 255). Once a plan was completed, the men adjourned to return home. On July 1, 1928, on the orders of Al Capone himself, several men present at the meeting in Miami addressed the situation with Frankie Yale. Frightened by a phone call he received while drinking at his own club, Yale rushed to his car, without his driver, to return home. On his way home a vehicle approached his and opened fire. Riddled with bullets, Yale's car ran into a curb at which point it was approached by a single gunman from the other vehicle. Trapped inside his vehicle, severely wounded, Yale was no match for the killer. One well-placed shot to the head marked the end of the 20-year relationship between Capone and Yale (Bergreen, 1994, pp. 286–290).

ST. VALENTINE'S DAY MASSACRE

Al had begun to enjoy spending the winter months removed from the cold of Chicago at his new home in Miami. Jack McGurn, one of Capone's top hit men, visited Al in the winter of 1929 at the Palm Island estate to discuss an issue involving a rival gang member. It is here that the plan for the famous St. Valentine's Day Massacre began. McGurn continued to be the victim of assassination attempts by Bugs Moran, and sought Capone's help in finding a solution.

Although Moran posed little threat to Capone while he was in Florida, he knew it was in his best interest to help Jack McGurn handle what had become a mutual threat to their safety and the safety of their businesses. The plan centered on offering Moran an opportunity to buy high quality whiskey at a low price. Using a trustworthy and respectable bootlegger, Moran would be offered the deal, which was to be completed at a local garage. The goal was to catch Moran inside the garage and convince him to surrender to McGurn's team of killers who would be disguised as police officers. Upon his surrender to what appeared to be a bootlegging charge he was to be executed before an "arrest" could be made (Schoenberg, 1992).

On the morning of February 14, 1929, McGurn's killers believed they saw Bugs enter the garage where the setup was going to take place. This prompted them to spring their trap, storming the garage as though they were police officers conducting a surprise raid. Once inside the killers ordered Moran's men to lay down their weapons and face the wall. After Moran's men complied, the killers opened fire, killing six men and leaving one barely alive. The killers exited the building, two in trench coats with their hands raised in an attempt to portray the arrested criminals and two in police uniforms walking them to the car (Schoenberg, 1992, pp. 210–215).

The execution lasted two minutes and 150 rounds of ammunition were fired. Only one thing was missing, Bugs Moran. As Moran approached the building where the deal was to take place, he saw the assassination squad dressed as police officers outside and assumed a raid was about to take place. Hoping to avoid an arrest, Moran escaped and never made it to his own execution that morning (Schoenberg, 1992, p. 210–215).

The man left alive, Frank Gusenberg, the one-half of the Gusenberg brothers not killed during the initial "raid," had been responsible for one of the attempts on McGurn's life.

He survived long enough for the real police to arrive. When asked who had shot him, he refused to answer and died shortly thereafter (Kobler, 1971, p. 246).

The plan was perfect, but the execution was not. It was not long before the press, the public, and law enforcement began to blame Capone for the killings. Although Al was in Florida and Jack McGurn had created a strong alibi by checking into a local hotel before the murders, there was no denying who would receive the greatest benefit from the death of Moran (Bergreen, 1994).

CAPONE: THE CHARACTER

In life and death Al Capone has became the standard by which the media and entertainment industries measures its criminal leaders. Since the height of his power there have been several stage performances, television shows, and movies based on his life. In many cases fictional characters have been modeled after him, drawing from his most dominant characteristics. His rise from immigrant to organized crime leader and his physical appearance including his short height, bulky build, predominate scar, and manner of dress have all been used in varying combinations in the creation of fictional characters intended to convey power and dominance. Popular films and television shows such as *Scarface, The Godfather,* and *The Sopranos* have drawn directly from his life in order to create intriguing and deep characters that are capable of drawing the same reaction from viewers that Al received.

No one was ever convicted of the murders that took place on that bloody St. Valentine's Day, but the killings became national news and the spotlight was now permanently fixed on Chicago and its criminal element. What had been planned as a simple murder, much like numerous killings that had taken place in the years before, had become the event needed to force action against the crime organizations of Chicago. Al Capone was about to get the public attention he coveted so much, but he had no idea how quickly the media would turn on him.

PUBLIC ENEMY NO. 1

The St. Valentine's Day Massacre was the latest in a string of increasingly high profile crimes that were attributed to Capone. Ultimately, it was his attachment to these crimes in the public eye that would lead to another nickname that Al would learn to dread, Public Enemy Number One.

Within days of taking office, President Herbert Hoover insisted that then Secretary of Treasury Andrew Mellon take control of the government's initiative against Capone. Mellon's plan involved two separate approaches to ensure the greatest probability of successfully convicting Capone (Schoenberg, 1992, p. 242). First there would be an effort to gather evidence of tax evasion and violations of federal tax laws. The man given the responsibility for investigating Capone's tax violations was Elmer Irey of the IRS Special Intelligence Unit. Irey, who had in the past investigated Capone as well as his brother Ralph, again chose the leader of his investigations unit, Frank J. Wilson, to assist him (Schoenberg, 1992). The investigation was aided by the Supreme Court ruling that found it was not unconstitutional to require the payment of taxes on illegal income.

The second approach involved the violations of Prohibition laws. Assigned to investigate Capone's bootlegging and other crimes associated with Prohibition was Treasury agent Eliot Ness. The efforts of Eliot Ness and his team of "Untouchables," named for their unwillingness to accept bribes and influences from Capone, were vital in the



Figure 3.1 Two "mug shots" of Al Capone, ca. 1931. Courtesy of the Library of Congress.

construction of the government's case on the Prohibition violations. Their contributions are often presented out of context as their efforts served more to disrupt the operations of Capone's organizations than to lead to a conviction. At the time it was believed that if Capone was to be convicted the most likely approach involved his violations of federal tax laws (Heimel, 2000).

Capone left Chicago again in May 1929, this time to attend a "gangster's conference" in Atlantic City. Al made the trip not knowing the magnitude of the investigation set in motion by President Hoover. Shortly after the conference ended, Capone went to Philadelphia to see a movie. As he was leaving the theater, he was arrested by local detectives for carrying a concealed weapon. What started as a short trip to the East Coast ended in March 1930, almost a year later, when Capone was released from jail after serving his sentence for carrying a concealed weapon (Schoenberg, 1992, pp. 239–240).

While Capone was in jail on the East Coast, Elliot Ness and his team of Untouchables carried out a series of high profile raids on Capone's breweries in Chicago. Although these raids did not produce enough evidence for a conviction, their adverse impacts on the profits of the organization as well as morale were widespread. In the absence of their leader, members of the Capone organization faced a legitimate threat from law enforcement (Heimel, 2000, pp. 279–280). One week after his release from prison Capone was faced with his greatest public humiliation yet. Frank Loesch, head of the Chicago Crime Commission, released a list of "Public Enemies." This list of the top criminals in Chicago was headlined by none other than Al Capone himself (Asbury, 1940, p. 352). As a man who desperately tried to maintain a positive public image, Capone was crushed.

In December 1930, Capone opened a soup kitchen to improve his public image. The soup kitchen was representative of several gestures that Capone used to try and win back the favor of those who blamed him for the violence and crime in the city (Bergreen, 1994,

pp. 400–403). Even at his lowest point, following the announcement of his new status as ''public enemy number one,'' Capone still saw himself as a man of the people, capable of helping those in need in return for the absolution of his crimes.

TRIAL

Al, unlike his brother Ralph who was indicted on tax violations in October 1930 along with various other member of his organization, was careful to avoid detection by the IRS. All of Capone's financial transactions occurred through third parties and could not be linked back to him. Capone had done such a good job of disconnecting himself from finances it was by pure luck the evidence needed to bring him before a grand jury was found.

Frank J. Wilson, leader of the investigation into Capone's tax violations, spent the summer of 1930 searching through the documents and materials that had been seized in raids of Capone's establishments since 1924. Late one evening as Wilson prepared to leave, he began to organize his materials and noticed a brown package in a file cabinet. When he opened the package, he found a set of bookkeepers' ledgers dated 1924–1926 (Schoenberg, 1992, pp. 298–230).

The ledgers had been part of a large collection of information turned over to the investigation and had never been examined. The government had seized the financial ledgers from the Hawthorne Hotel during a raid in 1926, shortly after the murder of the Hanging Prosecutor. The ledgers were written in code but contained detailed payments to three parties, ''A,'' ''R,'' and ''J.'' Wilson determined that these abbreviations likely represented Al Capone, Ralph Capone, and Jack Guzik. If these ledgers could be validated, they would provide direct evidence that Capone did, indeed, have a taxable income. The next step was to identify the handwriting of the bookkeepers who had written in the ledgers (Schoenberg, 1992, pp. 298–230).

After an intensive investigation, Wilson and his team were able to identify the handwriting of one bookkeeper, Leslie Shumway, which led to the identification of an additional bookkeeper, Fred Reis. A massive search began for the two men (Schoenberg, 1992, pp. 298–230). The men who had been responsible for organizing the books had disappeared following the raid. It was believed that they had been killed in order to protect Capone from being connected to the seized ledgers.

In the beginning of 1931, the team investigating Capone's tax violations found Leslie Shumway working in Miami, Florida, at a racetrack Al frequented. Less than an hour before Capone's men arrived to capture and presumably kill Shumway, Irey and Wilson's agents were able to reach the bookkeeper and convince him to testify. The second bookkeeper, Fred Reis, was found hiding in Illinois and took very little convincing to testify against Capone.

With the help of the ledgers and information collected through the years of investigations, the case was brought before a grand jury. On June 5, 1931, Capone was indicted on 22 counts related to tax law violations between 1925 and 1929. It was estimated that Capone had an income of over $1 million between 1924 and 1929 and that he had failed to pay just over $200,000 in taxes. Capone's estimated income was not complete but was based on the evidence collected by investigators and could be proven in court. Capone was indicted one week later on charges that he violated Prohibition related laws. This indictment was one of many that were handed out to various bootleggers as a result of Eliot Ness's work (Schoenberg, 1992, 309–310).

Entering court to face the charges against him, Capone was under the impression that there were forces working in his favor. Earlier he had agreed to a plea bargain with prosecutors that would assure him a relatively light sentence in return for a guilty plea. Prosecutors were willing to bargain with Capone for several reasons. First, there were doubts that the statute of limitations on the tax evasion charges would be upheld by the court for the earliest charges against Capone. In a previous case, an appeals court ruled against a six-year statute of limitations on tax evasion, settling on a three-year statute. They also understood the potential for Capone and his men to influence perspective jurors. Finally, there was concern over the safety of their star witnesses, the bookkeepers, thanks to a $50,000 bounty offered by Capone for their death. Once a plea was agreed upon, it was not made public for fear that it would jeopardize the images of the prosecutor's office and Capone.

After entering a guilty plea, Capone was shocked at the judge's response. Judge James Wilkerson made it very clear that his plea would not have an impact on sentence length. Capone had believed that in return for his plea the judge would grant the sentence length of two and a half years that he had agreed upon with the prosecutor. Before Judge Wilkerson accepted the plea he said, "It is time that somebody impress upon this defendant that it is utterly impossible to bargain with a federal court" (Schoenberg, 1992, p. 315). Understanding that his light sentence was no longer available, Capone withdrew his guilty plea with the permission of Judge Wilkerson and a trial date was set for October 6, 1931.

Prior to the start of his trial Capone tried desperately to influence the outcome. A bribe of $1.5 million was offered to a high-ranking treasury official if Capone could be guaranteed not to serve any time in jail. The second approach involved an unreleased list of ten jurors that even the judge had not received. These individuals were offered a variety of financial rewards, physical gifts, and threats to influence their verdict during the trial. When Judge Wilkerson was made aware of this secret list of jurors, he ordered the case to be brought before his courtroom without change. When Capone arrived for the beginning of his trial, he believed that he had achieved the upper hand and had planned to graciously accept the not guilty verdict his hired jurors would return. Al was prepared to thank the jury and the prosecution for their efforts and offer his understanding that they were simply doing their jobs.

Before the jurors could enter the courtroom, Judge Wilkerson ordered that the jury pool be switched with another nearby courtroom that was also scheduled to begin a trial that day. A stunned Capone could do nothing as his last hope for a guaranteed acquittal vanished. The new jury pool consisted of mostly farmers and men unlike Capone. They could not be influenced by his public image and were not likely to sympathize with the wealthy gang leader. The new jury pool was also sequestered at night so that they would be protected from the influence of Capone and his men. There were now 60 potential jurors that could not be influenced by Capone (Schoenberg, 1992, p. 316). What had begun as show, a trial with a predetermined conclusion in Capone's mind, had become a real trial. For once Capone began to feel uncertain about the future.

The trial ended 11 days after it began, and throughout that time the prosecution presented numerous witnesses and suggestive evidence in an attempt to prove that Capone received an income from his criminal activity. Witnesses testified to receiving payments, in cash, for services and goods provided to Capone and his family. The prosecution continually pointed to Capone's luxurious life-style as a demonstration of his wealth. How



Figure 3.2 Aerial view of Al Capone's Florida estate, 1937. Courtesy of the Library of Congress.

could a man with an estate in Florida, diamond belt buckles, and expensive suits have no income? It was easy to see that the prosecution was doing its best to highlight the extreme differences that existed between Capone and the jury of his ''peers.''

Despite the information provided about Capone's life-style, the prosecution knew that their case would succeed or fail based on the testimony of two key witnesses, the bookkeepers. Their testimony, along with the ledgers found by Wilson that had been seized by authorities in their raid on the Hawthorne Hotel in 1926, was the key to linking Capone to the taxable income. The bookkeepers testified that Al Capone was in charge of the entire criminal operation and the ultimate benefactor of payments made to other individuals in the organization (Schoenberg, 1992, pp. 318–324).

Capone's defense was surprisingly weak. The prosecution presented 23 witnesses during the trial, each offering testimony to Capone's wealth and lavish life-style. The defense called to the stand a collection of bookies who testified that Capone was not a successful gambler (Schoenberg, 1992, pp. 318–324). The defense failed to answer the challenge of the prosecution to disprove the wealth of Capone. The witnesses called by the defense did nothing to explain or disprove the testimony provided by the prosecution's witnesses and in several cases supported the prosecution's case by demonstrating Capone's wealth through his ability to finance his gambling.

The failure of the defense to offer even the slightest bit of resistance to the prosecution only strengthened the magnitude of the information presented against Capone. Following



Figure 3.3 Chicago Cubs player Gabby Hartnett autographing a baseball for Sonny Capone, who is sitting with his father Al Capone and other gangsters at a charity baseball game, 1931. Courtesy of the Library of Congress.

the closing arguments, Judge Wilkerson gave the jury their final instructions before deliberation. In a speech that lasted more than an hour, Wilkerson explained to the jury the role of circumstantial evidence and that the money Capone had spent in Chicago and Miami could be considered a demonstration of income (Bergreen, 1994, p. 483). On October 17, 1931, the case was sent to the jury for a decision. In eight hours the deliberation was complete and a verdict delivered. Capone was found guilty on five of the 23 charges. He was found guilty of three counts of federal tax evasion for the years 1925, 1926, and 1927. He was found not guilty on three additional charges for each year; these charges closely mirrored the charges on which he was convicted. Al was also found guilty of two misdemeanor counts of willing failure to file a tax return for 1928 and 1929 (Schoenberg, 1992, p. 324).

On October 24, 1931, Capone returned to court for sentencing where he was given the sentence and fine for each of the convictions. Judge Wilkerson decided to allow the first two felony tax evasion charges to be served concurrently followed by the third felony conviction, in what essentially became two five-year sentences. The misdemeanor charges were to be served with one running concurrent to the first felony conviction and the second to run consecutive to the federal charges. There was also a contempt of court judgment against Capone for missing court that resulted in an additional six-month sentence to be served consecutively with the other sentences. Capone's fines reached $50,000, and he was ordered to pay the court costs of $30,000. If Capone failed to succeed in an

appeal, he would serve a maximum of ten years in federal prison followed by one year in a county prison in addition to his fines (Schoenberg, 1992, p. 325).

Prison (1932–1939)

Al began the first part of his sentence in the Cook County Jail. His lawyers had arranged with the courts for him to stay there until his appeals had been concluded. During his stay in county jail, Al was able to remain in control of his organization and its operations. Capone met with his associates and presided over matters as though things had not changed. The appeals process was unsuccessful, and, once concluded, Capone could no longer avoid the inevitable, a trip to federal prison.

On May 4, 1932, Al made his first stop in Atlanta at the toughest penitentiary in the country. Capone's stay there was short, as his criminal connections were able to provide him with resources that allowed him the comforts normally denied to the average prisoner. While in the Atlanta prison, Al was able to bribe prison guards and still influence the operation of his organization in Chicago through special business correspondence (Bergreen, 1994, pp. 520–521). When it became apparent that Al had found a way around the system again, he was transferred to a facility considered to be the most secure in the world, Alcatraz (Schoenberg, 1992, pp. 330–333).

Capone's journey to Alcatraz began on August 18, 1934. He was transferred using a secure train to the San Francisco waterfront. The train car he was traveling in was loaded directly onto a barge and sent to the island prison (Kobler, 1971, p. 357). Once unloaded, Capone was assigned a number and a cell like every other prisoner, an indication that he would not receive special treatment. From this day forward the greatest criminal leader the world had known would be referred to as prisoner number 85, with his residence, cell 181 (Schoenberg, 1992, p. 335).

Alcatraz was a federal prison unlike any other in the country. It was housed on an island in the San Francisco bay and was considered inescapable. When Al arrived there, it was with the intention of removing all of the influence and power that he demonstrated in Atlanta. Here Capone, like the other ''residents,'' was denied contact with the outside world and thus lost his ability to buy the comforts and privileges he once enjoyed in Atlanta. Capone saw his influence in prison life diminish as the guards at Alcatraz worked to eliminate any potential currency that could be exchanged between prisoners. Cigarettes were readily available, and with no outside contact luxury items could not be smuggled in. In a prison designed for the worst possible prisoners, Al had lost his greatest asset, his ability to influence other people (Schoenberg, 1992, pp. 337–347).

Isolation was not the worst part of Al's stay at Alcatraz. During his time at the island prison, Capone became increasingly sick as the syphilis he had carried since his youth progressed towards neurosyphilis. This late stage of syphilis caused Al to suffer a great deal of confusion and deterioration of his mental capacity. When he reached his final year of incarceration at Alcatraz, Al was forced to spend his remaining days in the hospital wing of the prison. Upon his release in November 1939, after serving just six years and five months, Capone entered the Baltimore State Mental Institution, where he stayed until March 19, 1940 (Schoenberg, 1992, pp. 348–349).

The Final Days of Al Capone

Declining health prevented Capone from returning to a leadership role in his organization. No longer a leader in Chicago, Capone moved to Miami following his release from

the Baltimore State Mental Institution. Al found comfort with his wife at the Palm Island estate. Removed from the criminal organizations and confines of prison that had dominated his life for more than 25 years, Capone lived in peace. As the advanced stages of syphilis continued to take their toll on his body, Al's health began to fail and he suffered an apoplectic stroke that was followed by the onset of pneumonia. On January 25, 1947, just eight days after his birthday, Capone died of cardiac arrest. Al Capone had lived to age 48, a feat reserved for only a select few in his profession (Kobler, 1971, pp. 375–378).

THE LASTING IMAGES OF AL CAPONE

Once the favorite subject of reporters and the media throughout the country, Al remained an intriguing story even after his release from prison. In Chicago particularly, Al was often portrayed as a hero and a villain. In his early years the media helped to fuel the creation of his image by presenting stories that exaggerated his everyday activities. When the public opposition to prohibition began to grow, the media would present Capone as a champion of the people defying the oppressive laws. When they became enraged by the violence and crime that accompanied Capone's operation, the media were more than willing to present him as a menace to the city who needed to be removed. On one page of the local newspapers Al might be labeled in headlines as ''Public Enemy Number One'' and yet on another page cited for his donations to needy children. While Al was in prison, other criminals grabbed the attention of the national media, but he was never forgotten. Seldom would an extended period of time go by without coverage of his exploits in prison or his family's activities following his incarceration. As his health began to fail, reporters camped outside of his Miami estate in hopes of catching a last glimpse of Capone. At the time of his death, the entrance gates to the Palm Island estate were lined with news reporters from around the country.

Since his death in 1947, Al Capone's celebrity status has grown. In death, Capone's life has been portrayed in literature, television, and movies. Countless books have been written about his life; the most complete and thorough biographies have been written by Schoenberg, Bergreen, and Kobler. The pursuit of Capone has become the source of material for numerous movies, TV shows, and

ALCATRAZ

Located in the San Francisco Bay, the prison known as Alcatraz was designed with isolation in mind. When the Department of Justice opened the prison in August 1934, the facility was intended to house the worst prisoners in the country and was ironically located within a mile of downtown San Francisco. Although the island prison was never filled to capacity, it was home to, on average, over 250 prisoners at any given time. At the time of Al Capone's stay, the island consisted of a military garrison, loading dock, lighthouse, and prisoner housing (Bergreen, 1994, p. 536).

Alcatraz closed in 1964. During its 29 years of operation, Alcatraz was considered inescapable. Although no successful escapes were ever officially recognized, there were several escape attempts in which neither the prisoner nor a body were recovered. When investigated by the FBI, these cases were ruled to have ended when the prisoners likely drowned in the cold water surrounding the prison. Today, the prison known as Alcatraz still exists as a tourist attraction under the control of the National Park Service. It has often been used in television and films for its powerful image as a landmark and its historical status.

fictional literary works. These representations of Capone's organization are often accompanied by images of Eliot Ness and his Untouchables (Heimel, 2000, pp. 279–280). Although the work of Eliot Ness had little to do with Capone's eventual incarceration, the idea of an incorruptible lawman bringing down the organized crime leader has proven to be financially successful.

Interest in Capone after his death has also increased demand for artifacts from his life. Everyday items like shaving razors and household goods that have had their origins traced to Capone have become highly sought after collectibles. Since his burial, two headstones have been stolen from his grave and are now likely in the hands of private collectors.

It is a combination of his life and the ways in which he is represented in death that will ultimately determine the legacy of Al Capone. He was a man who did not hesitate to use violence in pursuit of his business and political goals, but was willing to help those in need. In a time when many Americans were willing to violate the law in pursuit of alcohol, he supplied the product and opportunity to satisfy their thirst. Alphonse Capone will be remembered as one of the most dynamic characters in American history, forever attached to Prohibition and 1920s Chicago.

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4

The Tragedy of Arbuckle, "Prince of Whales"

MATTHEW PATE

By the time Roscoe ''Fatty'' Arbuckle was acquitted for the manslaughter of Virginia Rappé in 1922, his movie idol status had been supplanted by that of a pariah. In the early days of American movie-making Roscoe Arbuckle had a meteoric rise. His stage and film comedies brought delight to millions of fans, but this amusement proved insufficient in the wake of a young starlet's untimely death.

Arbuckle's early years were marked by rejection and bad fortune. Born on March 24, 1887, in Smith Center, Kansas, Arbuckle moved with his family to Santa Ana, California, by his first birthday. The boy's father, William G. Arbuckle, left the family soon thereafter to open a business in Watsonville, California. Around the time of Arbuckle's twelfth birthday, his mother, Mary Arbuckle died, leaving him ostensibly alone.

While in Santa Ana, Arbuckle began performing at local theater amateur nights. Arbuckle quickly showed himself to possess many marketable talents. The minor celebrity he gained as a traveling vaudevillian translated into terrific fame as the star, director, and writer of numerous silent films. Despite his portly form, Arbuckle was an expert tumbler and adept dancer. These skills evolved into now legendary physical comedy alongside the likes of Buster Keaton and Charlie Chaplin. Arbuckle also holds the notable distinction of garnering the first million-dollars-a-year contract in cinema history (Yallop, 1976, p. 62). Yet, by the end of 1921 he had been vilified in the press, and his films had been banned in theaters across the country.

The scandal and trials surrounding the suspicious death of Virginia Rappé, a 25-year-old aspiring actress, might not have been so sensational had the accused been other than Roscoe ''Fatty'' Arbuckle. Arbuckle was one of America's first ''mass'' celebrities (Henry, 1994). The novelty of the expanding film industry made possible the spread of performers' images in ways that live shows could not. Just as Arbuckle had benefited by innovations in entertainment technology, he fell victim to another more traditional information

medium. When he stood accused of rape and manslaughter, Arbuckle unwittingly faced two parallel sets of trials: one in the California court system, and one carefully managed in newspapers owned by William Randolph Hearst and the motion picture standards office of Will Hays.

The set of events leading to the death of Virginia Rappé were in many respects tailor-made for exploitation in the press. The principals were all Hollywood notables. In the middle of Prohibition, the alleged crime took place at a drunken party set in a San Francisco luxury hotel. Sexual promiscuity, predatory guile, and unscrupulous motives enveloped and obscured many of the details. Wealthy newspaper publisher Hearst recognized the unique opportunity before him and crafted a version of Arbuckle's predicament engineered more to sell newspapers than to present balanced accounting of the facts at hand. After weathering two mistrials in the winter of 1921–1922, Arbuckle was acquitted by a third jury with only a few minutes of deliberation, but by that point the damage to his reputation and career was largely insurmountable.

THE LABOR DAY PARTY

By mid-August 1921, Arbuckle was at the top of his career. He had been given a contract by Paramount studios that included the formation of the *Comique Film Corporation* for his productions and complete artistic control over his films. He had a deal from Paramount that only one other filmmaker has ever garnered and then only once: Orson Welles for *Citizen Kane* (Yallop, 1994, pp. 61–62). Arbuckle had finished simultaneous filming of three features: *Gasoline Gus, Crazy to Marry,* and *Freight Prepaid* (Oderman, 1994, p. 43). This was a cap to a year in which he had filmed a total of 9 seven-reel feature films. As a respite from the hectic schedule, Arbuckle, along with director Fred Fischbach and actor Lowell Sherman, took his Pierce-Arrow automobile to San Francisco to spend the Labor Day weekend (Young, 1994, p. 64). The trio checked into a twelfth floor luxury suite at the St. Francis hotel. The hotel was one of Arbuckle's favorites and listed him along with General John Pershing and Billy Sunday as honored guests.

By many accounts, Arbuckle was a man who partied as hard as he worked (Oderman, 1994, p. 152). He allegedly arranged to have a Victrola, several phonograph records, and a quantity of illegal gin and whiskey delivered to his suite at the St. Francis. As this was 1921, the latter delivery was in violation of Prohibition and the Volstead Act.

Almost every detail of the weekend in San Francisco has since fallen under dispute. To begin with, sources differ on exactly how Rappé came to be in Arbuckle's suite at the St. Francis. One account (Young, 1994, p. 65) suggests that on Monday, September 5, Fischbach met Ira Fortlouis, a friend and clothing salesman at the Palace Hotel. At the Palace he also chanced to meet struggling actress, Virginia Rappé, her manager, Al Semnacher, and another of Rappé's friend's, Bambina Maude Delmont. Fortlouis, Rappé, and Delmont were invited by Fischbach to join him, Arbuckle, and Sherman back at the St. Francis. According to this version, that afternoon Rappé, along with Delmont, went to the St. Francis. Shortly thereafter, Alice Blake, a showgirl friend of Sherman's along with her friend, Zey Prevon, also joined the party.

Another account has Arbuckle calling Rappé (or possibly calling Semnacher or Delmont in order to reach Rappé) out of a long-held infatuation with her. Arbuckle had come to know Rappé through her fiancé, director Henry ''Pathé'' Lehrman, when he and Lehrman worked at Keystone studios together (Oderman, 1994, p. 153). Some have

MORE THAN JUST A KEYSTONE KOP

Roscoe Arbuckle achieved many notable ''firsts'' in cinema. As stated above, he was the first entertainer to be given a million dollar contract by a studio. Arbuckle was the first comedy star to direct his own films. Arbuckle was the first comedian to take a pie in the face on film. He was the first filmmaker to use preview audiences as a way of fine-tuning a movie before release. Arbuckle was also the first Hollywood star to be ''blacklisted'' by the industry. That occurrence notwithstanding, Arbuckle's influence was important to many rising stars. He is the only entertainer to have had Buster Keaton, Charlie Chaplin, and Harold Lloyd all appear as supporting players in his films. Arbuckle is also regarded as having given comedian Bob Hope his first big break in show business. Add to this list Arbuckle's pioneering use of many camera tricks and other special effects, and one quickly sees that Arbuckle was not only a famous silent film star, but an innovator and visionary for early cinema.

also advanced the less probable theory that Rappé, Delmont, and Fortlouis traveled to San Francisco with Arbuckle and company in his automobile (Anger, 1975, p. 33).

The various versions of subsequent events are no less divided. Henry (1994) contends that a parade of guests came and went from the Arbuckle suite and that Arbuckle received his guests wearing only a pair of pajama bottoms. Henry also states that large amounts of alcohol were consumed by the many guests and that this detail would later complicate the prosecution's case against Arbuckle. The vigorous consumption of alcohol appears consistent across all descriptions of the party.

In an account somewhat more sympathetic to Arbuckle (Young, 1994, p. 65), the actor receives Rappé with a surprised, ''My God! Virginia! Long time no see!'' Young's version also has Arbuckle quickly cornered by Rappé who proceeded to tell him that she was pregnant and that Lerhman would leave her if he found out about it. There also appears some unanimity about the fact that Rappé was quickly drunk and may have passed out.

At some point, possibly Monday afternoon, a drunk Rappé stumbled into the bathroom of Room 1221. It is at this point that the prosecution alleged Arbuckle to have said, ''I've been trying to get you for five years'' (Oderman, 1994, p. 153). The prosecution further alleged that Arbuckle followed Rappé into the bathroom, shut the door, and raped her.

Arbuckle's version of events contends that he went in the bathroom only to discover Rappé draped over the toilet vomiting and in pain. He helped her over to his bed, thinking that she was just suffering the ill effects of too much alcohol. He then changed out of his pajama pants and rejoined the party (Oderman, 1994, p. 154; Yallop, 1976, p. 113–114).

Not long afterward, a crowd gathered around Rappé as she lay on Arbuckle's bed. Her condition was not improving, and at some point she became hysterical. She tore off her clothes and began screaming that she was hurt or dying (Yallop, 1976, p. 114). According to Young (1994, p. 114), this scene was reminiscent of a 1917 party hosted by Keystone studio head, Mack Sennett, in which Rappé had also gotten drunk and passed out. There is some consensus that an argument broke out among the inebriated guests as to the best way to treat Rappé (Yallop, 1976, p. 113–115; Oderman, 1994, p. 154). Allegedly a number of bizarre things were tried, including submersion of the girl in a bath of ice water. One

version also has Arbuckle placing a piece of ice on the girl's thigh (or vulva). It is generally thought that this detail is the origin of a rumor that Arbuckle tried to rape Rappé with a shard of ice.[1]

Eventually Arbuckle summoned the hotel management and had Rappé taken to another room where she could recuperate. Her condition persisted even after visits from multiple physicians, who apparently took her malaise as merely an acute hangover (Oderman, 1994, pp. 154–155; Yallop, 1976, p. 116). Though unimproved, Rappé was not taken to a hospital until approximately three days after the illness began. When she was finally admitted to the Wakefield Sanatorium, her situation did not improve. Wakefield was not a hospital in the conventional sense. Rather, it was "a maternity hospital and a well-known haven for well-to-do women seeking semi-legal abortions" (Henry, 1994). Oderman (1994, p. 175) suggests that Rappé's injuries were the result of a botched abortion that Rappé underwent not long before the Arbuckle party. A contrasting account (Young, 1994, p. 65; also Yallop, 1976, p. 124) states that doctors [at Wakefield] confirmed the pregnancy. These accounts also report the existence of a venereal disease and "a running abscess in her vagina for upwards of six weeks" (Young, 1994, p. 65).

Virginia Rappé died at Wakefield Sanatorium on Friday, September 9, 1921. According to Oderman (1994, p. 175) the cause of death was listed as peritonitis brought on by a rupture of the bladder. . . caused by an extreme amount of external force. Again, this detail, the "external force," would fuel rumors of rape at Arbuckle's hand.

Ironically, by the time Rappé died, Arbuckle with his companions, Fischbach and Sherman, had long since departed San Francisco. Having loaded Arbuckle's Pierce-Arrow automobile aboard a ship named *Harvard,* the trio set sail back to Los Angeles. As they journeyed south, Rappé's condition worsened, but, according to Young (1994, p. 66), "At no time during her illness did [Rappé] accuse Arbuckle of any misconduct, and she loudly denied he had injured her in any way when others tried to get her to do so." Whether this accurately reflects Rappé's perspective is unclear. What is certain, however, is that the version of events told by Bambina Maude Delmont was entirely different.

Delmont told police and the press that Arbuckle had taken Rappé into his room, where he beat and raped her. She demanded that he be arrested and prosecuted for murder (Young, 1994, p. 66). According to Delmont, Rappé's last words were, "Maude, Roscoe should be at my side every minute and see how I am suffering from what he did to me" (Yallop, 1994, p. 123). As Young (1994, p. 66) points out, Delmont was not actually present at the time of Rappé's death. Nonetheless, the tide of public curiosity rolled forward.

Instead of a jubilant homecoming to celebrate the hit *Gasoline Gus* had become, Arbuckle was greeted in Los Angeles by a throng of hungry reporters. The headline of the *San Francisco Call,* a Hearst newspaper, read, "Grill for Arbuckle: Actress Death Quiz" (Young, 1994). By the end of the day on Monday, September 10, Arbuckle had returned to San Francisco whereupon he was arrested and, after a coroner's inquest, charged with manslaughter in the death of Rappé. Bail was denied. Back in Hollywood, *Gasoline Gus* was removed from theaters.

THE THREE TRIALS

It appears immutably certain that Roscoe Arbuckle liked to drink, that he enjoyed the trappings of a Hollywood movie star's life-style, and that he condoned a certain amount of excessive behavior on the part of his associates. What is less certain, however, is that he had any causal part in the death of Virginia Rappé. In the course of establishing

this point, Roscoe Arbuckle would lose his career, his reputation, and almost everything he owned.

There were a number of individuals who stood to gain at Arbuckle's misfortune. San Francisco District Attorney Matthew Brady clearly saw the groundswell of public attention as an opportunity to advance his political fortunes. Brady, a former judge, wanted to be governor of California. The lure of publicity attached to prosecution of a famous film star was apparent in his zealousness (Young, 1994, p. 68).

Some have also made the case that Brady had direct financial motives for an aggressive treatment of Arbuckle (Edmonds, 1991). In a twist reading more like a Hollywood script than reality, Adolph Zukor, founder of Paramount Pictures, gave Brady a check in the amount of $10,000 on at least two occasions (Edmonds, 1991, p. 215). While a clear intent has never been established for these payments, Edmonds tentatively contends that Zukor, long angered over Arbuckle's cost to the studio and his rebelliousness was possibly using the trial as a means either to get back at Arbuckle or to cover his own involvement in Arbuckle's predicament. In particular, Edmonds (1991, pp. 252–253) asserts that Fred Fischbach may have had a hand in setting up Arbuckle at the behest of Zukor.

Zukor allegedly had a number of reasons to want the proverbial pound of Arbuckle's flesh. He had been forced into a bidding war over Arbuckle, which resulted in Arbuckle's salary quadrupling. Arbuckle refused to make public appearances as Zukor had instructed. Arbuckle purportedly engaged in pranks that irritated Zukor. As testament to this position, Zukor is quoted as having stated that Arbuckle needed "knocking down a few pegs" (Edmonds, 1991, p. 253).

As the theory goes, Fischbach was to orchestrate a wild weekend of drinking, loose women, and tawdry behavior in which Arbuckle could be swept up and then extorted into a more manageable position for the studio. As Edmond (1991) states, "There also needed to be someone who was Zukor's eyes and ears at the party but who would not be implicated. Fischbach seems the likely candidate. . . ." Unfortunately for all involved, Virginia Rappé not only brought her soiled reputation with her, but also a life threatening health condition and bad timing.

As for Rappé's motives or intent in the scheme, no source has offered much in the way of definitive explanation. It is reasonable to assume that she hoped the affair might stimulate her unremarkable acting career, but this is admittedly just informed speculation. However, the motives of her counterpart, Bambina Maude Delmont, have been widely explored and are substantially clearer. Without dissent, all accounts of the Arbuckle trials and scandal paint Maude Delmont as an inveterate liar and con artist. Young (1994, p. 65) states that she was, "a woman of few scruples whose sordid past included prostitution, swindling and blackmail." Fussell (1982, p. 65) documents a Delmont telegram to associates in Los Angeles and San Diego, "We have Roscoe Arbuckle in a hole here. Chance to make some money out of him."

Immediately upon Rappé's death, Delmont set off telling the press and authorities that Arbuckle was behind it. To the chagrin of District Attorney Brady, the essential facts of Delmont's story changed with each telling (Edmonds, 1991, pp. 185–186). Even though she was the most vocal Arbuckle accuser and was poised to be the state's star witness, the prosecutors were so dubious of her veracity she was never allowed to testify in any of the three trials. Brady knew that her testimony would not stand under defense scrutiny. As a matter of convenience and preservation of his own reputation, he had Delmont locked up on a charge of bigamy and in so doing made her unavailable to testify.

Just as many individuals had a stake in Arbuckle's undoing, there were many others who remained steadfast on the matter of his innocence. Arbuckle's wife, Minta Durfee, stated, "The only thing he's guilty of is being too good-natured to throw out a lot of those no-goods who come hanging around a movie star and cage free drinks" (St. Johns, 1978, p. 61). Former boss, Mack Sennett, told the press, "Fatty wouldn't hurt a fly. . . . He was a good-natured fat man and a good comic" (St. John, 1978). Buster Keaton, along with several other Hollywood associates, would eventually loan Arbuckle money to pay his legal bills.

Even Zukor, in what was probably a move of obligation (or hedging his bets) more than loyalty, retained attorney Frank Dominguez to represent Arbuckle. Zukor was initially opposed to assisting in Arbuckle's defense, but Joe Schenck, a Paramount executive, convinced Zukor that it was in the studio's financial interest to do so. Zukor had originally hoped to enlist the aide of Clarence Darrow, but Darrow, who was in the midst of his own legal problems, had to decline. Paramount also tried to retain famed defense attorney Earl Rogers, but Rogers's ill health precluded his service. As such, Zukor settled on Paramount's third choice: Dominguez. Dominguez was an able attorney from an old and respected California family (Young, 1994, p. 67). Zukor pressed Dominguez to get the charges against Arbuckle dismissed. When the grand jury instead returned a manslaughter indictment against Arbuckle, an angry Zukor had Dominguez dismissed (Young, 1994, p. 69).

Zukor replaced Dominguez with a team of five attorneys headed by Gavin McNab. McNab was a prominent San Francisco attorney whose familiarity with the local court was thought to be advantageous. McNab proved to be a formidable adversary for District Attorney Brady. McNab's first action as Arbuckle's attorney was to order a background investigation of Rappé (Edmonds, 1991, pp. 213–214).

This investigation turned up numerous licentious details about the woman whom Brady et al. portrayed as "sweet and innocent." McNab's Chicago investigators produced reports that Rappé had been in ill health for a number of years. She had undergone several abortions, had possibly borne a child out of wedlock, and had received repeated treatment for venereal disease all by the time she was 16. A physician, Maurice Rosenberg, said that Rappé had been treated for chronic cystitis, a condition that could have started the infection and inflammation that ultimately led to her death (Edmonds, 1991, p. 214).

While the news about Rappé's past would prove helpful, the defense team's joy was short-lived. Before jury selection had begun in Arbuckle's manslaughter trial, federal agents filed charges against the actor on violation of the Volstead Act stemming from the liquor present at the Labor Day party. While the case was eventually dropped, the timing of it was distracting for the defense.

Meanwhile, the prosecution was dealing with problems of its own. Fellow party guests Zey Prevon and Alice Blake were kept "in protective custody" by the prosecution to make certain that their testimony would hold up under cross-examination (Edmonds, 1991). Nevertheless, Blake managed to slip away to Alameda County and the home of a friend. Once located, Brady placed her under a subpoena to ensure further compliance.

Jury selection in what would be the first of three trials began on Monday, November 14, 1921. Superior Court Judge Howard Louderback presided. A list of 207 potential jurors had been drawn. The process was almost instantly heated and volatile. Much of the drama stemmed from McNab's accusation that the prosecution had intimidated witnesses, Blake and Prevon, in particular. At one point, McNab stated, "...I will bring seven



Figure 4.1 T.M. Smalevitch, Milton Cohen, Gavin McNab, Charles Brennan, Roscoe "Fatty" Arbuckle, and Arbuckle's brother at the manslaughter trial of Arbuckle, 1921. Courtesy of the Library of Congress.

witnesses into this court to prove that this is more than an allegation, this is a charge. You have tampered with, threatened and intimidated witnesses into lying. You know this is true and I know this is true. . ." (Edmonds, 1991, p. 218).[2] This typified the scene that continued for five days.

Finally, both sides agreed upon seven men and five women. Fatefully for Arbuckle, one of the women was Helen Hubbard, the wife of a prominent San Francisco attorney and self-admitted fan of Brady, who while stating that she was a movie fan (Edmonds, 1991, pp. 219–220) later confessed that she had made up her mind that Arbuckle was guilty the "moment [she] heard he was arrested" (Young, 1994, p. 69; Noe, 2007).

The prosecution's first witness was a nurse from the Wakefield Sanatorium named Grace Halston (Edmonds, 1991, pp. 220–221). Halston glared at the defendant and through her tone showed an obvious contempt for Arbuckle. She testified that Rappé's body was "riddled with bruises, that she found numerous organ ruptures, and that both had most likely been caused by force—from a man." Under cross-examination, McNab got Halston to admit that the ruptured bladder could have been caused by cancer and that the bruises might have been caused by Rappé's heavy jewelry. McNab also called Halston's credibility into question, You claim you saw several lesions on the bladder during your examination. I would like to know what qualified you to examine the body because you are neither a physician nor a graduate nurse" (Edmonds, 1991, p. 221).

Brady's next witness, Dr. Arthur Beardslee, testified that the bladder seemed to be injured from external force. On cross-examination, he admitted that Rappé had

said nothing to him indicating she had been assaulted by the accused. Inadvertently opening himself up to criticism, Beardslee also stated that Rappé might have benefited from surgery, ''It was evident that I was dealing with an operative case'' (Edmonds, 1991, p. 222).

McNab attacked, ''Then, Dr. Beardslee, let me ask you this. If you saw evidence that Miss Rappé would benefit from surgery, why was no surgery ordered at that time?''

''I have no answer for that,'' Beardslee replied.

''You have no answer,'' McNab observed. ''I wonder if Miss Rappé might be alive today if you had.''

On Monday, November 21, Brady called model and party guest, Betty Campbell, to the stand. Campbell testified that she arrived about an hour after the alleged rape to find Arbuckle, Sherman, Fischbach, Semnacher, and Prevon sitting around the hotel room relaxed. Edmonds (1991, p. 222) contends, ''Brady tried to use this in an attempt to show Arbuckle had neither remorse nor concern for the condition of Virginia Rappé.'' Under cross-examination, Campbell said the comedian showed ''no signs of intoxication.''

Under cross-examination McNab elicited a bombshell from Campbell. She testified that the prosecutor had threatened to have her imprisoned if she didn't testify against Arbuckle. Predictably, this sent Brady into a storm of objections.

McNab presented the judge with affidavits from Alice Blake and Zey Prevon reasserting the defense's claim of intimidation on the part of the prosecution. Prevon testified that she had been under duress when she signed the statement that Rappé had claimed, ''He killed me.'' Alice Blake provided similar testimony. According to Edmonds (1991, p. 224), Blake was ''visibly frightened'' while under prosecution questioning and ''obviously relieved when McNab stepped in.''

The prosecution's next witness was a security guard who had worked at Lehrman's Culver City studio. Former guard Jesse Norgard testified that Arbuckle had once approached him with an offer of cash in exchange for the key to Rappé's dressing room. According to Norgard's testimony, Arbuckle wanted it to play a joke on the actress. Norgard said he refused to give Arbuckle the key.

Dr. Edward Heinrich, a criminologist who was especially expert in fingerprints, testified that partial prints of Rappé were found on the inside of the door to 1219 with Arbuckle's superimposed over them. To Heinrich this indicated that Arbuckle and Rappé had struggled over the door with Arbuckle preventing her exit. Heinrich also testified that he had sealed the Arbuckle suite 11 days after the party took place.

In rebuttal, McNab called former federal investigator Ignatius McCarthy. McCarthy said he could prove the fingerprints were faked and made a strong implication that Brady was behind the act. McNab also summoned the testimony of a hotel maid who stated she had dusted the door ''with a feather duster'' several times before it was sealed by Heinrich.

After making an opening statement that drew heated objection from Assistant District Attorney Friedman, the defense began by calling several witnesses with information about Rappé's medical and personal history. The first of these was Dr. Melville Rumwell, who had been one of the attending physicians at Wakefield.

Among Rumwell's testimony were observations that Rappé had gonorrhea and that she was not a virgin. Rumwell's position in the course of events is also suspect because he performed what the coroner's office termed ''an illegal autopsy'' (Edmonds, 1991, p. 170). It is widely suspected that Rumwell's primary motivation to perform a hasty post-mortem examination was an effort to conceal that he had also performed an illegal

abortion on Rappé. Most importantly for the defense, however, was Rumwell's testimony that Rappé never accused Arbuckle of injuring her.

Nurse/masseuse Irene Morgan testified that she had treated Rappé at the home of Henry Lehrman in Hollywood. Morgan said that Rappé suffered from abdominal cramps and had been catheterized on several occasions due to trouble urinating (Edmonds, 1991, p. 227). Morgan also testified that Rappé was known to tear off her clothes and run through the streets naked after a few drinks. Perhaps coincidentally, two days after she testified, Morgan was found poisoned in her hotel. She claimed that she had been threatened by anonymous phone calls, that she would be killed if she testified (Edmonds, 1991, pp. 227–228).

Fred Fischbach also took the stand for the defense. He admitted that he invited Rappé to the party. He also stated that he had heard Rappé "moaning or screaming" and that he had been the one to dunk her in a cold bath as a means to calm her. He also disavowed any knowledge as to why Rappé was hysterical in the first place, because he was, "gone for a few hours in the automobile . . . out of the room" (Edmonds, 1991, p. 228).

In a telling moment of character, Arbuckle asked McNab to deliberately stay away from the issue of the alcohol and the Victrola with Fischbach. Arbuckle knew that Fischbach was responsible for bringing the items as well as the party guests to the room, "I'm on trial here, not Freddy" (Edmonds, 1991).



Figure 4.2 Undated photo of Roscoe "Fatty" Arbuckle. Courtesy of the Library of Congress.

After a recess for Thanksgiving, on Monday, November 28, Roscoe Arbuckle took the stand (Edmonds, 1991, pp. 230–233). He stood accused of horrible crimes and was apparently relieved at the opportunity for refutation of the charges. Arbuckle's testimony lasted for a little over four hours.

"Mr. Arbuckle," Gavin McNab began, "where were you on September 5, 1921?"

"At the St. Francis Hotel occupying rooms 1219, 1220, and 1221," the entertainer answered.

"Did you see Miss Virginia Rappé on that day?"

"Yes, sir."

"At what time and where did you see her?"

"She came into room 1220 at about 12:00 noon."

Arbuckle described many details about the party, but mention of the excessive drinking was carefully avoided. He told how he had planned to take a friend, Mae Taub, riding in the Pierce-Arrow and that he was going into the bathroom to get dressed when he discovered Virginia in pain.

"When I walked into 1219, I closed and locked the door, and I went straight to the bathroom and found Miss Rappé on the floor in front of the toilet. She'd been vomiting."

"What did you do?"

"When I opened the door, the door struck her, and I had to slide in this way to get in, to get by her and get hold of her. Then I closed the door and picked her up. When I picked her up . . . she vomited again. I held her under the waist . . . and the forehead, to keep her hair back off her face so she could vomit. When she finished, I put the seat down, then I sat her down on it.

"'Can I do anything for you?' I asked her. She said she wanted to lie down. I carried her into 1219 and put her on the bed. I lifted her feet off the floor. I went to the bathroom again and came back in two or three minutes. I found her rolling on the floor between two beds holding her stomach. I tried to pick her up but I couldn't. I immediately went out of 1219 to 1220 and asked Mrs. Delmont and Miss Prevon to come in. I told them Miss Rappé was sick."

Arbuckle vehemently disputed Heinrich's conclusions about the door. He also described how Rappé had torn at her clothes including an instance where he helped her remove her shredded dress when Fischbach came into the room. Arbuckle also corroborated Fischbach's version of having put Rappé into a tub of cold water. When Rappé was carried back to the bed, Maude Delmont rubbed her nude body with ice. Arbuckle stated he tried to cover the girl with the bedspread and an outraged Delmont rebuked him. Arbuckle's reply to Delmont, "If you don't shut up, I'll throw you out the window."

Assistant District Attorney Leo Friedman conducted the state's cross-examination, "What time did you say Miss Rappé entered your rooms?"

"Around 12:00," Arbuckle said.

"You had known her before?" Friedman asked.

"Uh-huh. About five or six years."

Friedman returned to individual details several times. He tried to shake inconsistencies out of Arbuckle, but the comic remained focused.

Just after a recess in the middle of Arbuckle's testimony, the prosecution did a curious thing. In an act that McNab characterized as "disgusting and obscene," prosecutors brought Rappé's ruptured bladder into the courtroom. Other than for the presumed shock value, the utility of the introduction at that particular point is unknown.

In a continuing series of questions, Friedman tried to get Arbuckle to admit he had deliberately followed Rappé into room 1219. This failing, Friedman tried to depict Arbuckle as indifferent to Rappé's condition.

"Did you tell the hotel manager what had caused Miss Rappé's sickness?"

"No. How should I know what caused her sickness?"

"You didn't tell anybody you found her in the bathroom?" Friedman continued.

"Nobody asked me."

"You didn't tell anyone you found her between the beds?"

"Nobody asked me. I'm telling you."

"You never said anything to anybody except that Miss Rappe was sick?"

"Nope."

"Not even the doctor?"

"Nope," Arbuckle again replied.

By the time Arbuckle was finished on the stand, most accounts contend he had done well in defending himself and maintaining composure despite the prosecution's best

TIMELINE

March 24, 1887	Roscoe Conkling Arbuckle born Smith Center, KS.
1888	Arbuckle family moves to California.
1899	Roscoe's mother, Mollie Arbuckle, dies. Arbuckle is given first vaudeville opportunity.
1909	Appears in the movie, *Ben's Kid,* produced by Bud Selig.
1909	Marries Minta Durfee.
1913	Begins career with Mack Sennett at the Keystone film company.
1916	Leaves failing Keystone studio for contract with Comique film company.
1917	Separates from wife, Minta Durfee.
1917	Joined in Comique films by young comedian Buster Keaton.
1919	Adolph Zukor of Paramount studios offers Arbuckle a million-dollars-per-year contract to star in feature-length films.
September 5, 1921	Arbuckle hosts a vacation party at the St. Francis hotel in San Francisco. During the party, the actress Virginia Rappé becomes very ill.
September 9, 1921	Virginia Rappé dies from peritonitis.
Mid-September 1921	Arbuckle accused of Virginia Rappé's rape and murder.
November 14, 1921	The first of three trials begins.
December 4, 1921	After 22 ballots, jury announces its deadlock: 10 to 2 in favor of acquittal.
1922	The second trial produces the same result, in reverse: deadlock, 10 to 2 in favor of conviction.
April 12, 1922	The third trial jury votes to acquit and reads a formal apology to Arbuckle.
April 18, 1922	Arbuckle is blacklisted by the motion picture industry.
December 20, 1922	Ban is lifted, but Arbuckle would not work on screen for ten years.
1924	Arbuckle returns to film as the director of the Buster Keaton picture, *Sherlock, Jr.*
1925	Arbuckle, as ''William Goodrich,'' directs several more films. Arbuckle marries Doris Deane. The couple would divorce in 1928.
1932	Warner Brothers Studios signs Arbuckle to a six picture deal. Arbuckle marries fourth wife, Addie McPhail.
June 28, 1933	Arbuckle finishes last of the Warner contract pictures and is signed to a new, long-term contract.
June 29, 1933	Arbuckle and friends celebrate the new contract. Arbuckle retires for the evening and dies in his sleep. The listed cause of death was heart failure.

efforts to break him. What followed next were an odd set of rebuttal witnesses, whose testimony focused on the aforementioned bladder.

Dr. William Ophuls (who attended Rappé with Dr. Rumwell) was called by the prosecution and Dr. G. Rusk by the defense. Edmonds (1991, p. 236) summarizes the findings,

> The experts agreed on four points: that the bladder was ruptured, that there was evidence of chronic inflammation, that there were signs of acute peritonitis, and that the examination failed to reveal any pathological change in the vicinity of the tear preceding the rupture. In short—the rupture was not caused by external force.

Going into summation, both sides felt confident in the case they had made. District Attorney Friedman's summation continued to portray Arbuckle as a callous villain,

> This big, kindhearted comedian who has made the whole world laugh; did he say ''Get a doctor for this suffering girl?'' No. He said, ''Shut up or I'll throw you out the window.''
>
> He was not content to stop at throwing her out the window. He attempted to make a sport with her by placing ice on her body. This man then and there proved himself guilty of this offense. This act shows you the mental makeup of Roscoe Arbuckle.

In his closing, McNab forcefully argued that Arbuckle was the victim of overzealous prosecution, ''It was a deliberate conspiracy against Arbuckle! It was the shame of San Francisco. Perjured wretches tried, from the stand, to deprive this defendant, this stranger within our gates, of his liberty.''

McNab also cast aspersions against the prosecution's case and its tactics, particularly where Blake, Prevon, and Delmont were concerned. Finally, he made a final dig at Rappé, ''The evidence presented on both sides has proven that Virginia Rappé was not a girl in excellent health but a sickly, broken down woman. . .lying there writhing and vomiting would not have excited the passions of the lowest beast that was ever called man.''

The first trial ended on December 4, 1921. After 43 hours of deliberation and 22 ballots, the jury sent word that it was hopelessly deadlocked. The final count was 10 to 2, in favor of acquittal. One of the two holdouts was Helen Hubbard, the self-admitted fan of District Attorney Brady.

The state decided to retry Arbuckle on the manslaughter charges, and a date of January 11, 1922, was set in San Francisco Superior Court. Jury selection took six days, nearly twice as long as before (Edmonds, 1991, p. 245). Eighty people were interviewed, and some difficulty was experienced in finding prospective jurors who had not heard details of the previous trial and scandal.

The trial went poorly for both sides. Both Prevon and Blake were recalled for the second trial. Neither produced compelling testimony and again, McNab alleged witness tampering. Heinrich reversed his position from the first trial, stating that it was possible that the doorway fingerprints had been forged.

The defense took a different strategy with regard to Rappé's virtue. It became a centerpiece of their case. McNab portrayed her as a woman of loose morals who drank to excess and slept her way around town (Edmonds, 1991, p. 246). The defense called numerous witnesses who each told of Rappé's questionable behavior.

Again, the prosecution failed to bring Maude Delmont to the stand, eschewing her testimony for the testimony of Dr. Beardslee. Beardslee relayed to the court stories about Rappé that Delmont had told him.

The defense made two critical errors in the second trial: they did not put Arbuckle himself on the stand, and they did not offer a closing argument. McNab later admitted that both decisions were a mistake.

On February 2, the jury retired to consider Arbuckle's fate. The jurors deliberated for 44 hours, held 13 ballots, and again returned with a deadlock. This time the jury voted 10 to 2 for conviction. One juror later admitted that he was wavering in his decision to acquit Arbuckle and that if the other holdout had voted for conviction, so would he (Edmonds, 1991, p. 246).

The third trial commenced on March 6. It was very different from either of the other two trials. McNab would not make the same mistakes as before. He provided a very explicit description of Virginia Rappé, her life, lovers, and faults. Whatever delicacy or euphemistic treatment given the matter in the first two trials was set aside in trial three. As Edmonds (1991, p. 247) observes, "Though women in the courtroom gasped, fainted and stamped their feet to drown out the 'vulgarity,' McNab got his point across." McNab also let Arbuckle testify.

The trial was, by comparison, very brief. The prosecution presented only six witnesses. The jury began deliberations on April 12. The jurors were out for less than five minutes. During that time the jury prepared the following note for the court:

> Acquittal is not enough for Roscoe Arbuckle. We feel that a great injustice has been done him. We feel also that it was only our plain duty to give him this exoneration, under the evidence, for there was not the slightest proof adduced to connect him in any way with the commission of a crime.
>
> He was manly throughout the case, and told a straightforward story on the witness stand, which we all believed.
>
> The happening at the hotel was an unfortunate affair for which Arbuckle, so the evidence shows, was in no way responsible.
>
> We wish him success, and hope that the American people will take the judgment of fourteen men and woman who have sat listening for thirty-one days to evidence, that Roscoe Arbuckle is entirely innocent and free from all blame.

Arbuckle was finally free from the clutches of Brady and the Superior Court of California, but his ordeal had scarcely begun. The trial cost nearly $750,000, which left him nearly bankrupt, and no one in Hollywood would touch an Arbuckle picture. As if this were not enough, Arbuckle was soon contacted by the Internal Revenue Service. The IRS found that he owed nearly $100,000 in back taxes (Edmonds, 1991, p. 248). The IRS attached what was left of his estate and garnered a court order for any earnings until the debt was settled. Ironically, the worst was yet to come.

A PUBLIC SACRIFICE

In the days following the death of Virginia Rappé, Arbuckle was besieged by the press. They clamored around him upon his return to Los Angeles and continued to dog him throughout the trials. Most of the scholarship on Arbuckle indicates that the coverage was generally balanced, except in the newspapers owned by William Randolph Hearst. The Hearst newspapers vilified Arbuckle with exaggerated headlines. The *San Francisco Examiner* reported that Arbuckle had been stoned by the crowd when he returned from

San Francisco (Edmonds, 1991, p. 208), when, in point of fact, the reception was, if anything, mixed.

Shortly after his arrest, theaters nationwide began pulling Arbuckle films. On September 12, 1921, the Theater Owners Chamber of Commerce in New York banned exposition of Arbuckle films in any of its 300 member venues (Young, 1994, p. 111). Similar bans were enacted by theater owners in Philadelphia, Chicago, Memphis, Buffalo, and several other large cities. By December 1922 even New York's Sing Sing Prison had banned Arbuckle films (Young, 1994, p. 114). This left Arbuckle and the production studios in a tight spot. Famous Players-Lasky had three completed Arbuckle films in the can and no place to show them (Edmonds, 1991, p. 209).

Arbuckle was also the victim of unlucky timing. On the same day that the jury retired during Arbuckle's second trial, Paramount film director, William Desmond Taylor, was found murdered in his home. Among the prime suspects were Arbuckle costar, Mabel Normand, Paramount star Mary Miles Minter, and her mother, Charlotte Shelby. The murder generated nasty rumors of homosexuality, a love triangle, and even a drug deal having gone bad (Edmonds, 1991; Young, 1994).

As if this were not enough, by March another scandal, this time focused on the drug addiction of actor Wallace Reid, was made public. Reid's hasty withdrawal from his narcotics habit nearly drove the actor insane, forcing him into a sanitarium where he died the following year (Edmonds, 1991; Young, 1994).

The three scandals taken together were enough of a warning signal that the Hollywood establishment felt it had to act. Former United States Postmaster General Will Hays was brought in by studio executives (Zukor, Joseph Schenck, and Jesse Lasky among them) to head the newly formed Motion Picture Producers and Distributors Association (MPPDA), an organization designed to regulate film morals and self-censorship (Young, 1991, p. 71). The Hays Office, as it became known, spent the next 23 years enforcing a very tight code of behavior for individuals both on and off screen. So-called "morals clauses" were written into studio contracts and as Young (1991) reports, "[M]inisters nationwide, the powerful Federation of Women's Clubs and bigoted moralists who had deplored films since their beginnings, felt their day had finally arrived."

For whatever reason, the blanket self-censure of Hollywood was deemed insufficient. The movement against the perceived debauchery of the film community needed an obvious sacrifice. Arbuckle provided an easy target. On April 18, 1922, the Hays Office issued the following statement:

> After consulting at length with Mr. Nicholas Schenck, representing Mr. Joseph Schenck, the producers, and Mr. Adolph Zukor and Mr. Jessy Lasky of the Famous Players-Lasky Corporation, the distributors, I will state that at my request they have cancelled all showings and all bookings of the Arbuckle films. They do this that the whole matter may have the consideration that its importance warrants, and the action is taken notwithstanding the fact that they had nearly ten thousand contracts in force for the Arbuckle pictures.

Arbuckle, whose film career boasted many "firsts" for the industry, now added the mantle of being the first performer ever blacklisted by Hollywood. While the formal ban was lifted only nine months later, the damage to Arbuckle's career had been solidified.

The year 1923 brought a mixed bag of circumstances for Arbuckle. The MPPDA ban was lifted on January 20, but public opposition was still pervasive. On January 30, papers of incorporation were filed for Reel Comedies in Trenton, New Jersey (Young, 1994,

CONTROVERSY EVEN IN DEATH

Just as Arbuckle's relationship to events at the St. Francis hotel sparked decades of heated debate, so too did the matter of his final resting place. While Young (1994) correctly states that Arbuckle was cremated, numerous alternate accounts persist. Bent and Cross (1991) have Arbuckle buried in New York's Woodlawn Cemetery. Oderman (1994) not only states that Arbuckle was buried in Hollywood's famous Forest Lawn but also presents an account of first wife, Minta Durfee, visiting the grave. Pearson (2006) confirms Young's version with records from the Frank E. Campbell Funeral Service of New York, who verified the cremation on July 1, 1933. Further, Pearson cites his direct conversations with Addie McPhail regarding the final disposition of Arbuckle's ashes.

p. 115). The company was formed by Nicholas and Joseph Schenck for the purpose of giving Arbuckle employment and income. Six of Hollywood's largest studios secretly put up a total of $200,000 funding for the new company. A day later Arbuckle issued a statement in which he said he was ''through with acting'' and that he was joining Reel Comedies to produce and direct. During the next three years, Arbuckle went on to make 13 two-reel comedies, but received no screen credit for the work. Throughout the rest of 1923, Arbuckle gave numerous live performances in Chicago and Atlantic City.

While his star was on apparent reascension, Arbuckle's personal life again found trouble. In October, Minta Durfee Arbuckle sued for divorce. The pair briefly reconciled, but Arbuckle began a romance with Doris Deane, whom he married shortly after divorcing Durfee.

POSTSCRIPT: A FILM HISTORIAN GIVES PERSPECTIVE

Noted Arbuckle researcher David Pearson was contacted in preparation for this chapter. Pearson was asked to say what he thought was important for the public to know about Arbuckle. The following is an excerpt from his answer (Pearson, 2006).

> Because of [the] trials, [Arbuckle] lost his stardom, his film contract, his business interests, his home, his cars, and every penny he had—winding up deeply in debt to friends who stepped forward to pay his legal fees. And despite being found innocent, he was also considered to be an ''immoral'' person by much of the American public. Most people would have been crushed by all this. Not Roscoe Arbuckle. Roscoe worked his tail off for the next decade, first to completely repay all his friends, and then to rebuild his film career. He directed dozens of film comedies for other comics. He also repeatedly went on theatrical tours to rebuild his fan base—which often included visits to various city council meetings to disarm ''moralists'' trying to ban him. After ten years, he was finally allowed to make movies again. And after six well received short comedies made in 1932–33, he died. Some people claim, after the trials, Arbuckle climbed into a whiskey bottle until he died, forgotten in self-pity. Of all the outrageous lies said about Roscoe Conkling Arbuckle, that may have been the biggest lie of them all.

By August 1925, a poll of *Photoplay Magazine* readers indicated that the majority of the public was still against Arbuckle's full return to the screen (Young, 1991, p. 117). Nonetheless, Arbuckle continued to work with old friends like Buster Keaton and Lew Cody. Oddly enough, in the summer of 1925, Arbuckle and new wife, Deane, vacationed at the San Simeon home of William Randolph Hearst. Hearst's girlfriend, actress Marion Davies, was set to star in a new film, and Hearst hired Arbuckle[3] to direct it. Of his involvement in the smear of Arbuckle's reputation, Hearst purportedly told Arbuckle, "I never knew anything more about your case, Roscoe, than I read in the newspapers" (Yallop, 1976, p. 285). Arbuckle is said to have not replied.

Arbuckle continued to work in the entertainment industry over the next few years. He was involved in several film projects, a number of stage productions, and various side investments. His marriage to Doris Deane ended in 1928 over allegations of desertion. By late 1931, a readers' poll in *Motion Picture Magazine* indicated that the public was ready for a return of Arbuckle to the screen (Young, 1991, p. 119). In January 1932 Jack Warner, head of Warner Brothers Studios, offered Arbuckle a contract for a two-reel comedy at the company's Vitaphone Studios in New York.

While in New York, Arbuckle began a romance with Addie McPhail. The couple married in June 1932. She was 26; he was 45. Not long after the marriage, filming was completed on *Hey, Pop* at Vitaphone. The trade publication, *Film Daily,* touted the comedy as an overwhelming success. Arbuckle was immediately signed to make five more films for Warner Brothers.

On June 21, 1933, Arbuckle and McPhail celebrated their first wedding anniversary. A week later Arbuckle finished filming *In the Dough,* the second of his "comeback" films for Warner Brothers. On June 28, the couple held a party (a belated anniversary celebration) at Billy LaHiff's Tavern in Manhattan. After the party, the couple returned to their suite in the Park Central Hotel on Manhattan's West Side. Tired from the party and a tough film schedule, Arbuckle retired for the evening. At approximately 2:30 a.m. the comedian's heart gave out. Arbuckle died in his sleep. Long time friend Buster Keaton would often remark that Arbuckle had "died of a broken heart."

While most newspapers made a gentle report of Arbuckle's demise, Hearst's newspaper, *New York American,* ran the headline, "Fatty Arbuckle Lies Dead in the Chapel, But No Eager Crowd Comes to Look" (Young, 1994, p. 85). Even in death, Arbuckle made for scandalous Hearst copy. Arbuckle's body was placed for viewing in the Gold Room of Frank E. Campbell's Funeral Church on Broadway in Manhattan. This was the same chamber in which Rudolph Valentino's funeral viewing had taken place eight years earlier. Despite the Hearst reports, a crowd estimated between 800 and 1,000 mourners came to see Arbuckle. The funeral itself was attended by more than 250 of his friends and associates. Among the mourners were noted director Ray McCarey and comedian Bert Lahr. The famed humorist Will Rogers delivered the eulogy. At Arbuckle's request, his body was cremated. On September 6, 1934, his widow, Addie McPhail Arbuckle, spread the ashes out over the Pacific Ocean near Santa Monica (Young, 1994).

SUMMARY

Roscoe Arbuckle was an important force in determining the shape of early American comedic cinema. He was one of Mack Sennett's *Keystone Kops.* He was a mentor to Buster Keaton and a peer of Charlie Chaplin. He was among the first, if not the first person, to

throw a pie in someone's face on film. He was the first performer to be given complete creative control over his movies. Yet, for all his impact as a pioneering filmmaker, "Fatty" Arbuckle became instead a synonym for disrepute and reputations destroyed.

As the first film star to be blacklisted by Hollywood, Arbuckle fell victim to a reactionary climate of oppression that typified studios of the era. In so doing, he became something of an iconic reference point, a touchstone, for almost every celebrity who has since stood accused of foul crimes. Popular culture references to Arbuckle have even surfaced in current film. In *Death to Smoochy* (2000), actor Robin Williams as the disgraced children's character, "Rainbow Randolph," utters the line, "Welcome to Fatty Arbuckleland," while plotting the ruination of another character.

It is arguable that Arbuckle's trials were perhaps the most important celebrity trials of the twentieth century, at least until the murder trial of football star, turned actor, O.J. Simpson. Even in the shadow of the more recent Simpson trial(s), the Arbuckle case is perennially invoked by the media as a point of historical context.

That Arbuckle's predicament became fodder for the yellow journalism of the Hearst newspaper empire was also a harbinger of things to come. While fan magazines such as *Photoplay, Motography,* and *Movie Weekly* were popular during Arbuckle's career, their circulation did not reflect the same magnitude of apparent public interest evidenced by current television programs such as *Celebrity Justice* or tabloids like *The Star* or *The National Enquirer.*

Apart from the media-driven frenzy, the Arbuckle trials and associated scandals were the locus of a broad reconsideration of Hollywood, its products, and personalities. When Hollywood studios sought the aid of Will Hays and the MPPDA in fear of government-mandated censorship, Roscoe Arbuckle's fate was essentially sealed. Even though his formal blacklisting lasted only about nine months, the damage was done. Images of Arbuckle's cherubic slapstick were forever replaced in the public memory by unsubstantiated acts of drunken excess, rape, and murder. Whether he had actually done the things of which he was accused (and acquitted) was largely irrelevant. Regrettably for the waning star, the popular press along with the film industry had reached an equally damning verdict: Roscoe Arbuckle was no longer wanted. That he had begun to regain public favor just before his death was meager compensation for the needless hardship.

SUGGESTIONS FOR FURTHER READING

A note on the sources: Just as the Arbuckle trials produced myriad versions of what "really" took place in the St. Francis Hotel on Labor Day 1921, so too are there many subsequent historical accounts, some quite scholarly and well prepared, some not. That being said, there appears little consensus on many details, conversations, and other aspects of Arbuckle's life, career, and role in the Labor Day party. Anyone with a further interest in this topic is advised to begin with those titles listed below, but be aware that there are many, often conflicting perspectives.

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Edmonds, A. (1991). *Frame up! The untold story of Roscoe "Fatty" Arbuckle.* New York: William Morrow.

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NOTES

1. The rumor that Arbuckle used a shard of ice to violate Rappé is one of several stories popularized by the Hearst newspapers (Edmonds, 1991, p. 243). Equally violent is the rumor that Arbuckle, frustrated from having been made impotent from too much liquor, may have used either a Coca-Cola or a champagne bottle against Rappé. Neither story has ever been substantiated.
2. It should be noted that the vast majority of courtroom dialog presented in this account of the Arbuckle trials comes from the work of Andy Edmonds. Edmonds notes in his forward to *Frame Up!* that "someone connected to the case" provided him with "fairly complete" court transcripts (which were presumed destroyed) and for this reason his accounts should be credited as the most authoritative source on the matter of the trials. If there are points that to the more critical of readers appear to need additional documentation with regard to who said what to whom, let this note serve as a blanket acknowledgement that Edmonds is, unless otherwise noted, the source for exact courtroom dialogue.

   Young (1994, p. 247) takes issue with some of the dialog in the Edmonds work. Specifically, Young states, "It [Edmonds] contains considerable invented dialog." However, Young gives no indication of which instances in particular are of concern. Whether the courtroom dialog fits that category is unknown.
3. Arbuckle began working under the name William B. Goodrich (sic. "Will B. Good"), and it was under this name that he directed Davies in the MGM adaptation of *The Red Mill.* The film had a number of other directors and was a failure at the box office.

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5

The Incomprehensible Crime of Leopold and Loeb: "Just an Experiment"

DIANA PROPER

On May 21, 1924, two young men, 19-year-old Nathan Leopold and 18-year-old Richard Loeb, set out to commit the ''perfect crime.'' Partially inspired by an inaccurate, self-absorbed reading of the philosophy of Friedrich Nietzsche (Higdon, 1975), the two teens wanted to prove that they were Nietzschean ''Supermen'' by committing and getting away with the perfect crime. The teens were obsessed with the Superman theory, which states, in part, that there exist in society some supermen (the ''übermensch'') whose talents and intellectual superiority mean that they are above human-made law and, therefore, not subject to punishment for violation of such laws. For Leopold and Loeb (and the very embodiment of evil, Adolf Hitler), the theory allowed them to play with the idea that, as Supermen, they should be able to commit the perfect crime and get away with it. However, if caught, they felt that their superior status should exempt them from legal punishment (Higdon, 1975, p. 210). Many scholars of Nietzsche argue that the boys misread the Superman theory. These experts maintain that Nietzsche's Superman is a person so superior that (s)he would never consider committing evil acts and, therefore, would never be subject to punishment. In this reading, the Superman is not above the law but rather is so superior in nature that violation of any form of human or natural law would simply never occur.[1]

Both Leopold and Loeb were from prominent Jewish families in Chicago, well educated, and considered brilliant. Loeb's IQ was measured at 160, Leopold's at 210 (Higdon, p. 200). However, Leopold and Loeb would quickly learn that they were not their idea of Nietzschean Supermen who were above the law. They were flawed and ultimately ''abnormal'' boys, subject to law in the same way as the ''ordinary people'' around them.

Forces Uniting Leopold and Loeb in Crime

Earlier in 1924, Leopold and Loeb had burglarized two fraternity houses at the University of Michigan. Their most successful burglary was of Zeta Beta Tau. There they stole many items, including a portable Underwood typewriter (Higdon, 1975). But this was

small-time crime. For months after the burglaries, the teens planned to commit a perfect crime. Their goal was to commit this crime, and then end their criminal careers altogether.

Why were Leopold and Loeb interested in committing such a crime? While both were from very wealthy families, and were provided generous allowances, both teens also considered themselves intellectually superior to others. Their feelings of superiority were reinforced by the philosophy of Nietzsche and his concept of the Superman. To Leopold, Loeb represented the Superman. He was handsome, well built, and charming (Leopold, 1958). Each saw the other as superior to himself. However, each was often frustrated by the other. Both, at times, contemplated killing the other, and both had considered committing suicide (Hulbert-Bowman report, in Higdon, 1975). Their relationship was intense and intertwined. Thus, unable to successfully commit a perfect crime alone, they believed it must be planned and carried out together.

The Killers' Master Plan

Leopold and Loeb planned to kidnap and murder the child of a wealthy family. Neither boy relished the idea of killing, but both thought murder a necessary ingredient of the perfect crime (Higdon, 1975, p. 97). Their obsession was with the successful completion of a masterful crime and subsequent escape from detection. After the murder, they would dispose of the child in a culvert by the Wolf Lake area south of Chicago, an area with which Leopold was familiar, because that was the desolate area where he often conducted his ornithological studies. Leopold was well known in the ornithological community. At age 19, he published a paper and lectured locally on the subject (Linder, 2003).

After hiding the body, the two men would call the murder victim's family and send them a letter with precise instructions detailing the method by which a ransom should be delivered in exchange for the safe return of their child. The family would then be told to await a telephone call that would direct the father to wait for a Yellow Cab that would be sent to the family home (*New York Times,* May 23, 1924). The father was to take the cab to a nearby drugstore and wait for further instructions. Leopold and Loeb would call the father at this phone and direct him to go to a nearby railway station and purchase a ticket to Michigan City, Indiana (*New York Times*, June 1, 1924). They chose this train because, by the time the father arrived at the station, he would have little time to purchase a ticket and make the train. Therefore, he would be unable to contact police.

On the train, the father was to proceed to the last Pullman car and open the telegraph box (*New York Times,* June 1, 1924). There, he would find a letter from the kidnappers explaining exactly how the money was to be delivered. The father was to wait until he passed a brick building, the Champion Manufacturing Company, then to quickly count *one, two, three,* and throw the package containing the money from the end of the train (Linder, 2003).

After retrieving the money, Leopold and Loeb would go back to their normal lives, attending law school in the fall. Once they had proven to themselves that they could commit the perfect crime, they would have confirmed their superior Supermen status. But as the saying goes, the best-laid plans of Supermen often go awry, as Leopold and Loeb soon discovered.

Criminal Mistakes

Several weeks prior to the kidnapping, Leopold and Loeb set their plan in motion, acquiring items needed to commit their crime. Most were easily purchased: rope, a chisel,

and tape to wrap around it (Higdon, 1975). But the matter of transportation to use during the crime proved more challenging. They could not use Leopold's car because its bright red color was too noticeable. Loeb's car needed repair. Furthermore, neither wanted his own car traced back to him. So they devised an elaborate scheme to rent a car without revealing their identities (Rackliffe, 2000–2003).

First, Loeb established a temporary address by renting a room at the Morrison Hotel under an assumed name, Morton D. Ballard (Rackliffe, 2000–2003). He brought a suitcase (which he had filled with library books) with him to the room, and then met Leopold outside. The two then went to a local bank where Leopold opened an account as Ballard and deposited $100, which Loeb had taken from his own account earlier that day (Rackliffe, 2000–2003). Leopold used the Morrison Hotel as his address.

Armed with the hotel address, the bank account, and a list of phony references, Leopold posed as the fictitious Mr. Ballard, a traveling salesperson, in order to secure a rental car from the Rent-A-Car Company. His main reference was a "Mr. Louis Mason," who was actually Loeb, waiting across the street, ready for a possible reference call. Apparently suspicious of Ballard, the company boss called the reference, "Mason," who vouched for Ballard's authenticity. As Ballard, Leopold rented a gray Willys-Knight automobile. The teens kept the car for several hours and then returned it to the car company. Leopold (Ballard) asked the company to send an identification card to his hotel address. This was to ensure that he would have no problem renting a car on the day of the crime.

The next day, Loeb went to the Morrison Hotel to collect the car rental identification (Rackliffe, 2000–2003). When he arrived, he found no mail awaiting Ballard, and his suitcase was missing. He fled the hotel. Now in need of a new address for the rental identification, the teens drove to the Trenier Hotel, where Leopold explained that he, Ballard, planned to stay at the hotel, but had a change of plans (Rackliffe, 2000–2003). He asked the hotel to hold his mail; the staff agreed. "Ballard" then called Rent-A-Car and asked that the identification card be sent to the new Trenier Hotel address (Leopold confession, 1924). Finally, the plan for the car was ready.

Prior to committing the crime, Leopold and Loeb wrote two ransom letters to be addressed once they decided upon a victim. The first letter read:

> A. Dear Sir: As you no doubt know by this time, your son has been kidnapped. Allow us to assure you that he is at present well and safe. You need fear no physical harm for him, provided you live up carefully to the following instructions and to such others as you will receive by future communications. Should you, however, disobey any of our instructions, even slightly, his death will be the penalty.
>
> B. 1. For obvious reasons make absolutely no attempt to communicate with either police authorities or any private agency. Should you already have communicated with the police, allow them to continue their investigations, but do not mention this letter.
>
> C. 2. Secure before noon today $10,000. This money must be composed entirely of old bills of the following denominations: $2,000 in $20 bills, $8,000 in $50 bills. The money must be old. Any attempt to include new or marked bills will render the entire venture futile.
>
> D. 3. The money should be placed in a large cigar box, or if this is impossible, in a heavy cardboard box, securely closed and wrapped in white paper. The wrapping paper should be sealed at all openings with sealing wax.
>
> E. 4. Have the money with you, prepared as directed above, and remain at home after one o'clock. See that the telephone is not in use.
>
> F. You will receive a further communication instructing you as to your final course.

G. As a final word of warning, this is an extremely commercial proposition and we are prepared to put our threat into execution should we have reasonable grounds to believe that you have committed an infraction of the above instructions.

H. However, should you carefully follow out our instructions to the letter, we can assure you that your son will be safely returned to you within six hours of our receipt of the money.

I. Yours truly,

J. George Johnson (Ransom letter, reprinted in Higdon, 1975, pp. 41–42)

The kidnappers collectively called themselves George Johnson.

The next note supplied the instructions for the victim's family to be placed in the Pullman car. The notes and the plan were ready. All they needed was a victim.

May 21, 1924

On May 21, the day of the planned kidnapping, Leopold and Loeb went to the Rent-A-Car Company and rented a Willys-Knight. They drove until approximately 5 p.m. before they found a suitable victim. He was a young boy from a wealthy family who was walking alone.

Bobby Franks, age 14, lived near both kidnappers' homes and often played tennis at the Loeb family's tennis court (Higdon, 1975). Since he knew Loeb, he was not afraid to approach the kidnappers. Loeb called to the boy and, as a pretense, asked him about a tennis racket. Loeb asked Bobby if he would ride around the block (Higdon, 1975). Bobby agreed. One kidnapper was driving; the other was in the backseat. The driver (whether Leopold or Loeb remains unknown) opened the front passenger door so that Bobby would sit in the car's front passenger seat with one kidnapper sitting behind him (Higdon, 1975).

As the car turned the corner, the kidnapper in the backseat began to bludgeon Bobby Franks over the head with the chisel. Franks was severely injured and bleeding heavily from the attack, but he was not dead. The kidnapper in back pulled Franks into the car's backseat and stuffed a gag into his mouth. Franks suffocated to death, while Leopold and Loeb continued to drive (Loeb confession, in Higdon, 1975).

The brutal murder was complete. Leopold and Loeb drove through Chicago toward Indiana. In Indiana, they deliberately discarded the items of Franks's clothing that they did not think would burn, including the boy's shoes, class pin, and belt. The pair went back to Chicago and waited until dark. With Bobby's dead body still in the car, the kidnappers stopped for food (Higdon, 1975).

When night fell, the two drove to remote Wolf Lake (*New York Times*, May 24, 1924). As planned, they took Franks's body to the culvert underneath the railroad tracks, where they placed him in an automobile robe, stripped him of the rest of his clothes, and poured hydrochloric acid on his face, body, and genitals to prevent identification. They pushed the body into the culvert. Unwittingly, Leopold dropped his eyeglasses near the culvert. The kidnappers collected Franks's clothes and wrapped them in the robe. On the way to the car, one of the boy's socks fell from the robe (Leopold confession, 1924). Neither kidnapper noticed.

Upon returning from Wolf Lake, the young kidnappers made two phone calls. The first was to Leopold's parents. He explained that he would be late returning home and that, yes, he would drive his aunt and uncle home when he returned to the house (Leopold confession, 1924). They then stopped at a drugstore to call the Franks' home, but became

nervous when the operator took awhile to connect. They left the store, addressed the previously written kidnap letter, marked it "special delivery," and deposited it into a nearby mailbox (Higdon, 1975, p. 106). They stopped again to call the Franks' home. This time the phone was answered, and Mrs. Flora Franks was told that her son had been kidnapped and that she should await further instructions to ensure the safe return of her son. She hung up and fainted (Testimony Flora Franks, July 23, 1924, in Higdon, 1975).

The teens then went to Loeb's house, where they burned most of Franks's clothes. Since they feared the smell of the much heavier automobile robe, they hid it behind some bushes. Then they went to Leopold's home. Leopold drove his aunt and uncle to their home, then returned home, where he and Loeb had a drink with Leopold's father, and then played cards (Leopold confession, 1924). Leopold and Loeb then left the house in the rental car. While driving, one kidnapper threw the chisel from the car. A passing police officer saw this, retrieved the chisel, and brought it to the police station (Testimony Officer Hunt, July 24, 1924, in Higdon, 1975). (According to some accounts, the teens met later that evening with two dates and a friend for a meal. They then dropped off the group and returned home.) The next day, the two met on the street where they had parked the rental car and drove it to Leopold's driveway, where they attempted to clean bloodstains from the backseat (Leopold confession, 1924). The Leopold family chauffeur, Sven Englund, offered to help, but the boys said that they had merely spilled some red wine in the backseat and could clean it themselves (Higdon, 1975, p. 109).

The Franks Family

Meanwhile, the Franks, also a wealthy family of Jewish descent, had been worried for some time about their missing son. Prior to receiving the call from the kidnappers, Bobby's father called the boy's friends and teachers, as well as a family friend, Attorney Samuel Ettelson (Higdon, 1975, p. 109). Franks, Ettelson, and a teacher searched the school, but Bobby was not there. When they returned to the Franks' home, they found Flora, delirious from the call she received while the men were at the school. Franks and Ettelson went to the police that night, briefly explained to officers on duty what had happened, and decided to wait until the next day to speak to lead officers with whom they were acquaintances (*New York Times,* May 23, 1924).

The Immigrant

Early on May 22, Polish immigrant Tony Mankowski (Manke) was walking near Wolf Lake on his way to work when he noticed something odd protruding from a culvert under the Pennsylvania Railroad. It was a human foot. He looked further and found a dead young boy. He flagged down several railroad workers riding toward the scene on a handcar (Higdon, 1975, pp. 39–40). Manke spoke little English, but communicated that there was a body in the culvert. Immediately, the men removed the body to bring it to the police. One railroad worker noticed a pair of eyeglasses near the culvert. He decided to keep them (Higdon, pp. 40–41).

The men placed the body on the handcar, rode to a nearby train station, and called Chicago police. The police asked if the men had noticed anything at the crime scene. One railroad worker mentioned the eyeglasses. The body and the eyeglasses were confiscated and taken to a nearby funeral home (Higdon, 1975, p. 43).

The Investigating Journalists

Meanwhile, the *Chicago Daily News* received an anonymous tip that Attorney Ettelson could provide information on a young male kidnapping victim (*The Chicago Daily News,* 1924, May 31). Reporter James Mulroy located Ettelson at the Franks' home, where Ettelson explained what had occurred and asked Mulroy to remain silent for the time being (Higdon, 1975, p. 44). Back at the newspaper, the city editor discovered that police had brought the body of a young boy to a local funeral home. The paper's editors became suspicious that the two cases were related: Was the body at the funeral home that of the kidnapped boy? The editor sent reporter Alvin Goldstein to the funeral home; an *Evening American* reporter had also been sent (Higdon, p. 44). Back at the Franks' home, Mulroy told the family that a boy's body had been recovered from a nearby culvert. He suggested that someone go to the funeral home where the body was being held so as to ensure it was not that of young Bobby. Jacob Franks's brother-in-law went to identify the body (*The Chicago Daily News,* 1924, May 23).

By now, the Franks had received the kidnap letter promised the night before by "George Johnson." Jacob Franks secured the money requested and awaited the phone call promised in the kidnap letter for further instructions. In mid-afternoon, the phone rang. The caller identified himself as Johnson, and he told Franks to expect a Yellow Cab at his house soon (*New York Times,* 1924, May 24). The caller then provided a drugstore address where Franks was to direct the driver. There, Franks was to wait by the phone for further instructions. Ettelson took the phone and was also given the address. The phone rang again. It was the brother-in-law. The body at the morgue was that of Bobby Franks (*New York Times,* 1924, June 1).

Soon, the Yellow Cab driver appeared at the Franks' door. He explained that a man identifying himself as "Mr. Franks" called for a cab at their address, but provided no destination address (Higdon, 1975). Franks and Ettelson immediately phoned the police.

Meanwhile, Leopold and Loeb called the drugstore where they had instructed Mr. Franks to go. A store employee informed them that no such person was there. The teens hung up, left the first drugstore, and drove one block to another drugstore, where they again called the drugstore to which they had directed Mr. Franks. Again, no one matching Mr. Franks' description was at the store. The teens hung up the phone and then saw the afternoon newspaper's headlines. The body of Bobby Franks, kidnapping victim, had been found and identified. The young men aborted their plans, knowing that if they continued to try to contact Franks, they would be caught. Leopold and Loeb had failed in their attempt to commit the perfect crime.

The Criminal Justice Process

The Investigation

The police were called after the Franks family learned that the body at the funeral home belonged to Bobby Franks. Police had little information, so they first directed their attention to three teachers at the Harvard School, where Bobby was a student, but there was no evidence to link any of the schoolteachers to the crime (Higdon, 1975).

The main evidence was the eyeglasses found near the dead boy by the railroad workers (Higdon, 1975). The glasses were a common frame and prescription. However, investigators learned that a specific company made the hinges on the glasses, and these were sold

only at Albert Coe & Company. A store salesman examined approximately 54,000 records before compiling a list of three possible owners. One pair belonged to a woman, another to an attorney, and the third to Nathan Leopold (Higdon, 1975). At this point, the state's attorney, Robert E. Crowe, called police to bring Leopold in for questioning. When they arrived at the Leopold home, they asked Leopold if he wore glasses. He replied that he did, but only for reading. When asked if the glasses were in the house, Leopold was evasive (Higdon, 1975).

The Polite Interrogation

The police asked Leopold to go with them for questioning by State's Attorney Crowe. To avoid publicity, Crowe met the teen at a hotel rather than at his offices (Higdon, 1975, p. 78). Crowe showed Leopold the glasses and asked whether they looked like the ones he owned. Nathan said they did, but his were at home. After a second fruitless search of the Leopold home for the glasses, Leopold was brought back to the hotel, where he eventually admitted that the glasses belonged to him (Leopold confession, 1924). He suggested that the glasses must have fallen from his pocket while he was birding that prior weekend. Leopold attempted to demonstrate this possibility to investigators by placing the glasses into his coat pocket and falling to the floor. The glasses did not fall out (Linder, 2003). Investigators continued to question Leopold, during which time he acknowledged his friendship with Richard Loeb (Higdon, 1975).

Later that day, Loeb was brought to the hotel for questioning (Higdon, 1975, p. 86). The teens told conflicting stories of their whereabouts on the evening of May 21. Both admitted driving in Nathan's car that day, but then their stories diverged. Nathan said the two remained together; Loeb said they parted in the afternoon (*New York Times,* June 1, 1924).

While state officials questioned the teens, Mulroy and Goldstein of the *Chicago Daily News* continued their own investigation into the Franks murder. They learned that Leopold was part of a law school study group. Each week, he typed the session's notes. Goldstein visited a group member and asked to see his notes. Some looked different from others (Higdon, 1975). Goldstein took some sample notes back to the newspaper (*The Chicago Daily News,* May 31, 1924), where a typewriter expert examined the notes and compared them with the kidnap letter. The expert concluded that the notes and the letter were typed using the same machine.

The *Chicago Daily News* handed the evidence to the state's attorney. Although all members of the study group remembered Leopold using a portable typewriter, he denied owning one. No portable was found at his home (Higdon, 1975, p. 90). Leopold and Loeb both maintained their innocence.

State's Attorney Crowe knew he could not hold the teens very long without further evidence. Eventually, an assistant decided that before releasing the youths, he wanted to speak with the Leopold family chauffeur (Higdon, 1975, p. 91). Sven Englund was brought to the hotel and asked about Nathan's use of his car on the night of the murder. Thinking he was helping the boy (Linder, 2003), Englund stated that Leopold drove home that afternoon and asked Englund to fix the car's brakes. According to Englund, the car remained there all day. This directly conflicted with the statements of Leopold and Loeb, in which they both now agreed that they had used Leopold's car to pick up two girls (*New York Times,* June 1, 1924).



Figure 5.1 Police investigate the discovery of the body of Bobby Franks, 1924. © Bettmann/ CORBIS.

The Confessions

Armed with this new evidence, questioning became more intense. Investigators told Loeb that they knew the teens were lying about their use of Leopold's car. Their alibi had been broken. Loeb confessed at 1:40 a.m. on May 31 (Higdon, 1975, p. 93).

Crowe then went to see Leopold. He told Leopold that Loeb had confessed, and bombarded him with evidence provided by Loeb, including information about the rented car and the false identities. He then said that Loeb testified that Leopold alone planned the crime and struck the blow that killed Franks (Higdon, 1975, p. 93). Provided this information, Leopold knew Loeb had confessed. Only Loeb knew these details, and Leopold was angry that Loeb had identified him as the killer. At 4:20 a.m., Leopold also confessed (Higdon, 1975, p. 94).

The kidnappers were eventually questioned together. They confessed to everything, agreeing on most points regarding commission of the crime. However, there were some points of contention, the most important one being who struck the deathblow. Both pointed the finger at the other (*New York Times,* June 6, 1924).

After confessing, the teens took an odd pride in parading investigators and the press on a two-day hunt to the areas where they had hidden physical evidence. Loeb fainted from stress early in the process, but Leopold continued to take investigators on a step-by-step trip to retrieve evidence. He provided rubber boots used to wade in the mud when disposing of Franks's body. He identified the chisel, found by the police officer when it was thrown from the rental car, as the murder weapon. At the culvert, they found Bobby's

stocking. Later, Leopold took the group to a bridge. There, he showed police where to find remnants of the typewriter used to write the kidnap notes (*New York Times,* June 1, 1924).

At the end of the day, Leopold was taken to the hotel where Loeb had been resting (*New York Times,* June 1, 1924). As long as they were providing information, Leopold and Loeb were treated well. They were taken for a lavish dinner and provided changes of clothing from home.

The next day, the macabre evidence-gathering field trip continued. At one point, talking proudly of their research into and commission of the crime, Leopold made his famous statement about killing Franks: "It was just an experiment. It is as easy for us to justify as an entomologist in impaling a beetle on a pin" (*The Chicago Daily Tribune,* June 2, 1924). The teens showed no remorse.

The Defense

Throughout this period, Mike Leopold desperately tried to see his brother. During the first day of evidence gathering, Mike, Loeb's uncle Jacob, and family cousin/attorney Benjamin C. Bachrach, went to see Crowe. They asked to see the teens, but were denied access.

Frantic, Jacob Loeb knew there was one person who could save his nephew from death. He went to attorney Clarence Darrow, begging him to take the case (*The Chicago Daily*

CLARENCE SEWARD DARROW (1857–1938): A STEADFAST DEFENDER

Almost 70 years after his death, Clarence Seward Darrow (1857–1938) remains one of the most renowned defense attorneys in American history. Darrow was a leader in the American Civil Liberties Union and an ardent opponent of the death penalty. Among his clients who faced execution, none ever received the ultimate punishment.

During the late 1800s and early 1900s, Darrow was a central figure in many historic legal battles that resonate to this day. In addition to his passionate defense of Leopold and Loeb against the death penalty, Darrow was also a civil rights crusader who defended an African American doctor, Ossian Sweet, and his family after they were charged with murder of a member of a mob that had formed outside their home to intimidate them into moving from an all-white Detroit neighborhood. Darrow also defended trade union members, including Chicago American Railway Union leader Eugene Debs (later a prominent American Socialist) against charges of contempt of court during the 1894 Pullman Strike. He was later successful in securing an acquittal for Bill Haywood, a leader of the Industrial Workers of the World and the Western Federation of Miners, who was charged with the murder of the former governor of Idaho, Frank Steunenberg. And in a trial that dealt with issues still controversial and unresolved today, Darrow defended a science teacher accused of violating a Tennessee law that forbids teaching the theory of evolution in the state's public schools.

Darrow is remembered as a tireless opponent of the death penalty, an advocate for the rights of minorities and organized labor, and a dogged pursuer of fairness in an American criminal justice system he believed was skewed in favor of the wealthy. He often took cases defending unpopular clients or contentious issues. In all cases, he became a modern icon of criminal defense, defending his beliefs and upholding his clients' Constitutional right to the best possible defense, regardless of race, economic status, or popularity.



Figure 5.2 Nathan Leopold, 19, far right, and Richard Loeb, 18, second from right, during their arraignment in a Cook County courtroom with attorney Clarence Darrow, left, 1924. © AP Photo.

Tribune, June 3, 1924). By the 1920s, Clarence Darrow had become well known as the ''champion of the poor and the oppressed'' (Higdon, 1975, p. 123). He had defended everyone from murder suspects to union leaders. Though in poor health, he was still a great orator and speechwriter and was known for excellent cross-examinations and an ability to remember facts without use of written notes (Higdon, p. 123). Darrow took the case because he saw in it the perfect opportunity to speak out against capital punishment, a practice he had fought throughout his life (Linder, 2003).

Following the second day of evidence gathering, Leopold and Loeb were taken back to Crowe's office. During that Sunday morning, Crowe assembled the area's best-known alienists (as psychiatrists were then known) so the defense would be unable to use them in an attempted insanity plea. Prior to the teens' individual examinations, defense attorneys Bachrach and Darrow, along with Jacob Loeb, requested to see their clients. Crowe again denied their request (Higdon, 1975, p. 128). The attorneys would have to wait until Monday to bring the matter before a judge.

Crowe had Leopold and Loeb examined by his expert psychiatrists. All were ''traditionalists,'' who were concerned with elements of the conscious mind. The teens were tested and retested. Afterward, Crowe took them to identify the Willys-Knight they had rented on the night of the murder. That night, Crowe took the teens for another lavish meal (Higdon, 1975, p. 128).

On June 2, Darrow and Bachrach returned to Crowe's office, demanding to see their clients. Again, Crowe denied them access by refusing to send the teens to the county jail

(Higdon, 1975, p. 130). In response, the defense brought a writ of *habeas corpus* against Crowe, and was granted a hearing in front of Judge John R. Caverly, then chief justice of the criminal court.

Eventually agreeing that the minors were being denied their constitutional rights, Caverly ordered Crowe to move the teens to the county jail, where they could meet with their attorneys. Upon seeing his clients, Darrow told them to stop providing evidence, because by doing so they were helping the state to make its case (Higdon, 1975, p. 131). After their meeting, the teens took the Fifth Amendment when asked further questions. In response, Crowe held them in jail (Higdon, 1975, p. 132).

The Defense Strategy

With the most famous alienists in the region already employed by Crowe, Darrow and Bachrach sent Bachrach's younger brother, attorney Walter Bachrach, to the annual American Psychiatric Association meeting to find the era's top alienists to analyze Leopold and Loeb (Higdon, 1975, p. 137). Unlike Crowe's alienists, Bachrach chose doctors who were part of the new school of psychiatry, which was more concerned with subconscious rather than conscious motives. Sigmund Freud heavily influenced this new school. In addition to the alienists brought to Chicago, Darrow hired two local doctors, Harold Hulbert and Karl Bowman, to conduct extensive evaluations of the teens. Their 300-page report would be entered into evidence and play a huge role in the youths' defense.

Crowe was prepared to go to trial. He was convinced that Darrow was going to plead Leopold and Loeb not guilty by reason of insanity (*The Chicago Daily News,* June 7,

WHAT IS A WRIT OF HABEAS CORPUS?

Habeas corpus (Latin for ''you have the body'') is a writ issued by a judge ordering that a detained person be released from custody. The writ is designed as a check against unlawful imprisonment. Today, a petition for a writ of habeas corpus is usually filed by an individual seeking federal court review of the constitutionality of his/her imprisonment by the state. A writ succeeds and the person is freed if the reviewing court finds that a lower court has erred in its interpretation of the Constitution when it imprisoned the person.

The right *to file* a writ of habeas corpus is guaranteed by the U.S. Constitution (Article I, Section 9). However, this did not stop President Lincoln from suspending the writ during the Civil War, leaving those jailed upon suspicion of collaboration with the Confederacy no recourse to challenge their confinement. In 2006, President George W. Bush signed into law the Military Commissions Act, which suspends the availability of habeas corpus to non-U.S. citizens (including those living in the United States) detained as potential enemy combatants by the U.S. government (DeYoung, 2006). While the Act was designed to facilitate prosecutions against terror suspects after 9/11, many argue that it represents a violation of the Constitution's habeas corpus guarantee. The law's constitutionality is currently under review by federal courts.

Source: DeYoung, K. (2006, October 20). Court Told It Lacks Power in Detainee Cases. *Washington Post,* p. A18.

1924). However, Crowe was armed with his alienists' evidence that the teens knew that their actions were wrong.[2] With all of the physical evidence provided by the teens, Crowe announced that he had a "hanging case" (*New York Times,* June 1, 1924).

Darrow also knew the prosecution had a strong case. He had to rethink the insanity plea strategy. In a move that shocked the state's attorney, Darrow had Leopold and Loeb plead guilty to the kidnap and murder. Darrow explained to the defendants and their families that the plea would do two things: first, it would prevent the defense from being able to seek death on two separate charges: murder and kidnapping. As it stood, the state could ask a jury to seek death on one charge, and if it lost, it could impanel another jury to seek death on the other charge. The only way to prevent Crowe from getting two bites at the apple was to have the teens plead guilty to both charges (Higdon, 1975, p. 64).

Second, and perhaps more importantly, Darrow knew that a not-guilty-by-reason-of-insanity plea meant that a jury would decide the teens' ultimate fate, but a guilty plea would require a judge to make the death decision. It seemed much easier for a jury of 12 persons to sentence the teens to death since they could always argue that it was not themselves, but others on the jury, who pushed for the ultimate sentence. By pleading guilty, the decision whether to take the teens' lives would rest with one person, the judge. Thus, what was to be the trial of the century became a sentencing hearing during which the judge would hear mitigating and aggravating circumstances that he would then weigh in deciding whether the teens should live or die.

The Sentencing Hearing

State's Attorney Crowe was outraged that there would be no trial. Although the young men pled guilty, making moot the need to provide evidence of guilt, Crowe was determined to put all evidence before the court to prove their utter guilt and lack of remorse. During his evidence presentation, he portrayed Leopold and Loeb as evil monsters, suggesting that the boys had sexually molested Franks before killing him, a charge that was unfounded (*New York Times,* May 24, 1924). However, he was careful to maintain that, while their deeds were evil, the teens were not insane.

Darrow and Bachrach's strategy was to show that due to their mental condition and youth, the boys' lives should be spared. Darrow used psychiatric testimony as the primary mitigating factor. Crowe objected. If the defense were to argue that the boys were mentally unbalanced and therefore insane, the hearing should be concluded and a jury impaneled to hear a not-guilty-by-reason-of-insanity case (Higdon, 1975). In response, Darrow maintained that he would prove that the boys were not insane, but instead were mentally "abnormal," and that he would show the distinction between the two and the number of ways in which the teens' abnormalities were shaped and intertwined to produce the crime (Higdon, 1975).

There had been psychiatric testimony in previous trials (Fass, 1993), but there was no real precedent about the use of psychiatric testimony as mitigation in a death sentencing hearing. According to Higdon (1975), the Franks case set this precedent (p. 190). Judge Caverly agreed to hear defense testimony about the psychiatric state of Leopold and Loeb to determine whether such testimony should be allowed in court as official mitigation.

The defense turned to the findings in the Hulbert-Bowman report. In the report, and in all testimony by defense alienists, Darrow insisted that they refer to the teens by their nicknames, "Babe" (Leopold) and "Dickie" (Loeb). He believed that reference

to their childlike nicknames would reiterate the boys' youth (Higdon, 1975, p. 206). The Hulbert-Bowman report stated that Babe had been an outcast youth who turned to education and his superior intellect for solace. Babe's life philosophy had been altered by two events. The first was the loss of his mother at age 14 (Fass, 1993, p. 934). Babe reasoned that if a good person could be taken away at an early age, there must be no God. He decided to avoid emotions and to follow only "cold-blooded intellect" (Higdon, 1975, p. 201). The second experience involved Leopold's sex life. Though never really sexually attracted to women, he was sexually attracted to his friend, Dickie Loeb.

The report next turned to the boys' childhood and fantasies. During his youth, Dickie was provided an extremely strict governess who refused to allow Dickie to play with friends or to read books for fun (Higdon, 1975, p. 201). He was only to study. She wanted to mold him into a great man. In response to this pushing, Dickie began reading his favorite books, detective novels, in secret. He read them whenever he got the chance. Eventually, he became obsessed with, and fantasized about, crime (Hulbert-Bowman report, 1924, in Higdon, 1975).

The alienists reported that Babe's governess had sexually abused him (Higdon, 1975, p. 198). Perhaps as a result, he maintained a rich fantasy life, which usually involved himself as a slave to a king. In this fantasy, he, the slave, saved the king's life and was offered his freedom. But he refused and remained an anointed slave to the king (Higdon, 1975, p. 198).

The boys' fantasies merged when they met. According to the report, in Babe's mind, he became the slave to what he considered to be the superior Dickie (Higdon, 1975, p. 205). He wanted to please Dickie, whom he believed to be a Nietzschean Superman. Dickie wanted a partner in crime and believed Babe was superior in intelligence and capable of committing crimes. Through the intertwining of these fantasies, the forces united to result in the death of Bobby Franks.

After hearing this preliminary testimony, Judge Caverly decided that the defense's psychiatric evidence was not the same as evidence of insanity and, therefore, could be used as mitigating evidence of abnormality (Fass, 1993).

Once allowed to testify, defense alienists reiterated much of what they had previously stated. Babe had fears of inferiority. Alienists testified about his obsession with Nietzsche's Superman theory. On the subject of homosexuality, Dickie admitted to allowing Babe some sexual interactions, but solely in exchange for Babe's help in committing crimes (Fass, 1993).

At points during the hearing, Babe was labeled a "paranoid personality" (Higdon, 1975, p. 216), while Dickie was considered to be "abnormal mentally" and to have a "split personality" (Higdon, 1975, p. 217). Alienists suggested that Loeb suffered from disorders of the endocrine glands and the sympathetic nervous system, which could partially account for his abnormal behavior (Fass, 1993, p. 933). In effect, he was both mentally and physically abnormal. All of the alienists agreed that the crime never could have happened but for the intertwining of the disordered needs and personalities of the pair (Higdon, 1975).

In response to recasting the boys as victims of their abnormalities, Crowe offered rebuttal evidence. He called a prosecution alienist who testified that he could find in the teens "no evidence of any mental disease" (Testimony, Dr. Church, August 13, 1924, in Higdon, 1975).

The state rested.

Closing Arguments

Darrow was the first to close. This was his opportunity not only to convince the judge to spare the boys' lives but also to convince the nation of the evils of capital punishment. It would become his most widely renowned speech and is considered one of history's most impassioned and moving pleas against the death penalty.

First, however, he began his closing argument by denouncing the continual publicity surrounding the case and the unfairness of newspapers' widespread calls for death. Darrow believed public opinion was the greatest enemy to justice (Higdon, 1975, p. 124). He maintained that because the press had devoted such unprecedented time to the case, everyone in Chicago must have already decided whether the defendants should be put to death (Darrow summation, 1924).

Darrow next argued that the state would be out of touch with prior cases if it put to death youth of ages 18 and 19. No one in Illinois under age 23 at that time had ever been put to death. He argued that boys of such ages were still children in need of direction. The very act of snatching and killing a child for no reason, and ultimately sacrificing their own lives, could only be the work of "a couple of immature lads" (Darrow summation, 1924). Darrow also argued that the defense alienists' testimony proved that the boys were abnormal. The boys lacked the ability to reason. They killed for the experience of it. Clearly, this was not the behavior of normal boys.

Darrow then tried to persuade the court to understand and accept his theory of determinism. He believed a person's life was set at birth, that there was really no free will, but that actions were predetermined by heredity, upbringing, and mental capacity (see Shattuck, 1999). Therefore, these boys should not be held responsible for traits they displayed that had been passed down to them by distant relatives. It was the hand they had been dealt (Darrow summation, 1924).

Finally, Darrow turned to his famous argument against the death penalty. He argued that justice should be tempered with mercy, and reiterated that the boys would be imprisoned for life if allowed to live. This case was horrible, he agreed, but not as serious as some others that had previously been before the court. Yet, because the boys came from wealth, they were treated with severe public scrutiny and outcries for death (Darrow summation, 1924).

Darrow acknowledged laying the death decision at Judge Caverly's feet, arguing that the judge must live forever with his ultimate decision. It would be easy to sentence the boys to death, thereby caving to "popular" desire. But Darrow pled with the judge to recognize that such a sentence would be looking to the past:

> I know your Honor stands between the future and the past. I know the future is with me, and what I stand for here;...I am pleading for life, understanding, charity, kindness, and the infinite mercy that considers all...that we overcome cruelty with kindness and hatred with love....You may hang these boys...by the neck until they are dead. But in doing it you will turn your face toward the past....I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men. When we can learn by reason and judgement and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man. (Darrow summation, 1924)

By the end of the twelve-hour closing, Judge Caverly was in tears (Linder, 2003).

Next, it was Crowe's turn to convince Judge Caverly to sentence the boys to death. He asked Leopold whether he now believed in God—had it been an accident by the Nietzsche

disciple that led to his capture, or "an act of Divine Providence to visit upon your miserable carcasses the wrath of God in the enforcement of the laws of the State of Illinois" (Crowe summation, 1924). Crowe implied that the youths' capture was an act of God.

Crowe attacked Darrow's emotional closing. He suggested that Darrow relied too heavily on oratory and ignored facts, the only material the court should consider (Crowe summation, 1924). He criticized the determinism defense. Heredity could not be blamed for the boys' behavior. Even the defense's alienists admitted that there was no evidence of hereditary imbalance in the boys known to pass from one generation to another. Crowe called the teens "two perverts" and maintained that they should pay the ultimate penalty.

Crowe further claimed that the wealthy "spoiled" killers could not rely on the age defense, since the Illinois statute under which the case was being tried held that when an individual reached age 14, "the law presumes that he has the capacity to commit a crime and is entirely and thoroughly responsible for it" (Crowe summation, 1924). In addition, he argued, if American boys were old enough at age 18 to die to protect the laws of their country in WWI, then these boys, now both 19, were old enough to die when they violated such laws.

Finally, Crowe attacked Darrow's blame of Nietzsche for the crime. Students had been reading the philosopher for years, and yet no one had used it as a defense in committing a crime (Crowe summation, 1924).

Crowe concluded by reiterating that the case facts proved Leopold and Loeb's guilt, that the young men represented evil incarnate, and that they should be put to death for their actions (Crowe summation, 1924).

The fate of Leopold and Loeb now lay with Judge Caverly.

Sentencing

On September 10, in a packed courtroom, Caverly announced his long-awaited ruling (Higdon, 1975). He stated that, although the defense testimony about mental abnormality was strong, it was more important to the study of criminology than to this case. Indeed, Caverly maintained that he was not swayed at all by the defense's psychiatric evidence in making his decision. The crime, he held, was one of "singular atrocity" (Caverly decision, 1924).

Caverly sentenced the youths to life for the murder, plus 99 years for the kidnapping and ransom of Bobby Franks. Caverly chose life over death based solely on the teens' youth. This decision, he proclaimed, was in keeping with enlightened changes in criminal law occurring around the world, and with Illinois's own precedents (Caverly decision, 1924). Caverly stressed that life imprisonment seemed the worse punishment, as the teens would suffer years of confinement, unable to use the intellectual talents with which they had been so gifted and, ultimately, cursed.

Prison and Beyond

Leopold and Loeb were eventually placed in Stateville Prison after a period of separation (Higdon, 1975, p. 288). There, they began a correspondence school so that inmates could advance their educations, and they reorganized the prison library (Leopold, 1958).

On January 28, 1936, a former cell mate murdered Loeb in the shower. Though the death was ruled self-defense, state prison officials believed that Loeb had been murdered over a dispute about money (Higdon, 1975).

Leopold maintained the correspondence school after Loeb's death (Leopold, 1958). During World War II, he volunteered with other inmates as a test subject for a new malaria vaccine (Higdon, 1975, p. 304). In 1947, the governor decided to review the cases of all men who had volunteered for the malaria project. In 1949, Leopold's sentence was commuted from life plus 99 years to 85 years, thus reducing the period he would have to serve before being eligible for parole (Higdon, 1975, p. 311).

When parole became a possibility, Leopold spoke with Meyer Levin, a journalist who had originally been assigned to cover the case when it was heard in 1924. They discussed collaboration on a book about Leopold's life. But Leopold wanted to concentrate on his prison years and refused to discuss the crime (except to maintain that he was led by Loeb). This was unacceptable to Levin, who wanted to write about the crime itself (Levin, 1956). The men went their separate ways, each deciding to write a book. Levin went on to write *Compulsion* (1956), a fact-and-fiction account of the crime. Leopold wrote *Life Plus 99 Years* (1958), in which he focused on his accomplishments in prison. He also discussed his relationship with Loeb. He claimed that he loved Loeb, but also hated him for involving him in the crime that had forever changed his life.

In 1957, after turning down his first request, the parole board again reviewed Leopold's case. This time the board had read Leopold's book, and Leopold had retained Elmer Gertz, a famous civil rights attorney, to represent him (Gertz, 1965). Gertz also represented Leopold in a lawsuit against Levin's *Compulsion* and became his lifelong friend (Gertz, 1965). Gertz stressed that Leopold must provide a reason for his crime to be paroled (Higdon, 1978, p. 318). In his prior hearing, Leopold would give no reason. Finally, in 1957, he gave the parole board what they wanted to hear. He stated that he had committed the crime to please Richard Loeb (Leopold, 1958).

Leopold was granted parole in 1958. He moved to Puerto Rico, where he wrote about ornithology. He married and taught mathematics at the University of Puerto Rico. He died in 1971.

The Press: Helping Readers to Reimagine the Crime

Chicago in the 1920s witnessed two simultaneous conflicts: the first concerned Prohibition, and the second involved the city's newspapers (Higdon, 1975, p. 28). The latter provided much space for the former. By 1923, there were over 400 deaths per year in Chicago. Most were gangland murders. Life seemed cheap (Higdon, 1975, p. 20). In contrast stood the death of Bobby Franks. He was an innocent young victim, and his murder had no connection with the criminal underworld. If Bobby Franks could be murdered, so could any child. Newspapers pounced on this different murder, spreading the word quickly and vying for readers (Higdon, 1975, p. 20).

Though *Chicago Daily News* journalists Mulroy and Goldstein were responsible for some important case breaks, these were overshadowed by the sensationalism surrounding the crime. Editorials demanded Leopold and Loeb be hanged, asserting that mothers were afraid to let their children out for fear that strangers would murder them. William Randolph Hearst, who owned two Chicago newspapers, offered Sigmund Freud any amount of money to come to Chicago and comment on the hearing. [Freud declined due to ill health and his concern that all he knew of the case was what was printed in newspapers, and he was unprepared to comment on evidence related by them (Higdon, 1975).] The *Chicago Daily Tribune* (July 17, 1924) argued that courtroom events should be broadcast

on its affiliate radio station WGN and hosted an opinion poll to determine whether the public would support such a broadcast. Readers voted against it.

News of each day's court events could be found in each newspaper's next edition. The press published the boys' confessions (for example, *New York Times,* June 6, 1924), conducted interviews with families and friends of the victim and the accused boys, "and speculated about the nature of the 'million-dollar defense' to be mounted by Clarence Darrow and his expensive psychiatric witnesses" (Fass, 1993, p. 923). In his turn, Darrow maintained that newspapers were purveyors of lies and misrepresentations that ultimately shaped public opinion (Darrow summation, 1924).

WHAT IS PHRENOLOGY?

The theory of phrenology was first developed in the late eighteenth and early nineteenth centuries. Phrenologists believed that examination of the human head could reveal much about a person's personality and character traits, including whether that person was likely to commit crime. While phrenology was used by some scientists to suggest that individuals were not responsible for criminal behavior (since it was predetermined by biological traits), it was also used by racist groups (such as the Nazis) to argue that the physical traits of some races revealed their general superiority. Phrenology has been completely discredited; however, those who developed the theory contributed to the more modern concept that different thoughts and actions may be attributed to different parts of the brain (van Wyhe, 2004).

For more information about phrenology on the Internet, see John van Wyhe, *The History of Phrenology on the Web* (http://pages.britishlibrary.net/phrenology/), [November 20], 2004.

Along with the victim's family and police, two newspapers had each offered a $5,000 reward for information relating to the crime. But at the same time, newspapers published inaccurate stories, including one from the *New York Times* (July 19, 1924) stating that Loeb confessed to striking the fatal blow after learning that the crime's penalty would be the same regardless of who actually committed the physical murder. This was untrue; Loeb never confessed to carrying out the killing.

Press stories covered every sensational case detail (Fass, 1993). Rumors that Franks had been sexually abused intensified when the press became aware of the implied homosexual liaisons between Leopold and Loeb. However, there was no evidence to suggest that such abuse occurred (*The Chicago Daily Tribune,* May 24, 1924).

The press also dissected the teens' behavior by examining their facial features using the now-debunked science of phrenology (*The Chicago Daily Tribune,* June 1, 1924; *The Chicago Herald and Examiner,* June 1, 1924).

Leopold was portrayed as a coldhearted scientist who brutally took part in the murder as an experiment. In contrast, Loeb was seen as popular, and he was at first, as well as friendly with the press.

Prior to the guilty pleas of Leopold and Loeb, newspapers provided intensive tutorials for readers on the insanity defense (Fass, 1993, p. 931). But once the case became a sentencing hearing, coverage of psychiatry changed. As the hearing progressed, the public became familiar with new ideas, specifically those coming from the new school of psychiatry called psychoanalysis. The term "abnormal" became part of the social understanding of the apparently senseless crime that had been committed (Fass, 1993, p. 931). As the alienists described, the press reconstructed Leopold from a coldhearted killer to an abnormal, insecure boy.

As defense testimony about the teens' lives was given, some newspapers' sympathy toward the youths increased. The *Chicago Daily News* (June 3, 1924) wrote that Loeb, while in jail, was seen teaching a young African American inmate to read. The same article detailed the harsh conditions the wealthy teens faced in jail. One column asked Chicago families to think about how they would feel if one of their children were on trial for murder (Fass, 1993, pp. 928–929). By the end of the hearing, the perception of the boys would change completely, mainly due to the defense's psychiatric testimony. The wealthy monsters became mere boys who had committed a heinous crime (Fass, 1993, p. 929). These boys were now written about as abnormal in the psychiatric sense, and this abnormality helped to explain the seemingly random and horrific nature of their crime.

The press reconstruction of the boys from monsters to misguided youth helped the public to reimagine the crime in understandable terms—it was the work of severely "abnormal" and "disordered" boys (Fass, 1993, p. 938). In the process, understanding of psychological concepts, though both criticized and accepted, became more widespread.

THE LEGACY

The Leopold and Loeb case forever altered perceptions of youth, public knowledge of psychiatry, and problems involved with the interaction between psychiatry and law. In addition, it framed the debate over capital punishment for the rest of the century.

One of the many concerns after the hearing was the fear that the crime represented changes occurring among youth. Young people were becoming uncontrollable, a result of the new parenting culture that allowed too much freedom. While this was not the first time that writers disparaged the waywardness of youth, the reconstruction of Leopold and Loeb as abnormal boys struck fear in the hearts of many Chicagoans (Higdon, 1975; Fass, 1993). Crime and juvenile delinquency became not just the realm of the poor, but of the wealthy as well (Fass, 1993, p. 939). The public was concerned, not only that their children might be victims of "abnormal" others, but that their children might actually *be* "abnormal" (Fass, 1993, p. 939).

In the realm of criminal justice, appropriate use of expert psychiatric testimony became an issue. While psychiatric testimony had been introduced in trials long before the Leopold and Loeb case, Darrow was the first to use it as mitigating evidence to a crime, and the case brought expert testimony problems into public discourse (Fass, 1993, p. 930). Darrow used it to prevent an ultimate death sentence. But in doing so, he raised troubling questions concerning the appropriate scope and utility of psychiatric testimony that continue to persist.

Even before the expert psychiatric testimony was introduced, a battle waged over its appropriate use in the courtroom. Defense psychiatrists were concerned that the hearing would result in a war between opposing psychiatrists (Fass, 1993, p. 930). The judge would be left with two opposing points of view given by doctors paid by each side to support their positions. But, psychiatry was regarded as a science, and though reasonable doctors could disagree about diagnosis, defense psychiatrists suggested that doctors for both sides meet and agree to an ultimate diagnosis of the boys (Higdon, 1975, p. 166). But Crowe rejected this idea. He planned for a trial in which insanity would be the question. A consensus among psychiatrists about the teens' states of mind would not help his case, and might very well hurt it.

Years later, one defense alienist who had been involved in the case wrote about the problem of retaining experts to provide findings sympathetic to a client (Fass, 1993). He maintained that the only way to fairly analyze a state of mind in a court setting required that the court itself appoint experts to make diagnoses independent of those argued by prosecutors or by defense attorneys.

Such ideas have been repeatedly voiced as the criminal justice system continues to struggle with often-confusing evidence by dueling experts, but reforms have not been implemented. Perhaps this lack of implementation reflects both the realities of the adversarial setting of the courtroom and the court's unwillingness to take on the additional responsibility of providing oversight of experts.

Continuing Fascination

Publicity played a huge role in shaping public opinion about Leopold and Loeb. They started as Nietzsche-trained monsters and ended up as victims of determinism, self-doubt, and each other's fantasies. But unlike many other trials in American history, the question of Leopold and Loeb's guilt was never an issue (Steinberg, May 16, 1999). The primary concern was always, why would two wealthy boys of strong intelligence commit such an atrocious act? The teens' response, that they killed Bobby Franks to see if they could get away with the perfect crime, was never accepted as sufficient. Where did ultimate responsibility rest?

No answer to the boys' behavior has been deemed adequate, and so fascination with the case continues. No current theories of criminal behavior appear to be able to explain the apparent thrill killing (Entin, 1999). At the time, most psychiatric experts who examined the boys thought that Loeb was a psychopath (Higdon, 1975, p. 217) and Leopold a paranoid schizophrenic (Higdon, p. 339).

Scholarly publications still dissect the case, and it continues to be the subject of plays, books, and films. Although the film adaptation of Meyer Levin's novel *Compulsion* (1958) confuses the actual nature of events, blending fact and fiction, both the book and the film remain popular accounts of the pair's crime and sentencing. Inspired by the pair's alleged motivation, Alfred Hitchcock's *Rope* (1948) examines the cold Nietzschean philosophy that led two young men to kill a college-age peer—and then entertain dinner guests over his dead body. More recently, *Swoon* (1992) explores the nature of the homosexual and intertwined relationship between Leopold and Loeb. A decade later, *Murder by Numbers* (2002) provided another loosely based account of the Leopold and Loeb case.

Such long-lasting media attention reflects continued interest in the nature of "good" and "evil," and in the intense shades of gray represented by the Leopold and Loeb case. Perhaps more interesting today is Darrow's plea for the future and humanity. He believed himself on the side of history—that state-approved death sentences would soon be abolished. Darrow envisioned a moral society capable of learning from past mistakes. Perhaps mercifully, Darrow died only one year before his faith in a world moving toward a more moral path would be shattered: in 1939, the world was dragged down into the bloodiest war in history, and any hope for a more tolerant and peaceful civilization was eclipsed by one of the darkest eras of humankind.

But in 1924 Chicago, Darrow's beliefs in the future seemed possible, even as society struggled to understand his clients. Leopold and Loeb killed young Bobby Franks and left the world with their disturbing and incomprehensible vision of "the perfect crime." It is

this incomprehensibility that has led to fascination with the strange and frightening behavior of the two young men and ensures their immortality in the annals of American crime.

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NOTES

1. For Nietzsche's ''übermensch'' theory, see *Thus Spake Zarathustra* (Nietzsche, 1891/1966).
2. Illinois used the M'Naghten Test at that time, which required that, in order to prove insanity, the perpetrator not have known the difference between right and wrong at the time of the crime (Fass, 1993).

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6

Fundamental Divides: The Trial of John Scopes

ERNEST L. NICKELS

The trial of John T. Scopes was brought to session on the morning of July 10, 1925, in the Rhea County Courthouse of Dayton, Tennessee. On its face, the case is hardly noteworthy. It was a misdemeanor criminal trial of a small-town schoolteacher on charges he readily admitted to and—surprising no one—would ultimately be convicted of. As a question of law, however, the case probed the profound frictions in the history of American jurisprudence among academic freedom of public educators, protections against state establishment of religion, and the right of the people to legislative control of the form and operation of public agencies. Further, the case of *Tennessee v. Scopes* served as a spectacular finale to the end of an era, one marked by rapid change in the social, cultural, and intellectual institutions of American life—transformations to which a single trial could no more than bear witness. As narrated by an attentive press, these mere eight days of trial, squaring off the towering figures of William Jennings Bryan and Clarence Darrow, reflected back to a transfixed public all the aspirations and anxieties of a people finding themselves at the dawn of a new age. These were a people diversely, if uneasily, invested both in progress and in tradition, in reason and in faith, in science and in religion.

Reception of Darwinian Evolution

Evolution had the attention of philosophers and scientists alike well before Charles Darwin's *Origin of Species* in 1859. It was Darwin's thoroughly naturalistic rendering of an evolutionary account, his contribution of such concepts as ''natural selection,'' and his 1871 attempt in *The Descent of Man* to place the human species within this framework that placed him (if belatedly) at the forefront of a scientific revolution.

Religious antagonism to Darwinism fluctuated in proportion to its acceptance in the field. Mildly condemned for contradicting Biblical teachings on the special creation[1] of life and allowing no explicit role for God in its development, initial scientific resistance to Darwin calmed critics in the religious community temporarily. Until advancements in genetics breathed new and certain life into the Darwinian paradigm after the turn of the

century, his works held an uncertain place in the budding sciences. Special creationism (particularly in the United States) and pre-Darwinian evolutionary theories continued to thrive in the meantime. Only with the onslaught of a younger generation of post-*Origin* researchers, rapidly filling the expanding institutions of professional science, were such views eventually displaced.

Dissemination of this growing scientific consensus into the public sphere through high school science curricula lagged behind the field for some time.[2] Revisions of established textbooks, then dominated by creationist views, were not affected by the sweeping changes in the field at the close of the nineteenth century. Newer texts began to appear in the 1880s. However, only after the exponential growth of the public education system at the turn of the century, and the merging of zoology and botany into a single course called biology, did the intellectual monopoly held by older texts loosen. These forces required that the industry produce more, as well as original, materials to meet novel institutional demands—an opportunity for younger scientists. Over the next 30 years, these texts adopted an increasingly evolutionist and explicitly Darwinian stance, one progressively hostile to creationist concepts. In 1914, George Hunter published the hugely successful *Civic Biology*. It included a section on evolution as well as a biographical sketch of Darwin himself. It was Scopes's use of this text that led to his arrest and trial.

It is difficult to discern how the public initially received such ideas. Evidence suggests, however, that Americans today are generally more inclined to view science and religion as competitive realms of knowledge and to be antagonistic toward evolutionary ideas than at the turn of the century. Current views on evolution in the classroom are certainly more defined and polarized now. Far from predetermined, antievolutionism in the United States emerged from specific forces at work in religion in Progressive America. One man, a force in himself, was particularly instrumental in how history would unfold: William Jennings Bryan.

THE GREAT COMMONER

A gifted orator, scholar, lawyer, and journalist for popular and religious publications, the Great Commoner (as Bryan was known) had served as secretary of state under President Wilson, and three times ran as the Democratic candidate for the presidency. Committed to populist reform, world peace, welfare, and organized labor, Bryan's politics were emblematic of the Progressive Era. Like many progressives, he was devoutly religious, actively involved in the Social Gospel movement[3] and dedicated to the advancement of society through institutional reform and personal salvation—and, failing that, state intervention. Socially progressive and religiously conservative, Bryan and his fellow travelers constituted an enigmatic but effective force of change.

Darwinism initially commanded little attention from American Protestantism. It would, however, become the incidental enemy to a development movement in these congregations. At the dawn of the twentieth century, substantial numbers came to staunchly oppose ''modernism'' in the church—a trend toward liberal, nonliteral interpretations of Scripture informed by (among other things) scientific discovery. This oppositional offshoot, called fundamentalism, was more socially pessimistic and doctrinally conservative than the Social Gospel movement before it. Fundamentalists yearned for a return to ''old time religion'' premised on unchanging, universal principles (fundamentals) derived from Scriptural literalism. As the movement grew, absorbing the energies and political

clout of its forbearers, fundamentalism became a powerful force in the interwar political landscape. Unsettled by the expanding influence science held in shaping the minds of the nation's youth through the public education system, fundamentalists particularly resented what they viewed as indoctrination to evolutionary ideas in the classroom. Bryan's activism helped galvanize these vague sentiments into a full-scale cause.

Though a self-professed ''fundamentalist,'' Bryan's relationship to the anti-evolutionist movement was complex. Not sharing fundamentalism's cornerstone doctrine of Scriptural literalism, Bryan's own motivations were varied. Aware of early scientific criticism of Darwin, Bryan had been initially dismissive of Darwin's theory and continued to insist it was simply flawed science. However, while publicly categorical in rejecting evolution, privately he recognized that future science might demonstrate its factuality (De Camp, 1968, p. 45). Bryan's open objections to teaching human evolution were limited to its presentation as *fact* (rather than hypothesis) and pertained only to public (rather than private) schools. A progressive reformer, Darwinism troubled Bryan more in its application than its idea.

He viewed concepts like ''survival of the fittest'' as legitimating a *social* Darwinism, an ethic of might-makes-right that he believed alienated people from their moral obligations to care for the most vulnerable members of a society. Further inflaming these apprehensions was the popularization of eugenic social policy in interwar America—a movement pioneered by Sir Francis Galton (Darwin's cousin) to apply hereditary knowledge to the cultivation of a genetically ''fitter'' population through methods perceived un-Christian to many. Likewise, Bryan recognized Darwin's influence on the work of nineteenth-century German moral philosopher Friedrich Nietzsche,[4] a self-proclaimed immoralist many blamed for inspiring

THE FUNDAMENTALS

''Fundamentalism'' today is often used to refer to any strict or intolerant ideology (religious or otherwise), and its connotations are almost uniformly negative. Originally, however, fundamentalism was the proper and self-selected name for a religious movement that peaked in the United States during and shortly after World War I. Intellectually, this movement was a blend of the teachings of the Princeton Theological Seminary and Darbyite dispensationalism (see Sandeen, 1970). Princeton led the charge against modernism, eschewing higher criticism of the Bible, the incorporation of scientific knowledge into theology, the idea that there might be multiple valid paths to God, and the evaluations of good works over faith and convictions over doctrines. Dispensationalism, as taught by Darby and imported from the United Kingdom, taught a premillennialist theology that viewed the historical relationship between mankind and God as existing in a series of periods governed by different laws (i.e., dispensations). At the end of history, which dispensationalists believed was upon them, an apocalypse would precede a second, millennial reign of Christ on earth.

Spread primarily among Presbyterian, Baptist, and Methodist congregations, this movement flourished amidst revival circuits, Bible retreats, and dispensationalist conventions at the start of the twentieth century. The most complete statement of doctrine was put forth in a series of pamphlets published between 1910 and 1915, titled *The Fundamentals.* Among the cornerstones of faith most commonly identified by fundamentalist organizations and literatures are belief in biblical literalism and inerrancy, the bodily resurrection and deity of Christ, the total depravity of mankind, original sin, and the imminence of a second coming, which would begin with the rapture. Fundamentalism saw social improvement as futile, and thus emphasized faith as the sole path to personal salvation. The Social Gospel movement had instead believed that the second coming would not occur until mankind, through good works, brought the kingdom of God to earth.

German militancy that resulted in World War I. Furthermore, though helping to define the movement, Bryan clearly believed that his activism merely gave voice to the people's will. Dedicated to the populist creed that the people are the ultimate authority on all things public, including public science and its instruction, Bryan believed it was within their rights to banish Darwin from their schools. Likewise an advocate of free speech and an opponent of state establishment of religion, Bryan differed intellectually with measures sought by some fundamentalists to criminalize the teaching of evolution and institutionalize creationism. However, he was not one to highlight such ideological differences. His activism did much to produce antievolutionist legislation he could not fully endorse, but would defend nonetheless on principle.

THE MAKING OF A TRIAL

With the backing of groups including the World's Christian Fundamentals Association (WCFA), antievolutionism bills found their way first into the legislatures of Kentucky and South Carolina in 1922. Each bill met narrow defeat. Much to Bryan's credit, 1923 brought success in Oklahoma, with the passage of an antievolutionist textbook bill. Shortly thereafter, Florida approved a resolution he authored that prohibited the teaching of evolution as fact. Tennessee went further, in 1925, with the passage of the Butler Act, which read,

> Chapter 17, House Bill 185 (By Mr. Butler) Public Acts of Tennessee for 1925.
>
> AN ACT prohibiting the teaching of the Evolutionary Theory in all the Universities, Normals and all other public schools of Tennessee, which are supported in whole or in part by the public school funds of the State, and to provide penalties for the violations thereof.
>
> *Section 1.* BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That it shall be unlawful for any teacher in any of the Universities, Normals and all other public schools of the State which are supported in whole or in part by the public school funds of the State, to teach any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals.
>
> *Section 2:* BE IT FURTHER ENACTED, That any teacher found guilty of the violation of this Act, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars for each offense.
>
> *Section 3:* BE IT FURTHER ENACTED, That this Act take effect from and after its passage, the public welfare requiring it.

After it passed both state houses, Governor Austin Peay signed the bill into law in March of that year. Many, Peay included, saw the Butler Act as merely symbolic legislation. Plans for enforcement were never publicly entertained (Ginger, 1958, p. 7). Nevertheless, it quickly found application in the arrest of John Scopes.

The American Civil Liberties Union (ACLU),[5] having watched antievolutionist initiatives grow bolder, responded decisively to the Butler Act. It issued a press release, quoted in the May 4 edition of the *Chattanooga Daily Times,* announcing that the organization was ''looking for a Tennessee teacher who is willing to accept our services in testing this law in the courts'' (''Plan,'' 1925). In Dayton, a small mountain town outside Chattanooga boasting a population of less than 3,000, the ACLU's volunteer was found.

George Rappelyea, an employee of the Tennessee Coal and Iron Company who managed mining properties around Dayton (Scopes and Presley, 1967, p. 36), apparently saw in the ACLU release an opportunity for civic promotion—an event that could put Dayton on the map and bring in new sources of revenue, even if only through tourism during the event. Together with area locals and business leaders, Rappelyea set about enlisting John Scopes, a Rhea County Central High School science teacher and sports coach, in bringing a test case of the Butler Act.

At a local drugstore, the pitch was made. Initially reluctant, Scopes was unsure whether he had even broken the law.[6] Although Scopes did not normally teach biology, the drugstore meeting did uncover that he had substituted for the regular instructor and had used *Civic Biology* to help students review for the final exam. Eventually, Scopes was talked into volunteering for his own arrest. Once agreeable, Rappelyea swore out a warrant against Scopes and sent word to the ACLU, who responded promptly with a promise of *pro bono* representation, financial help, and publicity for his cause. The arrest came May 7, with formal charges three days later accusing Scopes of having taught evolution in April of that year.



Figure 6.1 Unassuming schoolteacher John Scopes. The case of *Tennessee v. Scopes* served as a spectacular finale to the end of an era, one marked by rapid change in the social, cultural, and intellectual institutions of American life. Courtesy of the Library of Congress.

Speaking before the annual convention of the WCFA in Memphis on the May 11, where the impending Dayton trial was much discussed, Bryan noted in his address his hope that the statute would be upheld. Promptly, the WCFA leadership approached him for assistance in the prosecution. Sue Hicks, a Dayton merchant who helped instigate the case, had also been attempting (without luck) to contact Bryan to elicit aid with the prosecution (Ginger, 1958, p. 21). Two days later, in Pittsburgh, Bryan announced his willingness to aid the state, and he was appointed shortly thereafter as special prosecutor —an unusual occurrence for a misdemeanor trial (Larson, 2003, p. 61). Bryan and his son joined District Attorney General Thomas Stewart and District Attorney Ben McKenzie and his son, Judge J.G. McKenzie, on the prosecution.

On defense, Scopes's Dayton attorney, John Neal, was joined by ACLU trial lawyer Arthur Hays. On learning that Bryan would aid the prosecution, Clarence Darrow and Dudley Malone jointly volunteered their services directly to Neal.

Darrow was a prominent defense attorney and, like Bryan, a social progressive, a friend of labor, and a Democrat. Originally friendly acquaintances, Darrow had even supported

Bryan's early political careers. However, Darrow did not share Bryan's populism, tending instead toward libertarian values with pronounced intellectualist overtones. A skeptic, rationalist, and fervent individualist, Darrow was viewed by many as a radical for aiding in the defense of clients who were anarchists, socialists, and communists (De Camp, 1968, pp. 74–79). The Federal Bureau of Investigation (FBI) even maintained a file on him.[7] Particularly on matters of religion and evolution, the two men stood in stark opposition. Their relationship grew publicly antagonistic as a result. In 1923, Darrow challenged Bryan in an open letter to the *Chicago Tribune* to answer 50 questions about human history, attacking Bryan's (inferred) Scriptural literalism. Bryan indignantly declined (De Camp, 1968, pp. 74–79).

For his zealous agnosticism[8] and personal antipathies toward Bryan, Darrow rightfully anticipated that the ACLU would wish to avoid his involvement for fear of ''transform [ing] the trial from a narrow appeal for academic freedom to a broad assault on religion'' (Larson, 1997, p. 100). John Neal had no such reservations. Renowned and experienced in high-profile cases, Darrow had a reputation for winning seemingly unwinnable cases. In the year prior, he had successfully defended Richard Loeb and Nathan Leopold, two wealthy teenagers accused in a thrill-kill murder of a 14-year-old boy, against a death penalty verdict by arguing that the defendants were pitiable victims of (among other things) exposure to Nietzschean philosophy. Ironically, Bryan later drew upon Darrow's defense of Leopold and Loeb to illustrate the need to prohibit evolutionism in schools (Larson, 1997, p. 100).

All involved in the making of the trial had aspirations for a show of sensational proportions, with various hopes for personal, economic, and ideological gains. The ACLU sought to rigorously defend Scopes. However, expecting defeat, they aimed to win on appeal at the state supreme court and have the law ruled unconstitutional—and, if not there, at the U.S. Supreme Court, where the impact would be national. Further, they hoped to use the trial's publicity to demystify evolution to a national audience, and then rouse popular disfavor for the Butler Act to put the antievolutionist movement in check, if not reverse it. Rappelyea and the business interests of Dayton were eager to attract attention and visitors to their town in the hope of spurring the community's economic growth. The WCFA sought a symbolic victory over the forces of modernism, as did Bryan, who further believed that the American public simply lacked understanding of the true fallacies and imminent dangers Darwinism posed for the moral fabric of the nation. Darrow aimed to take a well-publicized shot at fundamentalism by publicly defeating its most visible proponent, and his personal antagonist, Bryan. As these interests converged piece by piece, the stage was set for an event with far greater cultural than legal significance. With Darrow and Bryan now commanding the spotlight, the spectacle was set to begin. Arriving in Dayton, Bryan set the tone:

> The contest between evolution and Christianity is a duel to the death. . . .If evolution wins in Dayton, Christianity goes—not suddenly of course, but gradually—for the two cannot stand together. They are as antagonistic as light and darkness, as good and evil. (''Bryan,'' 1925, p. 6)

THE MONKEY TRIAL

The defense's trial strategy was simple enough: challenge the law on constitutional grounds. Failing that, attack the substance of the statute as incoherent and an unreasonable restriction on public educators by demonstrating the factuality of evolution and its compatibility with (modernist) Biblical interpretation. Waiting in the wing were a

number of scientific and religious authorities to provide expert testimony to that effect. A victory at Dayton was unlikely, so they would seek to produce a record of the trial favorable to a case for appeal (Scopes and Presley, 1967, p. 158). The prosecution would move to exclude expert testimony and would likely succeed. Any opportunity to enter even a sample of that testimony into the record, however, would be a partial victory.

The prosecution's strategy was simpler: fend off constitutional challenges and argue the case purely on the factual question of whether or not Scopes had taught human descent in violation of the law's letter and intent. They would try to suppress expert testimony to avoid debate on evolution's scientific merits and compatibility with Scripture—they simply would not win a contest of credentials with the expert witnesses available to the prosecution (Larson, 2003, p. 66).

John Raulston, an elected circuit court judge for east-central Tennessee and a lay minister, presided. Sharing the town's enthusiasm for its newfound fame, he likewise enjoyed his own. Aside from the throngs of journalists from the national media, Scopes is also a landmark trial in criminal justice history in the media for its pioneering use of live radio broadcasts and its continuous feed by cable of the unfolding events to Europe and Australia. Raulston himself was heard to remark, "[m]y gavel will be heard around the world" (Ginger, 1958, p. 103). He was, no doubt, correct.

When proceedings[9] opened on Friday morning of July 10, the first issue was the securing of a new grand jury indictment. The original had been invalidated by a procedural error. Jury selection dominated the afternoon. Darrow was known to engage this process



Figure 6.2 Clarence Darrow (left) seated with Judge John F. Raulston, 1925. Courtesy of the Library of Congress.

meticulously. So convinced of its importance in determining the outcome of a trial, he had once spent six months in selecting whom to seat. Regional custom in misdemeanor cases, however, was rather informal. A small, initial pool of potential jury members, if insufficient, could be enlarged by having the sheriff round up willing bodies from the available bystanders. Although concessions were made, Darrow was further dismayed to find himself limited to only three preemptory challenges (the ability to dismiss a potential juror without stating cause). Further, these challenges had to be exercised while the person was under questioning or not at all, meaning that he was forbidden to question them all before selecting out those he predicted to be least sympathetic to the defense (Ginger, 1958, pp. 96–97). In short order, then, the 12 jurors were settled upon.

Mostly farmers and primarily Baptists and Methodists, the jury displayed a diversity of viewpoints on faith and evolution largely unappreciated by a national media that lumped the lot of them as "fundamentalists" (Conkin, 1998, p. 87). It mattered little, however, as the jury would spend the vast majority of the trial excused from the courtroom as the prosecution and defense wrangled over legal questions of statutory interpretation and the relevance of expert testimony—matters to which the jury was not permitted to be an audience. Instead, the jury followed events as many in the town did, listening to the broadcast of the proceedings over a pair of large speakers on the courthouse lawn. At the close of the day, the defense requested that the jury be sworn before the weekend, to limit their permission to discuss the substance of the case. Local custom held that jurors not be sworn until the first day of trial, in case one should fall ill in the meantime. In keeping with that, Raulston ordered the swearing-in postponed until after opening statements on Monday.

Monday morning, then, with the jury excused, the defense raised its motions to quash the indictment. The law, they argued, was unreasonable in its limitations, it violated protections of due process and free speech as articulated in the state and federal constitutions, and it ran afoul of the state's own constitutional guarantees against the separation of church and state and its expressed mandate in support of the sciences. Attorney General Stewart, for the prosecution, countered. The language of the statute was clear enough. It in no way infringed upon religious freedom to limit the subjects public educators were permitted to speak on in the course of their duties. Further, as the state supreme court had ruled, control of the public schools fell to the discretion of the legislature.

The day concluded with Darrow's first speech to the court, arguing to quash. The speech oscillated between a folksy, good-natured appeal to reason and a terse rebuff of religiously inspired bigotry. On one hand, Darrow attempted to shame the religious sentiments of those in the audience for zealous persecutory practices of the Christian past (alluding to sixteenth-century witch hunts targeting intellectuals). On the other, he largely absolved his audience of responsibility for the Butler Act, casting blame instead onto out-of-state fundamentalist demagogues—those such as Bryan—and appealed to the jury's higher mindedness to put this bad law to rest. By most accounts, it was a brilliant speech, lionized by those in attendance and the press alike. H.L. Mencken, a widely read and influential syndicated editorialist for the *Baltimore Sun* who, as a friend, had encouraged Darrow to take the case (Larson, 1997, p. 100), was particularly generous in his praise. Likewise, as would be typical of his coverage, he was generously contemptuous of the fundamentalist "yokels" and "morons" in the audience.



Figure 6.3 Clarence Darrow defending John Scopes at the Scopes evolution trial, 1925. Courtesy of the Library of Congress.

Tuesday morning found the court in conflict, once more, over customary procedure. With the jury excused, Darrow objected to the practice of opening prayer at the start of each day. Raulston was unmoved. Noting his own reliance on divine guidance on the bench, he hardly saw impropriety in encouraging the same of jurors. He would concede only to allowing the local ministerial association to provide representatives of other faiths to lead opening prayer. The out-of-town press, believing Dayton was exclusively fundamentalist, interpreted Raulston's attempt at compromise as sarcasm. Of the remaining days of trial, prayer was conducted once by a Jewish rabbi and once by a Unitarian preacher. This also largely escaped the notice of a press selectively attending to its misperceptions of Dayton's residents (Conkin, 1998, p. 89).

After a recess, and a photo opportunity for the press (Ginger, 1958, p. 131), Raulston spent the remainder of the morning dictating his decision on the constitutional issues raised by the defense in private to a court stenographer. Somehow the ruling was leaked to the press. Raulston deferred his ruling until morning, until the culprit was identified and publicly scolded in court. Summarily, then, Raulston dismissed the defense's arguments as without merit. The trial continued. With the jurors now in attendance, the defense entered its plea: not guilty.

The prosecution succinctly stated the charge. Attempting to strengthen its case on appeal, the defense moved for dismissal. Unsuccessful, the defense then stated what would be its two-pronged theory of the case. By the wording of the statute, it argued, the state must first prove that Scopes had taught evolution. The defense conceded Scopes had.

ILLUSTRATING THE TRIAL

Historians regularly debate whether and how history might be usefully divided into periods that can be understood as backdropping the more localized events that comprise them. Still, there is broad consensus that the years between the end of World War I and the start of the Great Depression were a distinct time in American history. Culturally, it was a period of great turmoil. First, progressivism, a fragile (if not illusory) constellation of principles collapsed amidst a conservative turn and factional infighting. Second, divides between generations and geographies grew and spurred cultural conflicts. In both respects, the face-off between Bryan and Darrow are emblematic. More so, however, it is a bipolar character to the culture of the 1920s that seems to have given it such distinctive flavor. At one level, it was dominated by a vibrant and often garish pop culture, a celebration of the superficial, the momentary, and the *avant-garde.* Bubbling beneath, however, was a pervasive melancholy—a *weltschmerz,* roughly meaning ''world-historical sadness,'' most clearly illustrated in the literature of the Lost Generation or the art of the Dadaists.

Editorials of the Scopes trial invoked a number of recurrent themes. Among them is the portrayal of Bryan and antievolutionists as, alternately, quixotic figures and zealous bigots. Darrow and evolutionists, in turn, are mocked as befuddled intellectuals deeply confused about their genealogy, mistaking monkeys for their ancestors. A third position is marked out in another common device. Here, the debate is satirized by using the antievolutionist premise, that Darwinism teaches humans are descendants of monkeys, to suggest that the idea might be offensive to monkeys. In this way, commentators used the Scopes trial to criticize American culture at the time as unserious precisely by trivializing this event, and themselves, by contrasting the importance attached to it relative to the vast inhumanity they saw around them. As such, they reinforce despair for human nature and the prospect of progress. ''I say, Genevieve, in this evolution trial—are they trying to class men with monkeys or monkeys with men?''

See, also, Moran (2003) for an excellent analysis of the use of this and other framings of the Scopes trial in the African American press to renegotiate the place of black intellectuals in American society at the time.

Second, however, the state must prove that in so doing he had contradicted the Biblical account of creation. The defense contended that there was nothing inherent to evolution that contradicted anything other than a literalist interpretation of Genesis, and they were prepared to offer expert testimony to that effect.

With the jury finally sworn, the state called its witnesses. First came the superintendent of the Rhea County schools, who had signed the complaint against Scopes. Following that, the state called two students from Scopes's class to testify to Scopes's use of *Civic Biology,* and concluded with F.E. Robinson, a party to the drugstore conspiracy. The defense again moved for dismissal and, again unsuccessful, called its own first witness—Maynard Metcalf, an eminent zoologist from Johns Hopkins University.

The prosecution interjected. If Scopes was to testify, he must, under the rules of Tennessee process, be called as first witness. The defense responded that Scopes could provide nothing useful to his defense, as the use of the text was already conceded. Darrow returned

to his examination of Metcalf, who had testified to being both an evolutionist and a Congregationalist. When Darrow asked whether he was aware of any scientist who was not an evolutionist, Stewart objected. Raulston concurred. Under the rules of hearsay, one cannot testify on the content of opinions held by anyone other than one's own self. Raulston would, however, allow Darrow to proceed with his examination as a matter of record while deferring judgment on the admissibility of testimony overall. Though clearly predisposed to exclude the testimony, Raulston was reluctant to rule so early on the matter, perhaps thinking of interests at stake for the community (Conkin, 1998, p. 90) and perhaps out of reluctance to let go his own place in the spotlight. In any case, the ruling surely would have brought the trial to a premature close. After instructing court reporters that the testimony to follow was not to be released to the press, the judge permitted examination to resume. Metcalf testified that, familiar with the leading authorities in the zoological, geological, and botanical sciences, he was confident that each took evolution to be a fact. They might, however, differ on the particulars of its theory.

Stewart now raised the first of repeated objections insisting that, whatever the factuality of evolution, the sovereign people of Tennessee had decided that the teaching of human descent was inconsistent with Biblical scripture. Therefore, the jury, as the people's representatives, needed no further interpretation by experts of any sort on either the wording or intent of the legislature in putting the act to law. The only pertinent questions were those of the factual circumstances surrounding Scopes's use of the offending text. All other testimony was irrelevant.

Raulston, again excusing the jury, allowed Darrow to proceed. Metcalf testified to his belief that all life began as unicellular plants in the sea, and offered his estimation of this Cambrian period to have occurred more than 600 million years ago—a stark contrast to literalists' estimations that placed the earth's age at a mere 6,000 years. At the close of the session, Raulston announced that the question of admissibility would be settled the following day.

When the trial resumed Thursday, and before Metcalf was allowed to continue, the prosecution called for Raulston's ruling on the testimony. Darrow insisted that ''evolution'' and ''creation,'' key terms in the statute under which their defendant was charged, were not adequately clear and that expert testimony was necessary to demonstrate that Scopes taught the former and contradicted the latter. Raulston ruled that formal arguments on admissibility would be opened by the state, though Darrow argued that that privilege fell to the defense.

Bryan's son presented the prosecution's initial points. Offering a rigorous, if dry, account of the case precedent bearing upon the use of expert testimony, he argued that any experts presented by the defense could only testify to their own opinions on whether they *personally* saw conflict between the account of evolution and the story of creation as they understood it. Further, as a question of fact, it fell upon the jury alone to determine whether Scopes's use of the materials in question had violated the law. Hays responded for the defense. Interpretation of the statute was necessary, and the *factuality* of evolution—which only expert testimony could establish—was certainly relevant to the case before them. The debate carried on fruitlessly for some time, and Darrow moved for its immediate resolution, out of consideration for the witnesses left waiting in the wing. Showing hesitancy once more, Raulston postponed his decision until after the noon recess.

When the trial resumed, William Jennings Bryan took the floor. Up to this point, he had scarcely said a word, passively observing the proceedings. The expectant audience

awaited the Commoner's speech. Though evaluations varied, he was mostly in classic form. Animated, he directed his impassioned speech directly to the attentive crowd, rather than the bench—which should have elicited a reprimand from Raulston, but did not. He was, however, an older man now and in declining health, and largely drew upon an arsenal of rhetorical arrows crafted for antievolutionist lectures he delivered on circuits around the country. Nonetheless, he ruthlessly lampooned evolutionary thought and strung together Darwin with Nietzsche and German aggression. He attacked a diagram of speciation included in *Civic Biology* that placed the human race indistinctly amid branches representing other life forms in the animal kingdom, all sharing a single genealogical trunk. "Talk about putting Daniel in the lion's den?" he exclaimed (*Trial,* 1997, p. 175).

He mocked the notion of reconciling evolution with Genesis, and stressed the caustic effects of Darwinism on a social morality. He accused science of fostering atheism, and proclaimed the jury better qualified for Biblical interpretation than any supposed expert the defense could produce. He attacked Darrow personally, quoting from the record of the Loeb-Leopold case to accuse him of propagating an amoral worldview. Darrow objected, reproaching Bryan for misrepresenting the context of his statements. Bryan concluded by reiterating the prosecution's contention that it was for Tennesseans alone to decide what belonged in their own public classrooms. The jury, as their representatives, should alone determine whether Scopes stood in violation of their law, in its wording and its intent. When he finished, the courtroom burst into applause. Raulston simply looked on.

Malone, who had served under Bryan in the state department and harbored no small amount of resentment toward his old boss, responded for the defense. He reiterated its two-pronged interpretation of the Butler Act and its contention that the state had yet to satisfy both standards. Only the inclusion of expert testimony, he argued, could establish that evolution did not contradict Biblical teachings on divine origin. He appealed to a sense of fairness. To exclude such testimony would leave Scopes without defense, and the prosecution alone would be free to define the issues of the case such that his guilt was predetermined. The defense, he insisted, had a right to use the means necessary to establish its theory of the case. To limit the interpretation of Genesis to fundamentalist viewpoints advanced by the prosecution, and to use that interpretation as the standard of reasonableness in evaluating the law and its application in this case, was to establish an uneven playing field. To punctuate his appeal, Malone summoned a shameful portrait of zealous dogmatism, analogizing Scopes's prosecution under such conditions to the Roman Catholic Church's persecution of Galileo. He criticized the state team for seeking to exclude knowledge that would enable the jury to reach a fair and informed judgment on the merits of the case.

The crowd again responded favorably—but more so than with Bryan. Malone had won the match. Raulston called for order, but unsuccessfully, as even the bailiff himself pounded the table with his club in cheer. After the crowd calmed, Raulston inquisitively prompted the defense to elaborate its views on compatibility between Scripture and evolution, particularly regarding the ultimate origin of humankind and the immortality of the soul. Darrow skillfully replied that such matters lay beyond the scope of material science, which dealt only with physical processes. As distinct realms of knowledge, science and religion could never be in contradiction. Stewart, concluding for the state, called for a "purely legal discussion" of the principles of construing statutory law, attempting to stymie the defense's two-pronged interpretation. Quickly, however, discussion disintegrated

into contentious bickering. Little else more was accomplished that day. The courtroom cleared. Bryan himself gave the starkest evidence that the defense team had taken the day. He complimented Malone on what he claimed to be the greatest speech he had ever heard (Scopes and Presley, 1967, pp. 154–155).

Friday morning, Raulston finally ruled on expert testimony as inadmissible. Defense experts could, however, enter their testimony into the record: a small victory, but nonetheless the most profound blow the defense had sustained thus far. Stewart sought tight constraints on the testimony, suggesting a limitation to written affidavits. Bryan rose to inquire about the prosecution's right to cross-examine. Raulston consented, should those witnesses take the stand. Darrow, facing yet another unfavorable ruling, objected. Witnesses served only to state what the defense intended to prove—and at a higher court, to boot. Cross-examination would do nothing to inform this court's decision.

Failing to move Raulston on the point, Darrow's frustration turned to hostility. ''We want to make statements here of what we expect to prove. I do not understand why every request of the state and every suggestion of the prosecution should meet with an endless amount of time and a bare suggestion of anything that is perfectly competent on our part should be immediately overruled,'' Darrow complained.

''I hope you do not mean to reflect upon the court,'' Raulston replied.

''Well,'' Darrow quipped, his back to the bench, ''your Honor has the right to hope!'' The laughter of the audience turned to a quiet tension. Raulston ominously suggested that he had the ''right to do something else, perhaps'' (*Trial,* 1997, p. 207).

Darrow desisted, and court was adjourned early to allow the defense to prepare its statements over the weekend. With expert testimony excluded, popular opinion believed the case was over. As rapidly as they had descended on Dayton in anticipation of the trial, the swarm of reporters seemingly evaporated—including Mencken. Over the weekend, the conflict spilled out of the courtroom and into the press, with Darrow and Bryan each issuing statements, baiting one another on the issues of constitutionality and the integrity of evolutionary theory (Scopes and Presley, 1967, p. 161).

In belated response to Darrow's outburst Friday, Raulston opened Monday's proceeding by citing him in contempt of court, to be held on $5,000 bail. After another brief spat on their relevance, Hays proceeded to read the defense affidavits into the record. Just prior, the defense had outlined the purpose with which the testimonies were submitted. Scientific experts, the majority of the witnesses, would speak regarding the factuality of evolution. Biblical scholars, then, would lend support to the defense's two-realms-of-knowledge claim outlined earlier. Evolutionary science could not contradict divine creation, they contended, because the teaching that God made man in His own image refers to man's *soul* rather than his body. The soul is the domain of religious knowledge, whereas the body is properly known through material science. The court recessed at noon.

After reconvening, Darrow publicly apologized to Raulston and was relieved of the contempt charge. Nothing seemingly remained but a few affidavits, finding Scopes guilty, and his sentencing. Citing a fear that the large crowds from the prior week had threatened the architectural integrity of the building, but perhaps moved instead by the relentless heat of the courtroom, Raulston adjourned proceedings to the courthouse lawn (Scopes and Presley, 1967, p. 164). Court resumed under the shade of the maple trees.

Hays finished reading the statements into the record. Raulston was prepared to call the jury to return when Darrow demanded the removal of a sign stating, ''Read Your Bible,'' affixed to the wall of the courthouse, in plain view of the makeshift jury box.

Unsympathetic, but sensing that all was winding down, Raulston consented. Hays unceremoniously entered two versions of the Bible, Roman Catholic and Jewish, as evidence that, contrary to the wording of the statute, more than one Bible existed. Though surprising to many onlookers, the fact that both texts in question told the same creation story escaped the notice of all involved. The court again prepared to summon the jury when the defense played its last, and most famous, hand. Hays requested to call one final witness—Bryan himself. Though recognizing that his testimony could be given no more weight than those entered thus far into the record, the defense wished to have Bryan testify on ''other questions involved'' (*Trial,* 1997, p. 284).

''Other Questions Involved''—Bryan Testifies

Expectedly, the prosecution objected. Bryan, unexpectedly, did not. A bewitched Raulston indicated no resistance to this wildly unorthodox request. Whether welcoming the opportunity or not, Bryan could scarcely refuse. As one who, time and again, proffered himself as a Biblical authority, refusing to testify as an expert student of Scripture was unthinkable. After requesting an equal opportunity to question the defense, Bryan took the stand. Darrow directed.

''You have given considerable study to the Bible, haven't you, Mr. Bryan?'' Bryan responded that he had tried, more so now than when he was younger. Over Stewart's repeated objections and pleas to the bench to end this examination, Darrow proceeded to interrogate Bryan on issue after issue regarding internal inconsistencies in Biblical accounts and problems for literal interpretation in the face of modern scientific knowledge. In 1923, Bryan had dismissed Darrow's challenge in the *Chicago Tribune.* Now, as Darrow resurrected much of that list in serial fashion under the scrutiny of the crowd and remaining reporters, Bryan was forced to engage Darrow's assault.

The questions themselves were scarcely profound and were rather unoriginal observations. Clearly provoked and frustrated, Bryan responded tersely (if not evasively) to Darrow's questions. At times displaying the subtle wit of his earlier years as an orator, Bryan's answers were largely guarded, murky, and often meandering. Darrow sprinkled the strained façade of an offhanded demeanor with bitter tirade, revealing his own frustration with the exchange.

Was it a fish or a whale that swallowed Jonah? Bryan recalled no mention of a whale. *What of the story of Joshua commanding the sun to stand still, in order to lengthen the day —is it not the Sun, which is fixed, and the earth that revolves?* ''Well, it is relatively so, as Mr. Einstein would say,'' Bryan retorted, before conceding the point that if Joshua lengthened the day, he did so by halting the earth, rather than the sun. *What would happen if the earth were to suddenly come to a standstill in its orbital path?* Bryan said he had not considered the question before. *Isn't it true the earth would have converted into a molten mass of matter?* ''You testify to that when you get on the stand, I will give you a chance.'' *Is the Noachian flood to be taken as a literal event?* Yes, Bryan replied, though he would not testify to the accuracy of the date of 2348 BC, as calculated by Bishop James Ussher and included in the marginalia of some Bibles. *How exactly was that estimate arrived at?* ''I do not think about things I don't think about,'' Bryan replied. ''Do you think about things you do think about?'' Darrow shot back in frustration. ''Well,'' Bryan responded slyly, ''sometimes'' (World's Most Famous Court Trial, 1997, p. 287).

Darrow moved to questions that were focused squarely on Biblical chronology and genealogy. How could Bryan defend literalist calculations of the age of humankind in

the face of modern anthropological knowledge of ancient religions and civilizations, including those of the Chinese and Egyptians? How could he believe that the Tower of Babel was the origin of language types in the face of discoveries in philology? Bryan confessed to having neither an awareness of modern scholarship nor an interest in these questions. Shocking, however, was Bryan's admission that he believed the earth to be "much older" than the 6,000-year estimate offered by literalists, followed by his stated rejection of the idea that the earth was created in six days of 24 hours.

To those who failed to appreciate Bryan's ideological differences between himself and the fundamentalist movement with which he had aligned (and Bryan, of course, was loathe to call attention to such disagreements), his answers were a shocking revelation (Conkin, 1998, p. 97). To his fundamentalist supporters, it was a disgraceful concession to modernism and evolutionist heresy. To the prosecution, it was a symbolic regicide of the antievolutionist movement. As reported in the press, it was the *coup de grace* in Darrow's thorough and crushing defeat of Bryan on the stand. It was this account of a humiliated and demoralized Bryan having been dressed down by the coolly rational Darrow, hastening Bryan's death, that would dominate headlines and work its way into mythology of the "monkey trial," memorialized in the 1950 stage production and its film adaptation (1955) of *Inherit the Wind.*[10]

Bryan died shortly after the trial, but from years of poor diet and diabetes. Hardly a broken spirit, Bryan had planned to mount a full-scale campaign to reverse the tide, recover face, and renew his antievolutionist efforts. Bryan was well aware that Darrow had bested him, but the victory was less than complete and, in the views of many, dishonorably won. Many found Bryan the sympathetic figure and perceived Darrow's attacks as cruel taunts of a respected man of the people and his faith—and, by proxy, their own. The ACLU itself attempted to drop Darrow from the appellate team in light of his conduct (Conkin, 1998, p. 96).

Amid the fray, Bryan was able to carve out a minor martyrdom. To Stewart's demand that Raulston explain the purpose of the examination, Bryan responded, "[t]he purpose is to cast ridicule on everyone who believes in the Bible. . ." Darrow unwittingly took the bait, putting his own intolerance on bold display, retorting, "[w]e have the purpose of preventing bigots and ignoramuses from controlling the education of the United States and you know it, and that is all." This was just the opening the Commoner required to recover some lost ground: "I am simply trying to protect the word of God against the greatest atheist or agnostic in the United States. I want the papers to know that I am not afraid to get on the stand in front of him and let him do his worst. I want the world to know" (*Trial,* 1997, p. 299). The crowd erupted in cheer.

Darrow did not have the opportunity to finish his examination of Bryan, nor did Bryan have the opportunity to turn the tables. Neither had the chance for closing arguments. Reminiscent of Darrow's 1923 challenge to Bryan in the *Chicago Tribune,* Bryan would, however, issue a release to the press posing nine questions for Darrow. Darrow, in turn, issued his response to each—usually with the agnostic creed, "I don't know" ("Evolution," 1925). Following his death, Bryan's widow released a copy of his closing speech to the press.

When court reconvened on Tuesday, Bryan's testimony and the entire account of the exchange were stricken from the record at Raulston's direction. Dismissing the defense's two-pronged theory, at last, the judge stated that the only thing left to be decided was whether or not Scopes had, in fact, taught the evolutionary descent of humans. With that,

little else remained but to find Scopes guilty and close the trial. The defense agreed that the jury should be instructed to reach a finding of guilt. After arrangements to file the appeal were made, Raulston called the jury and charged them. Raulston informed them that if they found Scopes guilty, and were content with the minimum penalty, the bench could set the fine. Stewart interjected to note that under the state constitution, the *jury* must formally set any fine in excess of $50. Here, once more, customary norms prevailed. Defense stated that it had no objection. After nine minutes deliberating, the jury returned a verdict of guilty.

At last, Scopes rose to address the court on his own behalf, to explain why the penalty should not be imposed. Denouncing the law as unjust, Scopes swore he would continue to oppose it however he could. ''Any other action would be in violation of my ideal of academic freedom—that is, to teach the truth as guaranteed in our constitution, of personal and religious freedom. I think the fine is unjust'' (*Trial,* 1997, p. 313). Scopes was then fined $100, which Bryan himself had offered to pay. The defense filed notice of appeal to the state supreme court. Bond was set at $500, a cost assumed by Mencken's paper, the *Baltimore Sun,* which had provided material support for the defense.

The various parties all made their final addresses to the court. Bryan struck an optimistic tone. He claimed faith that the case would ultimately be decided correctly, whatever the outcome, by the people. Darrow concurred, but once more expressed his apprehension with what he feared to be a return to the days of pious witch-hunts. Raulston thanked the visiting attorneys. With that, the ''monkey trial'' closed.

The Evolving Aftermath

As circulated popularly and in the press, the term ''monkey trial'' cut both ways. For antievolutionists, it lampooned the absurd (though misunderstood) proposition that humans evolved from primates. Conversely, modernists used it as a rebuke of a proceeding (wrongly) attributed to religious bigotry run amok in the ''backward'' culture and institutions of the South. Generally, it suggested the surreal, circus-like atmosphere surrounding the trial as chronicled by swarms of (mainly northern) reporters who had infested Dayton for the event. Packaged as a showdown of religion versus science, Bryan versus Darrow, the subtext of these accounts revealed the deeper cultural tension between an urban and progressive North and the rural and traditional South—another chapter in an age-old conflict between populism and elitism in the contest for Truth. Who won or lost are matters of perspective, as well as time frame.

Scopes was found guilty, but none expected otherwise. Dayton enjoyed notoriety, if not infamy, for its moment in the spotlight, much to the chagrin of Tennesseans who wished that the embarrassing affair had never occurred. Far less economic gain resulted than anticipated, perhaps even resulting in net loss. The ACLU claimed victory in having both stirred a national backlash against antievolutionism and in securing the appeal as a stepping-stone to the U.S. Supreme Court. National press coverage of the trial, at all stages, would support the first claim (Larson, 2003, p. 72). Scopes lost his appeal before the Tennessee Supreme Court, but few followed the story. In ruling against Scopes, the Court also saw fit to overturn his conviction on a technical error. Stewart was correct to insist that the jury, not the bench, set Scopes's fine (*Scopes v. State,* 1927). The Court instructed that the case should not be retried, in the interest of preserving the dignity of

CREATIONISM ADAPTS

Christian conservatives reemerged as a political force in national politics in the United States during another period of rapid social change and profound pessimism beginning in the 1970s. Industrial economies were quickly giving way to service economies. Women were entering the workforce in numbers unprecedented in peacetime. Crime was on the rise. Population centers were shifting from the North toward the Sun Belt. Galvanizing this movement was fierce opposition to the Equal Rights Amendment and the Supreme Court's decision in *Roe v. Wade,* which had legalized abortion. Pursuing prayer in schools and abstinence-only sex education, this movement also sought to reintroduce creationism into the science classroom. Unlike their fundamentalist forbearers, however, this antievolutionist cause did not (at least overtly) seek a ban on the teaching of evolution. Instead, the strategy was to revive Bryan's position that evolution is a hypothesis rather than a fact. Rather than using this premise to denigrate science as inferior to biblical scripture, however, the purpose was to put creationism on the same footing as evolutionary theory. ''Creation theory'' was posed as an equally valid, equally scientific account of human origins. Over time, however, this message mutated into something far stranger—the idea that creationism is science, and science is religion.

In 1969, California adopted a statement into its science curriculum guidelines suggesting that ''creation theory'' may better account for certain scientific data than evolutionary theories. Although eventually defeated, creationism activists used this model to formulate similar policy statements picked up for consideration around the country. In 1973, Tennessee introduced new legislation requiring creationism to receive equal time in any biology textbook dealing with human origins adopted by the public schools. Struck down two years later, legal challenges for equal time in Colorado and later California, though likewise unsuccessful, served to publicize and popularize the antievolutionist cause. Subsequent legislative efforts introduced around the country adapted to court rulings by modifying ''creationism'' and ''creation theory'' into ''creation science.'' ''Equal time'' and ''balanced education'' were replaced with language referring to the ''unbiased'' presentation of evolution and creation sciences. Challenges conflated evolutionary thought with the ''religion'' of secular humanism, and accused the ''biased'' presentation of evolution ''dogma'' as violating the Establishment clause (see Nelkin, 1982). As ''creation science'' morphed into the presently more popular ''intelligent design,'' states began experimenting with stickers and inserts for biology books warning that evolutionary theory remains a controversial, incomplete, and flawed account and that it must therefore be read skeptically or with an ''open mind.'' Although also largely unsuccessful, these events suggest a broader trend with some history still ahead of it.

the state. It was clearly a dead end and, as Malone charged, a well-crafted ''subterfuge'' (''Malone,'' 1927).

Until the Scopes trial, ''fundamentalism'' was primarily a pejorative only among intellectuals, such as Mencken and Darrow. Now it held strong negative connotations for large swaths of the American public, particularly in the North. Press coverage indelibly linked

"antievolutionism" with "bigotry" and "ignorance." Its adherents were termed "cranks" and "freaks" ("Cranks," 1925). In Bryan's purported defeat, punctuated by his subsequent death, the movement organized behind the Commoner lost significant momentum nationally. Mississippi passed an antievolutionist bill in 1927, as did Arkansas in 1928, but these statutes remained inactive—as had the Butler Act before and after Scopes. A year after the repeal of the Butler Act in 1967, in *Epperson v. Arkansas,* the U.S. Supreme Court finally ruled such laws an unconstitutional endorsement of religion.

Disenfranchised in the North and significantly marginalized in the South, fundamentalism and its antievolutionist cause were down, but not out. As the nation moved on to the tribulations of the Depression and World War II, and oppositional voices diminished under the illusion of an end-all victory at Dayton, fundamentalism faded from the public conscience. However, closed off behind institutional structures tailored to their own specifications, buffered from trends in the broader culture (Larson, 2003, p. 233), fundamentalists thrived. Their numbers swelled, convictions polarized, and influence grew; and their tactics changed.

Through localized efforts, fundamentalists sought district-by-district democratic control over public education administration in their communities. They also targeted state agencies responsible for approving classroom texts. Both strategies were unlikely to be met with judicial review, cutting out the problem at its source. It was wildly successful. In order to stay viable, the textbook industry was forced to produce editions marketable in all regions. This meant vetting evolutionary content, and even explicitly catering to creationist demands. Teachers were left to their own resources (and, in fundamentalist-controlled districts, their own peril) to introduce evolution in the classroom. In the end, subtle political pressures and the logic of markets did what even a vigorously enforced Butler Act could never have achieved. In subsequent decades, upwards of 70 percent of public high schools dropped evolution from their curriculum. It was all but eclipsed in portions of the South and West (Larson, 2003, p. 231). Effectively stifling the main conduit of scientific knowledge of evolution to the public consciousness, for three decades antievolutionist ideas ran largely unopposed. Their influence expanded even to mainstream sectarians.

While the agents of science pushed back beginning in the 1960s (Larson, 2003, p. 86), recovering lost ground in public school curricula, the intellectual commitments and ideological trenches had, by then, grown unfathomably deep.[11] By this point, the conflict of "science versus religion," a conflict few Americans even perceived at the dawn of the twentieth century, had gathered a lengthy and profound history—one complete with heroes and villains, insurgents and martyrs, battles won and battles lost. Always and unerringly, this folklore draws us back to the day Darrow met Bryan in Dayton.

SUGGESTIONS FOR FURTHER READING

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NOTES

1. The belief that God created all species uniquely, and that their forms exist unchanged to this day. Some adherents accept evolution among nonhuman animals.
2. See, generally, Larson (2003).
3. The Social Gospel movement primarily consisted of mainstream denominational Protestants who dedicated themselves to social reform by living and proselytizing their faith through good works—what Bryan termed "applied Christianity." As the religious force of progressivism, this movement agitated for racial equality, women's suffrage, prohibition, labor reform, welfare, and universal public education.
4. Bryan (1924) noted, "Nietzsche carried Darwinism to its logical conclusion and denied the existence of God, denounced Christianity as the doctrine of the degenerate, and democracy as the refuge of the weakling; he overthrew all standards of morality and eulogized war as necessary to man's development" (p. 146).
5. Originally, the Civil Liberties Bureau—a collection of activists and lawyers who organized during World War I to protect the rights of conscientious objectors. Afterward, the ACLU adopted a broader mission of defending civil rights, particularly those of organized labor, minorities, free speech, and academic freedom.
6. Under Tennessee's declaratory judgment act, the mere fact that Scopes was a state-employed teacher with a vested interest in the law gave him standing to challenge its constitutionality—a criminal indictment was unnecessary (Larson, 2003, p. 60).
7. Surviving documents are now available through the Freedom of Information Act, and online from the FBI's Freedom of Information Act Web site at http://foia.fbi.gov/foiaindex/darrow.htm
8. Agnosticism is a position of principled skepticism on questions of theology, such as the existence of divine entities, a creed captured as "I don't know." Darrow's agnosticism was rather militant, closer to "I don't know, *and neither do you!*"
9. The account to the proceedings, unless otherwise specified, is taken from the stenographic record of the case trial, as published in *The World's Most Famous Court Trial* (1997), hereafter referred to as *Trial.*
10. Which were, in fact, fictionalized accounts written as commentaries on the politics of McCarthyism.
11. Gallup polls conducted during the 1980s and 1990s on attitudes toward creationism and evolutionism show a remarkable stability in responses. Consistently, 35–40 percent believe humans developed over millions of years from less-advanced forms of life with God guiding the process. Approximately 45 percent believe God created humans essentially as they exist today within the past 10,000 years. About 10 percent of respondents reliably respond that human evolution occurred with God having no part in the process.

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7

Bonnie and Clyde: A "Mad, Dizzy Whirl"

LEANA ALLEN BOUFFARD

You've read the story of Jesse James
Of how he lived and died
If you're still in need for something to read
Here's the story of Bonnie and Clyde.

—"The Story of Bonnie and Clyde," by Bonnie Parker (Milner, 1996)

In January 1930, to help out with housework, Bonnie Parker agreed to temporarily move in with a neighbor who had broken her arm in a fall. During her stay, another friend of the neighbor, convicted car thief Clyde Barrow, also paid a visit. Clyde's mother claims that over a shared pot of hot chocolate, he instantly fell in love with Bonnie. For Bonnie, it was also love at first sight. This chance encounter set off a two-year violent crime spree and an enduring nationwide fascination with the gangster couple Bonnie and Clyde.

Clyde Chestnut Barrow was born in March 1909 to Henry and Cumie Barrow, tenant farmers in Texas. Clyde was the fifth of eight children. Because his parents often had trouble with money, the children were frequently shuffled among the homes of various relatives. Finally, they gave up farming and moved to a poor part of Dallas. Clyde was a fan of Western outlaw movies, idolizing Jesse James. He often skipped school, and he dropped out at 16 to begin working. Clyde's earliest criminal activity involved stealing a flock of chickens with his older brother, Buck. After that, he continued getting into trouble with the law.

Bonnie Parker was born in October 1910 to Charles and Emma Parker. She was the middle child, with an older brother and younger sister. Bonnie's family was somewhat better off than the Barrow family. Her father was a brick mason, and the family lived a quiet and comfortable life in a small town near Dallas. When Bonnie was five years old, her father died suddenly, and her mother was forced to move to one of the toughest parts of Dallas to live with her parents (Bonnie's grandparents). Bonnie was described as a good student in school, high-spirited and tenderhearted. She won awards for her essays and poetry. At 15, Bonnie began spending time with a classmate, Roy Thornton. By the next

year, they were married, and eventually the couple moved in with Bonnie's mother. Bonnie was deeply infatuated with Thornton and had their names tattooed above her right knee. Despite this infatuation, Thornton was not the most loyal and attentive of husbands. He frequently left. In January 1929, he reappeared after an absence of nearly a year, and Bonnie refused to take him back. Thornton was later arrested during a robbery and sentenced to five years in prison. Bonnie stayed married to him, believing that it would be inappropriate to divorce him while he was in prison, but that did not prevent her from seeing Clyde.

BONNIE'S FIRST CRIME

Then I left my old home for the city
To play in its mad dizzy whirl,
Not knowing how little of pity
It holds for a country girl.

—"The Story of Suicide Sal,"
by Bonnie Parker (Milner, 1996)

During the first few weeks that Bonnie and Clyde were seeing each other, police found him at the Parker home and arrested him on suspicion of burglary. While he was in jail, Bonnie sent him letters urging him to go straight and get a job when he got out. In March 1930, Bonnie traveled with Clyde's mother to Waco, Texas, to see him. She stayed with her cousin and visited Clyde in jail. During one visit, Clyde and one of his cell mates, William Turner, convinced Bonnie that she could help them escape by smuggling a gun into the jail. Turner drew a map of his parents' home and told her where she could find the key and the gun. Taking her cousin with her, Bonnie went to the Turner home, found the key, and began looking for the gun. It was not where Turner said it would be, and the two girls left the house in considerable disarray. But they had found the gun, and Bonnie smuggled it into the jail. This was Bonnie's first foray into criminal activity.

The next night, Turner pretended to be sick. When the jailer opened the cell door, another inmate, Emery Abernathy, pulled the gun and placed the jailer in the cell. Clyde, Abernathy, Turner, and another inmate strong-armed the keys away from the jailer and escaped into the night, stealing a car and driving through Texas, Missouri, and into Illinois. When they reached Illinois, Clyde sent Bonnie a telegram to let her know that he was safe. With Clyde on the run, Bonnie returned home to wait for him. However, Mrs. Parker suspected Bonnie's involvement in the escape. She believed that Bonnie enjoyed being the center of attention and viewed the whole incident as exciting and romantic.

Meanwhile, Clyde and the other escapees committed several robberies, burglaries, and car thefts. During one of their burglaries, a witness noted their license plate number, and police caught up with the group. Though Clyde used an alias, police eventually learned that the three were the Waco escapees. In April 1930, Clyde was transferred to Huntsville Prison. On intake, he claimed that his middle name was "Champion" and that Bonnie was his wife. From Huntsville, Clyde was assigned to the Eastham Prison Farm. During his imprisonment, Bonnie went back to work, started dating, and for a while stopped corresponding with Clyde.

Clyde's mother lobbied authorities to shorten his sentence from 14 years to only two years. But Clyde, depressed by the slow progress of the appeal, persuaded another inmate

to cut off two of his toes so that he would be transferred back to the prison hospital at Huntsville. Soon after, the governor agreed to parole Clyde. He returned to Dallas and immediately went to see Bonnie. Reunited with Clyde, she dropped her current boyfriend and the two resumed their relationship. When Clyde's sister arranged for him to have a construction job in Massachusetts, Bonnie was pleased that he seemed to be going straight. Two weeks after starting the job, Clyde returned to Dallas because he was homesick. Soon Bonnie told her mother she was moving to Houston for a job selling cosmetics. In reality, she was joining Clyde and his new associates.

THE BARROW GANG

Now Bonnie and Clyde are the Barrow gang,
I'm sure you all have read
How they rob and steal
And those who squeal are usually found dying or dead.
—"The Story of Bonnie and Clyde," by Bonnie Parker (Milner, 1996)

Upon his return to Dallas, Clyde hooked up with Raymond Hamilton and Ralph Fults, two petty criminals. In March 1932, the three attempted to rob a hardware store, with Bonnie acting as lookout. A night watchman spotted them and alerted police, who gave chase. The gang's car became stuck in the mud, and the four tried to escape by running through nearby fields. Fults was captured, Hamilton and Clyde escaped, and Bonnie hid in the field until the next day. She began hitchhiking home but was stopped and taken in for questioning. While in jail waiting for the grand jury to convene, Bonnie wrote a poem, "Suicide Sal," about a

TIMELINE

March 1909	Clyde Barrow is born.
October 1910	Bonnie Parker is born.
January 1930	Bonnie and Clyde first meet at the home of a mutual friend.
March 1930	Bonnie commits her first crime in helping Clyde escape from jail.
March 1932	A failed bank robbery attempt results in Bonnie being captured by law enforcement. Clyde escapes.
April 1932	While Bonnie sits in jail, Clyde and others rob a service station, murdering the owner.
June 1932	Bonnie is released from jail and rejoins Clyde. The gang is involved in a series of robberies, car thefts, and murders over the next several months.
April 1933	Police attempt to ambush the gang multiple times in Missouri, Arkansas, and Iowa. Some gang members are captured, but Bonnie and Clyde escape.
November 1933	Bonnie and Clyde conduct a violent raid on Eastham Prison Farm, helping fellow gang members to escape and killing a prison guard. The Texas Prison System names former Texas Ranger Frank Hamer as special investigator responsible for hunting down Bonnie and Clyde.
April 1934	Bonnie and Clyde steal the car in which they would eventually be killed and meet with their families for the last time. Bonnie gives her mother a poem she had written, "The Story of Bonnie and Clyde."
May 23, 1934	Hamer and other law enforcement officers ambush Bonnie and Clyde near Arcadia, Louisiana, killing them.



Figure 7.1 Bonnie Parker mockingly points a shotgun at Clyde Barrow, 1933. Courtesy of the Library of Congress.

woman who fell for a criminal and eventually took the blame for his crimes. This appears to have been a period of disenchantment with Clyde.

While Bonnie languished in jail, Clyde and Hamilton met up with Frank Clause, who had recently been released from prison. The group committed several crimes, but the most serious occurred in April 1932 when they robbed a small service station owned by John and Martha Bucher in Hillsboro, Texas. The three scoped out the store and returned at midnight, requesting entry to purchase guitar strings. As the Buchers opened the safe, Hamilton fired his gun, killing John Bucher. He later claimed that the shooting was an accident. Martha called the police after the three robbers left, and a few days later, she identified Clyde and Hamilton from police photographs. Clyde hid out temporarily at his family's home, and a few days later, he joined Clause in another robbery. This time they held up two service stations, kidnapping the attendants at gunpoint. Both men were later released unharmed.

After Bonnie's grand jury hearing in June 1932, she was released due to lack of evidence. She returned home to her mother, claiming she would have nothing more to do with Clyde. Toward the end of June, Bonnie went to Wichita Falls, telling her mother she would be applying for a job. In reality, she, Clyde, and Hamilton had rented a house there. In August 1932, the group returned to Dallas and picked up another gangster, Everett Milligan. With Milligan serving as the getaway driver, Clyde and Hamilton robbed a packing company at gunpoint. The police gave chase, but Clyde's speedy and reckless driving left them in the dust. Leaving Bonnie at her mother's, the men headed out of state to Oklahoma.

In Oklahoma, Hamilton wanted to stop at an open-air dance floor. Despite feeling that it was too dangerous, Clyde stopped. They danced and tried to relax, drinking whiskey from fruit jars, which caught the notice of a local sheriff, C.G. Maxwell, and deputy, E.C. Moore. The Prohibition laws were strictly enforced in Oklahoma, and the officers told the men that they were under arrest. Clyde and Hamilton both began firing their pistols, shooting Moore in the head and wounding Maxwell. The two men then sped away, heading back to Texas along back roads. Milligan, who had been dancing at the time of the shooting, tried to blend into the crowd. He asked a new friend for a ride into town, where he left for Texas by bus. Hearing from witnesses about a third member of the group, police tracked Milligan to Texas and captured him there. Between Milligan's confession and Clyde's fingerprints on one of the abandoned vehicles, police were able to put names to the suspects.

PROHIBITION

The 18th Amendment, prohibiting the importing, exporting, selling, and manufacturing of intoxicating liquor, was enacted January 16, 1920. Though illegal, consumption of alcohol continued, creating a profitable black market. Prohibition has been credited with the growth of organized crime and the emergence of high-profile gangsters, like Al Capone, as well as with increasing levels of violent crime during this period. Prohibition ended in December 1933 with the passage of the 21st Amendment, which repealed the 18th Amendment and allowed states to regulate the production and consumption of alcohol.

Hamilton retrieved Bonnie from her mother's house, and they met up with Clyde. With search parties looking for them, the gang decided they should move to a place where they were not known. They decided to go to New Mexico. A sheriff's deputy in New Mexico became suspicious of their out-of-state license plates. Upon learning that their car was stolen, Deputy Joe Johns followed the gang to their hideout and asked to speak to the car's owner. With a shotgun, Clyde confronted the deputy, taking him hostage, and the three began another flight from the law. Police throughout New Mexico and Texas began an intense manhunt. Deputy Johns was released unharmed several hours and several hundred miles later. On their flight, the gang continued to steal various cars. One of the victims reported the theft immediately, giving police the information they needed to set up an ambush. Clyde, however, noticed the trap and quickly turned the car around, firing his pistol and wounding one officer in the process. Despite a large posse with heavy firepower, the gang was again able to evade police.

Until September, the gang robbed various businesses in Texas—but did not kill or kidnap any of their victims. Hamilton left the gang, and in October, Clyde met up with two other men, Frank Hardy and Hollis Hale, to rob a small grocery store. As Clyde held the salesclerk at gunpoint and collected the money, the meat market manager, Howard Hall, appeared and offered some resistance. Clyde punched the man once, and Hall grabbed at his arm to prevent a second blow. In a rage, Clyde fatally shot Hall. He attempted to shoot the clerk as well, but the gun misfired. Police broadcast a description of the gunmen to agencies in the surrounding area. Another manhunt ensued, but Clyde evaded capture, picking up Bonnie around midnight, then driving into Oklahoma. Two individuals later positively identified Clyde Barrow as the person who committed the robbery and murder.

Throughout November, Clyde, Hardy, and Hale committed various robberies in Missouri. At the end of the month, they decided to rob a bank. Bonnie scoped out the bank but was not allowed to participate in the actual robbery. When the men entered the bank with guns drawn, the guards began firing. Hardy grabbed as much money as he could while Clyde fired back, and they ran to the getaway car. Hardy and Hale took all of the money, hitchhiked into town, and disappeared. Short on cash, Clyde decided to rob another bank using Bonnie as a lookout. Unfortunately, it had gone bankrupt, and there was nothing to steal. After those failures, the couple decided to return to Texas. During December, Bonnie and Clyde stayed with family and added another member to their gang, 16-year-old W.D. Jones, who had known the Barrow family for nearly ten years.

On Christmas Day, 1932, Clyde decided to steal another car. Jones found a car with the keys inside and attempted to start it. Neighbors noticed the attempted theft and ran out to stop him. With three people standing on the sidewalk yelling, Clyde became agitated, and he and Jones began pushing the car to get it started. After it got rolling, Clyde jumped into the driver's seat, and Jones stood on the running board waving his gun. Doyle Johnson,

the owner, ran after the car and jumped on the driver's side running board, grabbing Clyde's arm to prevent him from getting away. Clyde fired his gun, hitting the front fender of the car, and Jones reacted to the shot by firing his own pistol. Johnson was hit in the neck, and he fell to the street and later died. The two men fled in the stolen car. Meanwhile, Bonnie had remained in Clyde's car, so she slid behind the wheel and left the scene, unnoticed. Also in December, Raymond Hamilton was captured by police and awaited trial for his part in the Bucher murder.

In January, the Barrow gang returned to Dallas. Bonnie spent a few minutes with her mother while Clyde visited Hamilton's sister, Lillie McBride. He gave her a radio with a hidden saw blade to deliver to Hamilton in prison so that he could escape. The group reconvened and hurried to an abandoned farmhouse to hide. Police, meanwhile, had been tipped off about McBride's relationship to Hamilton and went to her home. She had gone to the prison to see Hamilton, so they decided to wait. Noticing a car circling the block, the police turned off all of the lights in the house. The gang returned, and Clyde approached the front door with a sawed-off shotgun. He noticed the shadow of a policeman in the front window and fired a shot into the house. The police returned fire, and Jones began firing as well. Other officers converged on the front lawn, and Clyde shot one of them at close range, killing him. He made it back to the car, and the group sped away, ending up in Oklahoma. At the end of January, the gang kidnapped and released another police officer.

THE GANG'S NEW MEMBERS

The road gets dimmer and dimmer
Sometimes you can hardly see
But it's fight man to man, and do all you can
For they know they can never be free.

—"The Story of Bonnie and Clyde,"
by Bonnie Parker (Milner, 1996)

In March 1933, Clyde's brother, Buck Barrow, was released from prison after serving time for an auto theft he had committed with Clyde years earlier. He planned to take his wife, Blanche, to visit her parents in Missouri and hoped to settle on their farm. Along the way to Missouri, Buck decided, against his wife's wishes, that he would visit his brother. They met up in Arkansas and drove together to Joplin, Missouri, where they rented a garage apartment. Within a few days, neighbors and police became suspicious of this group with guns and out-of-state license plates. Eventually, police decided to confront them. In April 1933, police pulled up outside the garage, parking their cars in the driveway to block escape routes. Clyde noticed the officers approaching, alerted the group, and grabbed his rifle. Clyde, Jones, and Buck began shooting from the windows. Bonnie started packing, but Blanche was terrified and ran into the street, screaming. The rest of the gang jumped into their car and raced out of the garage, sideswiping a police car on the way. They followed Blanche into the street and pulled her into the car.

In the shootout, two police officers were killed and two others were wounded. When police searched the apartment, they found Buck and Blanche's marriage license as well as the pardon that Buck had received. Two rolls of film that the gang had taken of their exploits were also left behind. The evidence helped police identify the group as the Barrow

gang. The pictures immediately made it into the newspapers, and the public had names and smiling, unremorseful faces to go with the stories of their crimes.

In late April 1933, the gang needed a getaway car for a planned robbery. They located a suitable vehicle, and Jones quickly drove away in it. The owner of the car, H. Dillard Darby, and a friend, Sophia Stone, chased after Jones. They came upon Clyde and the rest of the group, who kidnapped the pair, releasing them the next day unharmed and with some money to get home. Buck and Blanche decided to finally go visit her parents in Missouri. In June, they were to meet back up with Bonnie, Clyde, and Jones. On their way to the rendezvous, Clyde was speeding along the highway and did not notice that a bridge had been washed out ahead of them. The car flew into a ravine, flipping twice. Clyde was thrown from the car, and Bonnie was pinned under the wreckage. Clyde pulled Jones out of the car but could not free Bonnie. A farmer who lived nearby arrived to help, and Bonnie was rescued, but not before the car had caught fire and severely burned her legs.

The men carried Bonnie to the farmer's home, where his wife treated the burns. A neighbor had called police, and when they arrived, Clyde and Jones took them hostage. Clyde ordered the two officers into the back of their car and lay Bonnie across their laps. He then drove to meet Buck in Oklahoma. There, they released the two officers, deciding not to kill them since they had been kind to Bonnie. From there, the group drove to Fort Smith, Arkansas, where they rented a tourist cabin. Bonnie's sister, Billie, arrived in Fort Smith to care for her. During their stay in the cabin, Clyde did not leave Bonnie's side. Buck and Jones committed a few robberies to get some cash. In one of those robberies, they shot and killed the town marshal. After that, Clyde knew they would have to move again.

Clyde sent Billie back to Dallas, and the gang drove to the Red Crown Tourist Camp in Platte City, Missouri, committing various robberies along the way. They rented two rooms, and Clyde continued to care for Bonnie and her injuries. The clerk on duty became suspicious of the group with the heavily bandaged woman. He called police, and they realized it was the Barrow gang. Various police agencies pooled their resources and planned their attack. They surrounded the rooms and knocked on the door. Blanche stalled them while the group packed a few belongings and left through a side door into the garage. Police had blocked that exit with an armored car, but Clyde and Jones fired an automatic rifle at it, wounding one of the officers. Meanwhile, Buck fired at the rest of the posse from the cabin window. When they returned fire, he was shot twice in the head. Clyde loaded everyone, including a semiconscious Buck, into their car, and they crashed through the garage, shooting as they went. Police again returned fire, shattering the car windows and sending splinters of glass into Blanche's eyes. They raced out of Platte City.

Clyde drove through that night and the next day, eventually finding a thickly wooded spot near a stream in Iowa. The group rested there and tried to recover from their wounds, but again, local citizens became suspicious. Police in Iowa were alerted and planned an ambush of the group with the help of the Iowa National Guard. Early the next morning, Bonnie noticed the police surrounding their camp. Clyde and Jones grabbed their rifles and began shooting. Bonnie limped to the car, and Blanche struggled to drag Buck in the same direction. On the way, Bonnie was wounded, Buck was shot twice, and Jones was shot in the chest. The group piled into the car but soon realized that they would not be able to avoid the posse's fire. Clyde ordered everyone to hide in the woods. Buck was shot several more times, and Blanche tried to shield him from any more gunfire. Clyde was shot in the arm but carried Bonnie to a nearby farmhouse where they stole a

car at gunpoint. Clyde, Bonnie, and Jones escaped, but Buck and Blanche were captured. Several days later, Buck died in the hospital. Blanche was sentenced to 15 years in the Missouri State Prison. Jones eventually left the group but was captured and convicted of murder.

In late November, Bonnie and Clyde began planning a prison break. Raymond Hamilton had been sentenced for the murder of John Bucher, and he was serving his time at Eastham Prison Farm. Hamilton's brother and a former inmate, James Mullin, were also in on the plan to hide two pistols on the grounds of the prison farm. A trusty in the prison retrieved the pistols and passed them to Hamilton and a friend, Joe Palmer. Hamilton and Palmer took the pistols with them the next day when they began work. Clyde and Mullin waited just off prison grounds, and Bonnie stayed in the getaway car. When Hamilton and Palmer drew their pistols, a gunfight erupted between the inmates and guards. Hearing the shooting, Bonnie began honking the horn. Hamilton, Palmer, Henry Methvin, and two other inmates ran toward the sound of the horn and escaped with Bonnie and Clyde. At the prison, one guard had been killed and another wounded.

THE BEGINNING OF THE END

They don't think they're tough or desperate
They know the law always wins
They've been shot at before, but they do not ignore
That death is the wages of sin.

—"The Story of Bonnie and Clyde,"
by Bonnie Parker (Milner, 1996)

The prison director at Huntsville, Lee Simmons, swore that he would find and punish those responsible for the death and wounding of the guards at Eastham. Research into the history of the escapees led him to Mullin, who confessed to his part and implicated Bonnie and Clyde. Simmons began formulating his plan. He created a new position, special investigator for the Texas prison system, and selected Frank Hamer, a former Texas Ranger known for his fearlessness, to fill the position. Simmons then convinced Governor Miriam Ferguson to offer a pardon to any associate of the gang who would help in their eventual capture.

After the prison break at Eastham, the gang, now composed of Bonnie and Clyde, Raymond Hamilton, Henry Methvin, and Joe Palmer, continued committing robberies and stealing cars throughout Texas. Hamilton contacted Mary O'Dare, the wife of a former gang member, who agreed to join them as his mistress. Near the end of February 1934, the gang, numbering six, converged on Lancaster, Texas. With Methvin as a lookout, Clyde and Hamilton entered a bank with a sawed-off shotgun and a pistol. Clyde ordered the bank's manager to open the safe. Hamilton collected all of the cash from the safe and from the tellers' drawers, and the two men escaped through a side door. As soon as they were gone, the bank official contacted police, who determined that the descriptions fit Clyde Barrow and Raymond Hamilton.

In this robbery, the gang had pulled off one of their biggest hauls, just over $4,000. The three men joined up with the rest of the gang, and they all drove out of state. On this trip, tempers flared. Clyde observed Hamilton pocketing some of the cash before it had been divided. Bonnie did not like Mary O'Dare or her habit of flirting with all of the men in

BIOGRAPHY OF FRANK HAMER

Frank Hamer was born March 17, 1884, in Fairview, Texas. As a young man, he worked with his father as a blacksmith and as a cowboy on a Texas ranch. During his time as a cowboy, he assisted in capturing a horse thief, impressing the local sheriff, who recommended Hamer to the Texas Rangers. In April 1906, Hamer joined the Rangers, becoming Senior Ranger Captain in 1921. In 1932, at the age of 48, Frank Hamer retired from the Texas Rangers. After Bonnie and Clyde killed one prison guard and wounded another during the Eastham Prison Farm escape, the Texas Prison System, in 1934, appointed Hamer as special investigator with the responsibility of finding the couple. After three months on the job, Hamer and other law enforcement officers ambushed and killed Bonnie and Clyde near Arcadia, Louisiana. His success in this position earned him a great deal of public recognition, and Hamer was honored by the U.S. Congress. He finally retired from the Texas Rangers in 1949 and died in July 1955 in Austin, Texas. Years after his death, Hamer's wife, Gladys, and his son, Frank Jr., sued the producers of the 1967 movie, *Bonnie and Clyde,* arguing that the movie's negative portrayal of Hamer constituted defamation of character. They won an out-of-court settlement.

Source: http://www.texasranger.org/halloffame/HOF.htm

the gang. This conflict reached a breaking point after the Lancaster bank robbery. Clyde and Bonnie left Hamilton and O'Dare in Indiana and returned to Texas with Henry Methvin.

As Easter approached, the couple returned to the Dallas area. On Easter Sunday, April 1934, Bonnie, Clyde, and Methvin napped in their car on a highway near Grapevine, Texas. Police had been assigned to patrol the area for speeders, and three motorcycle officers noticed the parked car. Bonnie woke up and alerted Clyde that the police were approaching. He told Methvin, "Let's take them," implying a kidnapping. Methvin, who had only been with the couple a short time and was not familiar with their habit of kidnapping police, assumed that Clyde meant to begin shooting. He opened fire, killing one officer instantly and severely wounding another, who died on his way to the hospital. The three sped away from the scene, avoiding capture, but this incident further aroused law enforcement.

After the death of the two officers near Grapevine, the captain of the highway patrol also swore that he would find and punish those responsible. He had heard rumors about Hamer's new job and contacted him. He tried to persuade Hamer to include one of his men in the plan. Though he preferred to work alone, Hamer eventually agreed, and highway patrol officer Manny Gault, also a former Texas Ranger, joined up. Hamer and Gault recognized the circular traveling pattern that Bonnie and Clyde favored, from Dallas north through Oklahoma and Kansas, east into Missouri, south to northern Louisiana, and back to Dallas. They concluded that they would have to stop the couple somewhere along that circle.

The tracking party expanded to four when Simmons recognized that Hamer and Gault would not be able to identify Bonnie and Clyde on sight. He contacted Dallas police for

assistance, and they assigned two officers, Bob Alcorn, who knew Bonnie and Clyde, and Ted Hinton, who was familiar with the Barrow family. The four men discussed the possibility of gaining help from a gang member in exchange for clemency. They settled on the family of Henry Methvin, who lived in the town of Arcadia in northeastern Louisiana, a spot on the Barrow gang's traveling circle. They contacted the local sheriff, who set up a meeting between Hamer and Henry Methvin's father.

Hamer offered Methvin's father a deal. In exchange for information about where the couple would be at a certain time, the governor would write a letter giving Methvin a full pardon. Over the next few days, the gang was spotted in various towns in Texas and Oklahoma. It had been raining for several days, and outside of Commerce, Oklahoma, the gang's car became stuck in the mud. Unable to wave down a passing car, the group was still struggling to free the car when Chief of Police Percy Boyd and a constable, Cal Campbell, arrived. A gun battle ensued. The officers' shots narrowly missed Clyde, but the gang's gunfire did not miss. Both Boyd and Campbell were seriously wounded, and Campbell died at the scene. Luckily for the gang, a local trucker, Charles Dobson, had heard the shooting and drove toward the scene. Another motorist, Jack Boydston, also appeared. At gunpoint, Clyde ordered the two to use the truck to haul their car out of the mud. Clyde and Methvin forced Chief Boyd, who had suffered a severe head wound, into their car, and they sped away. Boydston and Dobson alerted local police, who determined that the killers were Bonnie and Clyde and began a search involving both police cars and a plane. However, law enforcement lost their trail.

During the chase, Bonnie and Methvin bandaged Chief Boyd's head wound, and Boyd tried to have a friendly conversation with his kidnappers. Clyde claimed that they had had nothing to do with the murders of the two highway patrolmen near Grapevine, and Bonnie asked Boyd to tell the world that she did not smoke cigars. She blamed reporters for spreading that lie about her after the joke pictures of the gang had been discovered in Joplin. Eventually, the gang arrived in Fort Scott, Kansas. Outside of town, the gang released Boyd, who walked back to Fort Scott and told his story to local police and reporters.

THE AMBUSH

Someday they'll go down together
And they'll bury them side by side
To few it'll be grief, to the law a relief
But it's death for Bonnie and Clyde.

—"The Story of Bonnie and Clyde,"
by Bonnie Parker (Milner, 1996)

Throughout April, Bonnie and Clyde eluded police. On April 29, 1934, the gang stole a nearly new, tan-colored Ford V-8 sedan belonging to Jesse and Ruth Warren of Topeka, Kansas. The next day, Bonnie, Clyde, Methvin, and Joe Palmer robbed a Kansas bank and got away with nearly $3,000. Palmer again decided to leave the gang, and Bonnie, Clyde, and Methvin returned to Dallas. They set up a meeting with the Barrow and Parker families. At this meeting, Bonnie requested that her family take her home when she died rather than letting her go to a funeral parlor. She also gave her mother a poem she had written called "The Story of Bonnie and Clyde," in which she foretold Clyde's and her

deaths together. This was the last time the families would see the couple alive. Bonnie and Clyde headed toward Louisiana.



Figure 7.2 The bullet-riddled automobile in which Clyde Barrow and Bonnie Parker were shot to death by Texas Rangers. Courtesy of the Library of Congress.

On May 19, 1934, Hamer's posse arrived in Shreveport, Louisiana, with heavy firepower. Coincidentally, Bonnie, Clyde, and Henry Methvin were also in town. They had been staying at a cabin with Methvin's father and had gone into town for lunch. While Bonnie and Clyde waited in the car, Methvin went in to place their orders. As they were waiting, Clyde noticed a police car making a routine patrol and sped away, leaving Methvin inside the café. Having planned a rendezvous point in case they got separated, Methvin left the café and hitchhiked back to his father's home. He told his father about the meeting, and his father passed the information along to the police, upholding his part of the deal. The next morning, Hamer and his group heard about the strange behavior of the café customers. The waitress identified Methvin as her customer. Hamer also got word that the elder Methvin had passed along important information about a meeting between his son and Bonnie and Clyde that would take place near Arcadia, Louisiana. The four men packed and drove to Arcadia to set up the ambush.

When Hamer's group arrived in Arcadia, they were joined by the sheriff, Henderson Jordan, and his deputy, Prentiss Oakley. The six men drove to the meeting point and staked out their positions overnight. The next morning, May 23, 1934, Methvin's father arrived, parking his truck on the side of the road. He removed the front tire and left the spare lying on the road to make it appear as if he needed assistance. Then, he joined Hamer's group in the trees. Bob Alcorn spotted the tan Ford approaching and identified the couple. Clyde recognized Methvin's truck and slowed. He then saw the officers aiming their rifles and reached for his gun. Hamer's group opened fire. As the car was riddled with bullets, Clyde's foot slid off the brake, and the car rolled off the road. The posse continued to fire until Hamer signaled the men to stop. They approached the car cautiously and observed the slumped, bloodied bodies of Bonnie and Clyde.

After ensuring that his son was not in the car with the couple, Ivan Methvin fixed his truck and left. Hamer instructed members of the posse to arrange for a tow truck and the coroner to respond to the scene. Hinton, another member of the posse, filmed the scene with a 16-millimeter movie camera. Hamer began an inventory of the car's contents and found 15 sets of license plates, three Browning automatic rifles, a shotgun, 11 pistols, a revolver, and more than 2,000 rounds of ammunition (Roth, 1997).

The public heard about the deaths quickly. Local farmers who had heard the gunfire arrived at the scene. In nearby Arcadia, a member of the posse found the coroner, Dr. James L. Wade, and asked him to return to the scene to rule on the cause of death. Dr. Wade called his wife to let her know he would be late for lunch, and the operator, who had stayed on the line and overheard the news, quickly spread the word throughout town. People immediately drove out to the scene. The operator also called the local newspaper, which sent the story out to the rest of the nation. As the word spread, a reporter

called Bonnie's mother, asking if she had heard that police had killed Bonnie and Clyde in Louisiana. Other reporters told Clyde's family the news, while still others contacted everyone who had been involved in the crime spree. Some talked with former gang members W.D. Jones and Raymond Hamilton. Others found Bonnie's husband, Roy Thornton. Reporters in Oklahoma talked with Chief Boyd, who had been kidnapped by the gang only weeks earlier.

At the scene, local townspeople began collecting souvenirs, including shell casings, pieces of glass from the car, pieces of bloody clothing, and locks of hair. One man even attempted to cut off Clyde's left ear. The number of people at the scene made Dr. Wade's work extremely difficult. Eventually, the tow truck arrived, and the sedan was towed into town in a procession that included police cars and onlookers. On its way, the caravan passed a high school, and students poured into the streets to look into the sedan.

Eventually, the parade pulled in front of Conger's Furniture Store and Funeral Parlor in Arcadia. The bodies were carried in amid the gaping crowd and taken to a small corner that was the mortuary. Local police wanted to put the bodies on display to give the large and increasingly aggressive crowd what it wanted, and Dr. Wade was hurried through his work. Carroll Rich (1970) published Dr. Wade's autopsy notes, in which he noted three tattoos on Clyde's body and the missing toes on his left foot. Bonnie's autopsy was performed second and was more rushed. He noted Bonnie's tattoo of the name *Roy* and a wedding ring as well as the extensive scars on her legs that had resulted from the car crash a year earlier. Dr. Wade concluded that both Bonnie and Clyde had died as a result of multiple gunshot wounds. A local photographer took pictures of the bodies, selling them to the public for $5 each and to newspaper reporters for $50. After a hurried cleaning and embalming, the couple was covered to the neck with white sheets and rolled into the furniture store for public viewing. A line of people filed by the bodies for nearly six hours.

Clyde's father arrived that afternoon with an ambulance to take his son's body back to Dallas. The hearse to transport Bonnie's body arrived later. In Dallas, neither of Bonnie's last wishes, spoken to her mother and immortalized in her poem, was fulfilled. Their bodies were taken to different funeral homes, where thousands lined up to see their caskets, not home as she had asked. The couple was also not buried together. Bonnie's mother said that Clyde had had her in life, but she would have Bonnie now. They were buried in separate services in separate cemeteries, and Clyde was buried beside his brother Buck. At Clyde's funeral, an airplane dropped a wreath of flowers on his grave. In the four days between the ambush and their burial, newspapers flew off the shelves.

THE FOLKLORE OF BONNIE AND CLYDE

> *They're young. . . they're in love. . . and they kill people.*
>
> —Ad for *Bonnie and Clyde,* 1967 (Hoberman, 1998)

Throughout Bonnie and Clyde's crime spree, the media faithfully reported on their activities, occasionally aided by the writings and poems that Bonnie sent to newspapers for publication. Some refer to Bonnie and Clyde as the world's most-photographed gangsters. After the ambush at Joplin, Missouri, the police found a roll of pictures taken of the gang. These photos soon appeared in the newspapers. The most famous of these photographs includes a picture of Bonnie in a long, dark-colored dress and beret with one foot perched on the bumper of their car, clutching a pistol and smoking a cigar. From this

picture, Bonnie was referred to repeatedly in newspaper accounts as Clyde's "cigar-smoking gun moll" (Treherne, 1985, p. 120). Bonnie disliked this reference. She, in fact, hated cigars and only smoked cigarettes. In another picture, Bonnie holds a shotgun on Clyde. In both of these, Bonnie holds weapons, and this contributes to the image of her as an active participant in the murderous activities. However, members of the Barrow gang interviewed after the deaths of Bonnie and Clyde said that Bonnie never liked guns or fired one.

Cartoonists of the time also weighed in on the events. A cartoon in the April 9, 1934, edition of the *Dallas Journal* depicted law enforcement as a confused sheriff holding a gun and baton, head reeling as he tries to catch Bonnie and Clyde's car jumping in and out of holes in the ground (Treherne, 1985, p. 187). The image clearly demonstrated the gang's knack for escaping very close calls and law enforcement's frustration with trying to capture them. In the May 16, 1934, edition of the *Dallas Journal,* a cartoon appeared foreshadowing a violent end for the couple. The cartoon includes a drawing of an electric chair with a "Reserved" sign hanging on the wall behind it and the inscription "Clyde and Bonnie" (Treherne, 1985, p. 198). Only a week later, the couple would die at the hands of law enforcement.

After the couple's death, the government, particularly the Bureau of Investigation (later the Federal Bureau of Investigation), was determined to portray the pair negatively. A book on gangster crime published in 1936 with a foreword by J. Edgar Hoover stated: "not a kind word may truthfully be said of Bonnie Parker or her mate, Clyde Barrow. They were physically unclean. The woman boasted that she never took a bath" (Treherne, 1985, p. 229). Meanwhile, the Barrow and Parker families were equally as determined to tell their side of the story. Published in 1934, a book based on the stories of Bonnie's mother and Clyde's sister describes two attractive and charming individuals driven to a life of crime by the harassment and unfair treatment they received from the law.

Soon, however, public attention turned to more pressing matters: recovery from the Depression, the rise of Hitler, and an impending world war. As Robertson (2002) points out, the couple languished in the "dusty backroom of the national memory." However, some media attention still focused on the story of Bonnie and Clyde. In 1939, the movie *Persons in Hiding,* based on a book written in collaboration with J. Edgar Hoover, was released. The goal was to dispel the public's sympathetic view of 1930s gangsters. The book and the movie are loosely based on the exploits of Bonnie and Clyde, portraying an attractive woman who longs for a glamorous life. She meets and marries a small-time criminal and turns him into a serious gangster. The movie was only moderately successful, and the government's propaganda did little to dispel the romantic image of Bonnie and Clyde.

Gun Crazy, released in 1950, tells the story of two people, Annie and Bart, who are obsessed with guns. They meet and begin their courtship as sharpshooting acts in a fair sideshow. Then, because of Annie's need for excitement and material possessions, the couple turns to a life of crime, committing bank robberies and murders. The film portrays Annie as dominating the relationship, taking sensual pleasure in shooting and killing, and forcing Bart to participate. This story is among the early versions to link sex and violence, especially in the story of Bonnie and Clyde. The phallic symbolism of the gun and its attractiveness to the female member (Bonnie) appeared in other stories as well. Additionally, the distorted image of Bonnie as the dominant member of the couple continued.

In 1958, *The Bonnie Parker Story* was the first movie to specifically depict the lives of Bonnie and Clyde (called Guy Darrow in the film). Bonnie's story begins as Guy/Clyde

shows her his machine gun. She is seduced and excited by their criminal adventures. The couple is joined by Guy/Clyde's brother, Chuck/Buck, and his girlfriend, who are shot by police. After this incident, Bonnie takes charge, organizing a prison break and taking up with a number of different men, including a handsome architect (Paul) who gives Bonnie a glimpse of the life she could have had. In the final scene, Bonnie and Guy/Clyde are killed in an ambush by police. This film further embellishes the image of Bonnie as the dominant partner and Clyde as a nearly impotent sidekick.

The story of Bonnie and Clyde was popularized most by the 1967 movie *Bonnie and Clyde,* directed by Arthur Penn and starring Faye Dunaway and Warren Beatty. Originally criticized as tasteless and grisly, the movie received enormous publicity and became a box office hit, receiving ten Oscar nominations. Hoberman (1998) notes that this movie represented a new style for Hollywood. In 1930, the Motion Picture Association of America's Production Code was revised to eliminate realistic violence in movies, stating that there could be no on-screen bleeding and that a gun and its victim could not appear in the same shot. The major concern of the industry was that viewers should not be seduced into siding with the criminals, so stories should not be told from the criminal's point of view. In 1966, this self-regulation was dismantled, and *Bonnie and Clyde* was among the first movies to take advantage of the change to a rating system.

In the Dunaway-Beatty movie, the title couple was portrayed sympathetically as both victims and offenders, which infuriated critics even as the movie fostered an emotional attachment among audiences to the charming, laughing pair. At the same time, the movie offered a negative depiction of law enforcement, appealing to a strong antiauthoritarian theme in the youth culture of the 1960s. Clyde and Bonnie were portrayed as Robin Hood and Maid Marian, beginning their bank-robbing career after meeting a poor farmer who had lost his farm to the bank. The image in the movie was that of Bonnie and Clyde as champions of the little people who were trapped into a series of violent confrontations. Critics noted that the danger of the movie lay in its claim to historical accuracy. In reality, there are notable inaccuracies in the movie version, from their first meeting to the rumor of Clyde's impotence to the crimes that they committed. However, through the enormous publicity and public support, critics were forced to recant their negative reviews.

Director Arthur Penn commented that the problem with most movies about violence was that they were not violent enough. He viewed the movie as a cautionary tale (Hoberman, 1998). Violence and sexuality are also intimately linked in the movie from the first view of Bonnie, naked in her bedroom, to her first meeting with Clyde, in which she caresses the barrel of his gun and recognizes the thrill and sexual excitement that he offers. Other themes in the movie, including changing positions of women and rebellious youth, also resonated with 1960s moviegoers. After its initial release, and the rerelease in 1968, the movie inspired fashion trends around the world, including calf-length skirts and berets for women, and fedoras and wide ties for men.

Since the smash hit of the 1967 movie *Bonnie and Clyde,* the story has continued to inspire musical and theatrical works, further cementing the couple's place in American history. ''Foggy Mountain Breakdown,'' the theme song from the 1967 movie, reached the top ten on the music charts. Musicians from Merle Haggard to Mel Tormé have told the story of Bonnie and Clyde in a variety of genres, including country, rock, and rap. British singer Georgie Fame used machine-gun fire as a backdrop to his song ''The Ballad of Bonnie and Clyde,'' which was banned in Norway and France (Hoberman, 1998). Today's musicians, including Tori Amos, Travis Tritt, and Eminem continue to invoke

the story of Bonnie and Clyde in modern-day versions. Additional movies influenced by the story include *Thelma and Louise, Natural Born Killers, Drugstore Cowboy,* and *Teenage Bonnie and Klepto Clyde.*

An unusual development in the legend is a musical version of the story (*Bonnie and Clyde: The Musical*). The musical premiered July 1, 2003, at the Guildhall School of Music and Drama in London. In addition, after touring the country as a carnival attraction, the Bonnie and Clyde death car and the shirt Clyde was wearing when he died remain on display at the Primm Valley Resort near Las Vegas. Over the years, the couple's names have been loaned to various attractions, including the Bonnie and Clyde Trade Days, a monthly flea market held near Arcadia, Louisiana. Gibsland, Louisiana, also holds the annual Bonnie and Clyde Festival, which includes an appearance by the car used in the 1967 movie and reenactments of a bank robbery and the ambush resulting in the couple's death.

Clyde was just an ordinary criminal, and his crimes were mostly ignored until he met up with Bonnie. She was the unique feature at a time when violent crime was becoming more common, and the combination captured the public's imagination. Throughout their crime spree and in the nearly 70 years since, public perception of the Barrow gang and their crimes has been shaped by the media coverage. Part of the allure of the story of Bonnie and Clyde is the image of the couple as star-crossed lovers. They were the Romeo and Juliet of the 1930s. Their deaths together and Bonnie's self-composed eulogy put a romantic spin on their violence. Later, Hollywood productions went even further and linked their violence to sexuality.

Movies and stories of Bonnie and Clyde imply that, like other outlaws, they were fighting a battle for the little people, robbing the banks that had contributed to the Great Depression and murdering law enforcement officers, symbols of the government. In reality, Bonnie and Clyde's crimes were committed primarily against ordinary citizens, such as John Bucher, a store owner; Howard Hall, a meat market manager; and Doyle Johnson, a man in the wrong place at the wrong time. Of the hundreds of robberies committed by the gang, only a few targeted banks. The story of Bonnie and Clyde has become larger than life, due in part to newspaper coverage at the time and in even larger part to Hollywood exaggerations.

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8

The Scottsboro Boys Trials: Black Men as "Racial Scapegoats"

JAMES R. ACKER, ELIZABETH K. BROWN, AND CHRISTINE M. ENGLEBRECHT

Scottsboro. The very name of this northern Alabama town evokes images of the racial, regional, and ideological conflicts that smoldered during the Great Depression and then exploded in the trials of nine black youths charged with raping two white women. The trials exposed glaring fault lines in the administration of Alabama justice and represented an indictment against courtrooms and cultural norms throughout the South. The youths' convictions and death sentences produced two landmark U.S. Supreme Court decisions, rulings that were especially noteworthy because of the justices' willingness to measure the fairness of state criminal trials against the demands of the federal Constitution. Through widespread and enduring news and mass media attention, the Scottsboro cases most conspicuously signified the bitter legacy of institutionalized racism and class oppression, and shattered the myth that a nation's entire people could fully participate in the American Dream.

The Alleged Crimes

In 1931, as the country reeled in the economic crisis ushered in two years earlier by the collapse of the stock market, it was not uncommon for itinerants in search of work to hop the trains that crisscrossed America. A Southern Railroad train left Chattanooga, Tennessee, on March 25 of that year, headed west for Memphis on a route that snaked through northern Alabama. Scottsboro, a town of 3,500 people and the Jackson County seat, lay on the rail line, nearly equidistant from Stevenson to the east and Paint Rock to the west. Four traveling companions, all young Negroes,[1] had boarded the train in Chattanooga, hoping to find jobs in Memphis: Haywood Patterson, 18; Eugene Williams, 13; Andy Wright, 19; and Andy's younger brother, Roy Wright, 13. Many others had hitched rides on the 42-car train as it headed west through Alabama, including five other black youths who lived in scattered parts of Georgia: Olen Montgomery, 17; Clarence Norris, 18; Ozie Powell, 16; Willie Roberson, 17; and Charles Weems, 19. The Georgia teenagers did not

know one another, nor did they know the four Chattanooga youths (Carter, 1969, pp. 3–6; Geis and Bienen, 1998, p. 49; Goodman, 1994, pp. 4–5; Linder, 2004a). The nine would soon be irretrievably linked and thereafter identified collectively as the Scottsboro Boys.

Two young white women, 21-year-old Victoria Price and 17-year-old Ruby Bates, had sneaked into a boxcar on the same train. Both women were returning to their homes in Huntsville, Alabama, from Chattanooga, where they had unsuccessfully searched for work. By the time the train pulled out of Stevenson, Alabama, at least some of the black youths crossed paths with several young white men who were also on board. A fight broke out and all of the white youths except one were thrown or jumped from the train. The jettisoned youths made their way by foot to Stevenson and complained to the stationmaster. By this time, the train already had passed through Scottsboro and was approaching Paint Rock, some 40 miles west of Stevenson. The Stevenson stationmaster forwarded word that a gang of blacks had assaulted the young white men. A posse of white men were quickly deputized, armed themselves, flagged down the train at Paint Rock, and arrested all of the blacks they could find. The nine Scottsboro Boys were handcuffed, tied together with a rope, and transported in a flatbed truck to the Scottsboro jail.

Not until arriving in Scottsboro did the nine young men learn that Victoria Price and Ruby Bates had accused them of rape. The origins of the charge were somewhat obscure. After the two women were removed from the train in Paint Rock, Price either volunteered that she and Bates had been sexually assaulted by the Negroes or she assented to a deputy sheriff's inquiry that had made that assumption. Price elaborated that six of the young men had raped her at knifepoint, and that another half-dozen black youths had assaulted Bates. The women were whisked away for a medical examination performed by two local physicians. A frightened Roy Wright accused the other young men of committing the crimes while insisting that he, his brother, and his Chattanooga friends were innocent (Carter, 1969, p. 16). The other arrested youths either maintained silence or denied the charges, which brought immediate retribution from their captors (Norris and Washington, 1979, p. 21). At least some of the Scottsboro Boys were unlikely participants in either a fight or a sexual



Figure 8.1 Miss Juanita E. Jackson visiting the Scottsboro boys, January 1937. Courtesy of the Library of Congress.

assault. Olen Montgomery, who claimed to be traveling alone on the train, was blind in one eye and had extremely poor vision in the other. Willie Roberson suffered from both syphilis and gonorrhea, which resulted in swelling and painful lesions about his genitals and caused him to hobble with the aid of a cane (Carter, 1969, p. 6).

As news of the outrageous crimes spread, a threatening mob gathered outside of the Scottsboro jail. Fearing a lynching, Jackson County Sheriff M. L. Wann placed an urgent call to the governor's office. Governor Benjamin Meeks Miller responded by dispatching armed troops to Scottsboro from the nearest National Guard post (Carter, 1969, pp. 7–10). The Alabama Supreme Court later summarized the events of March 25, 1931:

> If the two girls, Victoria Price and Ruby Bates, are to be believed, the defendants were guilty of a most foul and revolting crime, the atrocity of which was only equaled by the boldness with which it was perpetrated.... [I]n many respects [the details are] too revolting, shocking, to admit of being here repeated. (*Powell v. State,* 1932, p. 204)

VICTORIA PRICE (1911–1982)

Victoria Price was born in 1911 in Huntsville, Alabama. Price went to work at a Huntsville cotton mill at the age of 10. She soon became the sole provider for herself and her mother, who had suffered an injury while working. Price was twice married during her adolescent years, and was reported to have turned to prostitution to supplement her income. In 1931, at the height of the Depression, Victoria and her friend Ruby Bates were riding the rails along with many others on a freight train bound for Huntsville from Chattanooga, Tennessee. In the trials that followed her accusations that nine black youths had raped her and Bates, Price presented a vivid description of the alleged attack. She became the subject of unsympathetic characterizations by the defense, who called into question her integrity and virtue. In 1937, having stuck to her story of the alleged rapes through numerous trials, Price faded from public view. Price returned to the public spotlight in 1976 when she filed a lawsuit against the National Broadcasting Corporation (NBC) for airing a made-for-TV movie, *Judge Horton and the Scottsboro Boys,* which she felt misrepresented her character. In the course of that lawsuit, Price reiterated on the witness stand her version of the events of March 25, 1931. Ms. Price was seeking $6 million for libel and invasion of privacy; her case ultimately was settled for an undisclosed amount.

Source: PBS Web site. Accessed November 10, 2006, from http://www.pbs.org/wgbh/amex/scottsboro/peopleevents/p_price.html

IN THE COURTS: THE LEGAL SAGA

The Jackson County grand jury quickly convened. Indictments returned on March 31 charged each of the boys with rape, a crime punishable by ten years' imprisonment to death, at the discretion of the trial jury. The nine defendants appeared in court that same day for arraignment. Acting pursuant to Alabama law, which required the appointment of counsel for indigents accused of capital crimes, Judge Alfred E. Hawkins announced that he was assigning all seven licensed attorneys in Scottsboro to represent the boys (Carter, 1969, p. 17; *Powell v. Alabama*, 1932, p. 49). Not guilty pleas were entered on the boys' behalves, and their trials were scheduled to begin the following week, on April 6. As the trial date approached, however, three of the originally assigned lawyers were assisting in the prosecution of the cases, while others had withdrawn their services.

Stephen Roddy, a Chattanooga attorney hired by concerned citizens from that city, appeared in court on April 6, but insisted that he was unfamiliar with Alabama law, that he had not officially been retained for the case, and that he was unprepared to represent

the boys. A Scottsboro lawyer, Milo Moody, volunteered to represent the defendants in conjunction with Roddy. Neither lawyer had investigated the charges, and they had met with the boys for barely half an hour before the trial. Roddy had a drinking problem and already smelled of alcohol when the trial commenced. Moody was approaching 70 years of age and was notoriously forgetful (Carter, 1969, pp. 17–23; Geis and Bienen, 1998, p. 50; Norris and Washington, 1979, p. 22). Judge Hawkins authorized them to proceed on the boys' behalves, "[a]nd in this casual fashion the matter of counsel in a capital case was disposed of" (*Powell v. Alabama*, 1932, p. 56).

The trials progressed in lightning fashion, with predictably disastrous consequences for the defendants. Although Roddy and Moody did not object to the boys' being tried jointly, prosecutors elected to go forward in four separate trials, proceeding first against Clarence Norris and Charles Weems. Victoria Price, the principal prosecution witness, described the fight that had broken out between the black and white youths on the train, culminating with the white boys being thrown from the train. She identified Norris and Weems as among the six Negroes who had raped her in a gondola car filled nearly to the top with chert, or crushed gravel. The two physicians who had examined Price and Bates on their arrival in Scottsboro, shortly after the alleged assault, confirmed the presence of semen in their vaginas.

After the prosecution rested, Weems took the witness stand and admitted participating in the fight with the white boys, but denied seeing any women on the train, let alone having anything to do with Price or Bates. Norris then shocked defense counsel by testifying that Roy Wright had held a knife on the young women while the other Negroes, including Weems, took turns raping them. Norris maintained that he alone did not assault the women. Following the prosecution's closing argument and demand for the death penalty, the defense counsel elected to waive final arguments before the jury. The 12 white men serving as jurors then retired to deliberate on a verdict as jury selection began for the second trial (Carter, 1969, pp. 24–35).

The remaining trials unfolded with minor variations. All concluded by the end of the day on April 9. The verdicts were reported with chilling regularity as one trial gave way to the next. Eight of the Scottsboro boys were convicted of rape and sentenced to death. Because of his youthful appearance, Roy Wright had been prosecuted separately, in the last of the trials, and the solicitor had asked only for a sentence of life imprisonment. The 13-year-old Wright was convicted, but notwithstanding the solicitor's call for mercy, seven members of the jury insisted on sentencing him to death. The resulting lack of unanimity caused a mistrial to be declared in his case. The executions of the remaining defendants were scheduled for July 10, 1931 (Carter, 1969, pp. 35–48).

Shortly after being returned to jail at the conclusion of their trials, the boys were visited by lawyers from the International Labor Defense (ILD), the legal arm of the American Communist Party. Party leaders had seized on the Scottsboro trials as a cause that would help unite black and white workers in the communists' worldwide struggle to achieve political, economic, and social equality. "By publicizing the plight of the boys and defending them in court, the Party saw the chance to educate, add to its ranks, and encourage the mass protest necessary not only to free the boys but also to bring about revolution" (Goodman, 1994, p. 27). Discerning the potential significance of the case too late, the National Association for the Advancement of Colored People (NAACP) engaged in an awkward and eventually losing tug of war with the ILD over the boys' legal representation. To the dismay of the NAACP's leaders, the ILD funded and assumed control over the

appeal of the rape convictions (Carter, 1969, pp. 51–102; Goodman, 1994, pp. 32–38; Van West, 1981, pp. 40–43). The scheduled executions were postponed while the eight death-sentenced boys were dispatched to Alabama's death row in Kilby Prison to await the outcome of their appeals (Norris and Washington, 1979, p. 47).

The Alabama Supreme Court wasted little time in affirming the convictions and death sentences (*Patterson v. State,* 1932; *Powell v. State,* 1932; *Weems v. State,* 1932). Only Eugene Williams's conviction was overturned by the state's high court, on the ground that he had not yet turned 16 at the time of the offense and thus fell within the exclusive jurisdiction of the juvenile court unless formally transferred for criminal trial (*Powell v. State,* 1932, pp. 211–213). Chief Justice John C. Anderson dissented from the decisions upholding the other defendants' convictions. He argued that community passions had been stirred to a "fever heat" by the crimes, which, he opined, were "of such a revolting character as to arouse any Caucasian county or community" (*Powell v. State,* 1932, p. 214). This atmosphere, combined with the "rather pro forma" representation provided by appointed counsel, led the chief justice to conclude that the defendants had not been given a fair trial (*Powell v. State,* 1932, pp. 214–215).

CLARENCE NORRIS (1912–1989)

Clarence Norris was born in 1912 in Georgia. With only a second-grade education, Norris worked various jobs before boarding a train the morning of March 25, 1931, in Chattanooga, Tennessee, that was bound for Memphis, where he hoped to find better work. When the Scottsboro Boys were accused of raping two white girls, Norris originally testified that while he was innocent, his fellow defendants had, in fact, committed rape. Norris later recanted those statements and reported that he had been intimidated and threatened before the trial in offering such testimony. While Norris was initially found guilty of rape, his conviction was later overturned. Norris was again convicted of rape in subsequent trials, but his sentence of death was commuted to life in prison. After several tumultuous years in prison (Norris was known to get into fights while incarcerated), he was paroled and, in violation of his parole conditions, moved to New York. He spent two more years in prison for the parole violation before being paroled again. After regaining his freedom, Norris again violated parole by moving to Cleveland and then to New York City. Former defense attorney Samuel Leibowitz helped Norris find a job in New York City in the mid-1950s, despite the fact that he was still a fugitive because of his parole violation. During the 1960s, with the help of the NAACP, Norris began seeking a pardon from the State of Alabama. His quest was finally successful in 1976, when Governor George Wallace officially recognized his innocence by issuing a pardon. Before he died, Norris published a book about his life and legal ordeals. The book, co-authored by Sybil D. Washington, is entitled *The Last of the Scottsboro Boys*.

Source: The Trials of the Scottsboro Boys Web site. Accessed November 28, 2006, from http://www.law.umkc.edu/faculty/projects/FTrials/scottsboro/scottsb.htm. See also *New York Times* Obituary, 1989.

At the Supreme Court

The ILD retained Walter Pollak, a prominent expert in constitutional law, to pursue the cases in the U.S. Supreme Court. The conservative majority of the nation's high court was known during this era for its unwillingness to approve of President Roosevelt's New Deal reforms, and was almost equally reluctant to become involved in matters traditionally reserved for state law. The justices nevertheless were unable to condone the boys' treatment in the Alabama courts. In a seven to two ruling, the Court reversed the convictions and vacated the death sentences in the seven cases joined for decision in *Powell v. Alabama* (1932).

Justice George Sutherland's majority opinion concluded that the late resolution of appointment of counsel, and the consequent deficiencies in investigation and representation in these capital cases, denied the defendants fundamental fairness as guaranteed by the due process clause of the 14th Amendment. *Powell v. Alabama* had ramifications far beyond reprieving the seven condemned Scottsboro boys. The Court's decision emphatically signaled that the U.S. Constitution imposed limits on how state criminal trial courts would be allowed to conduct business. Powell laid the foundation for the Court's landmark ruling three decades later in *Gideon v. Wainwright* (1963), that the Sixth Amendment entitles indigent defendants charged in state courts with serious crimes to representation by court-appointed counsel (Heller, 1951, pp. 121–125; Lewis, 1964; Mello and Perkins, 2003, pp. 348–355).

Retrial

In preparation for the boys' retrial, the ILD contacted Samuel Leibowitz, a New York City attorney widely regarded as the best criminal defense lawyer of his day. Leibowitz agreed to take on the cases, but wary about the Communist Party using the trials for ideological purposes, refused payment for his services and insisted that he be allowed to work independently of the ILD. After a change of venue was secured to Decatur, 50 miles west of Scottsboro in Morgan County, the new trials were slated to begin March 27, 1933. Leibowitz immediately moved to quash the rape indictments returned by the Jackson County grand jury, and also challenged the Morgan County jury venire. Both motions were based on the systematic exclusion of blacks from the respective jury pools, which Leibowitz attempted to demonstrate through detailed presentation of evidence. Judge James E. Horton, Jr., denied the motions, and the prosecution elected to proceed against Haywood Patterson in the initial trial (Carter, 1969, pp. 181–202).

As if to affirm the Supreme Court's insistence in *Powell v. Alabama* about the importance of competent trial counsel in safeguarding defendants' rights, Leibowitz's entry into the case shed dramatic new light on the rape allegations. During his pounding cross-examination of Victoria Price, Leibowitz introduced records of her prior convictions for adultery and fornication. He portrayed Price as a prostitute who frequented hobo camps and had engaged in sexual relations with a companion, Jack Tiller, shortly before her alleged rape on the train. Following up with one of the Scottsboro doctors who had examined Price just an hour and a half after she was removed from the train, Leibowitz established that Price had appeared calm and had experienced no vaginal bleeding or tearing. She had only a few superficial cuts and small bruises on her arms and back, surprising in light of her story that she had been repeatedly assaulted while lying on top of jagged gravel. The doctor also had detected only a small amount of semen in her vagina—consistent with her having had intercourse with Tiller the previous day, and extraordinary in the face

of her claim that she had been raped just a few hours before by six men. Moreover, the sperm in the semen sample were immotile, which the doctor testified was unusual because sperm typically remained alive 12 hours to two days following intercourse (Carter, 1969, pp. 204–210).

When the defense opened its case, Leibowitz aggressively attempted to establish Patterson's innocence. Several of Patterson's traveling companions testified that they had neither seen nor had any interactions with Price on the train. Contrary statements that some of the boys had made during the earlier trials were attributed to fear inspired by their predicament and threats leveled by the authorities. Patterson testified and maintained his innocence. Leibowitz then examined Lester Carter, who described how he and Ruby Bates had engaged in sexual intercourse in a hobo camp on March 23, 1931, while Jack Tiller and Victoria Price had similarly had sexual relations. But the defense's most important witness was Ruby Bates, who made a surprise appearance at the trial. In response to Leibowitz's questioning, Bates recanted her story of being raped. She confirmed Carter's account that the two of them had had sexual intercourse on March 23,

SAMUEL S. LEIBOWITZ (1893–1978)

Samuel Leibowitz, whose original family name was Lebeau, settled in New York City at age 3 when his parents emigrated from their native Romania to escape growing anti-Semitism. As a child he developed a passion for baseball and developed a penchant for debate, acting, and singing with a voice that matured into a rich baritone—talents that would serve him well throughout his legal career. He graduated from Cornell Law School in 1915, achieved the highest score among the more than 600 law school graduates who sat that summer for the New York Bar Exam, and quickly distinguished himself as New York City's top criminal defense attorney. Over time, his reputation rivaled that of Clarence Darrow, and his clients included the infamous gangster Al Capone among many other notables. In the 78 murder cases in which he appeared as defense counsel, Leibowitz compiled a remarkable record of 77 not guilty verdicts and one hung jury. He was asked by the International Labor Defense to represent the Scottsboro Boys in January 1933 and agreed shortly thereafter to take on their defense. The Scottsboro cases demanded Leibowitz's attention for parts of the ensuing four and one-half years, and he remained in touch with several of his clients for decades thereafter. Leibowitz ended his private law practice in 1941, when he was appointed as a trial judge in Brooklyn. Ironically, as a judge Leibowitz was an ardent supporter of the death penalty and was known for his law-and-order disposition. He remained on the bench until 1969. He died nine years later at age 84.

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as did Price and Tiller. Bates then underwent a grueling cross-examination that called attention to her fine clothes and suggested that both her clothes and her testimony had been bought while she had taken refuge in New York City (Carter, 1969, pp. 219–234; Linder, 2004b).

When the attorneys delivered summations to the jury, Morgan County Solicitor Wade Wright vigorously defended the prosecution's case and ripped into Leibowitz's attempt to discredit Victoria Price and her testimony. Solicitor Wright challenged the 12 white jurors from his community: "Show them, show them that Alabama justice cannot be bought and sold with Jew money from New York" (Carter, 1969, p. 235). Leibowitz's furious motion for a mistrial was denied. The jury began its deliberations at one o'clock on a Saturday afternoon. It returned to the courtroom at ten o'clock Sunday morning with a verdict: Haywood Patterson was guilty of rape. His punishment was death.

The verdict was greeted by large demonstrations in New York and other northern cities (Carter, 1969, pp. 243–245). Unable to contain his contempt, Leibowitz explained the trial's outcome to the New York press. Referring to the jurors, he exclaimed, "If you ever saw those creatures, those bigots whose mouths are slits in their faces, whose eyes popped out at you like frogs, whose chins dripped tobacco juice, bewhiskered and filthy, you would not ask how they could do it" (Goodman, 1994, p. 148, quoting the *New York Daily News,* April 10, 1933). In retrospect, Leibowitz's frontal assault on Victoria Price during Patterson's trial appeared to have backfired. "Too late the chief defense attorney realized that Mrs. Price had become a symbol of white Southern womanhood" (Carter, 1969, p. 210). Southern newspapers excoriated Leibowitz for the "brutal manner" in which he had questioned Price (Carter, 1969, p. 210, quoting Sylacauga, Alabama, *News,* April 7, 1933).

Conceivably, a local defense without the triple disadvantage of being radical, Jewish, and "northern" could have gained a compromise such as life imprisonment, but the jury's loyalty to its white caste could only be proved unequivocally by a guilty verdict. Whether Haywood Patterson was guilty or innocent was, at most, a peripheral question (Carter, 1969, p. 242).

Judge Horton ordered a delay in the remaining trials to allow the clamor surrounding Haywood Patterson's conviction and sentence to subside and to consider Leibowitz's motion to set aside the verdict. Meanwhile, thousands of marchers supporting the Scottsboro Boys descended on Washington, DC. The NAACP and ILD reached an uneasy truce and agreed to work cooperatively to defend the boys; and even southern papers, including Alabama's *Birmingham Post,* began questioning the charges (Carter, 1969, pp. 243–254). On June 22, 1933, more than two months after the conclusion of Patterson's retrial, Judge Horton stunned prosecutors and defense counsel alike by announcing in a carefully detailed ruling that the evidence failed to support the jury's verdict. He ordered that Patterson be granted a new trial (Norris and Washington, 1979, pp. 63–78; *Street v. National Broadcasting Co.,* 1981, pp. 1237–1246 [reprinting Judge Horton's order]). Hailed by some as a hero in the Scottsboro saga (Van West, 1981, pp. 44–46) but reviled by others, Judge Horton lost his bid for reelection the following year (Carter, 1969, p. 273). Much later, while reflecting on the Scottsboro cases, Horton recited a Latin phrase to explain his decision: *fiat justicia ruat colelum*—"let justice be done though the heavens may fall" (Linder, 2004c).

The next round of trials began November 20, 1933, in Decatur before a new judge, William Washington Callahan. Callahan repeatedly clashed with Leibowitz, interrupted

JUDGE JAMES E. HORTON, JR. (1878–1973)

James E. Horton, Jr., presided over the initial retrial in the Scottsboro Boys case. He set aside Haywood Patterson's conviction and death sentence, ruling that they were not supported by the evidence. Horton was the son of a judge; his father also was a former slave owner and member of the Confederate Army. He was born and raised in Limestone County (Athens), Alabama, which bordered Morgan County, the site of Patterson's and all subsequent retrials. Abandoning his original aspiration to become a physician, Horton earned a law degree from Tennessee's Cumberland University in 1899. After spending several years in private law practice, he was elected to the Alabama Legislature, and in 1922 won election as Circuit Court Judge. He was in the fifth year of his second six-year term as judge in 1933 when he presided over Patterson's trial. He stood a lanky 6'2'' and was frequently described as ''a Lincolnesque figure,'' because of his striking resemblance to the former president. He had determined not to seek a third judicial term following the uproar over his decision to grant Patterson a new trial, but reconsidered when presented with a petition signed by all members of the Athens bar urging him to run. He was defeated handily in the 1934 election, on the same day that Thomas Knight, Jr., the state Attorney General who led the prosecution of the Scottsboro Boys, was elected Lieutenant Governor of Alabama. Horton subsequently resumed practicing law and tended to his substantial farm. He remained robust and without regret or reservations about his courageous but personally costly decision to award Patterson a new trial until the time of his death, at age 95. Following his death, county officials installed a plaque in the Athens courthouse, inscribed with portions of Judge Horton's jury instructions in the case that would mark his place in history. ''[T]he law,'' said the judge, ''knows neither native nor alien, Jew nor Gentile, black nor white. . . .We have only to do our duty without fear or favor.''

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his questioning of witnesses, hurried the cases along, and indicated in his rulings and demeanor his antagonism to the defense efforts. He denied Leibowitz's renewed motions to quash the Jackson County indictments and the Morgan County jury venire. The judge rejected the former motion after inspecting the Jackson County grand juror rolls and disputing Leibowitz's contention, supported by the testimony of a handwriting expert, that the names of several Negroes had fraudulently been entered after the fact to make it appear as if they had been considered by the jury commissioners. Judge Callahan also refused to allow Leibowitz to interrogate Victoria Price about her sexual activity prior to the alleged rapes—which was crucial to support the defense theory regarding the source

of the semen detected during her medical examination—or to introduce Lester Carter's related testimony (Carter, 1969, pp. 274–293). Following the presentation of evidence, the judge's instruction to the jurors included the admonition that "[w]here the woman charged to have been raped, as in this case[,] is a white woman there is a very strong presumption under the law that she would not and did not yield voluntarily to intercourse with the defendant, a Negro" (Carter, 1969, p. 297). The validity of this premise notwithstanding, the defense, of course, had not built its case on consent, but rather disputed that any of the defendants had engaged in sexual relations with Price at all.

The trials of Haywood Patterson and, thereafter, Clarence Norris were conducted before Judge Callahan in this fashion. Following brief deliberations, the separate juries returned guilty verdicts and sentenced each defendant to death. Leibowitz secured a postponement of the remaining defendants' trials to allow the appellate courts to review Patterson's and Norris's convictions and resolve issues that were likely to recur in the ensuing cases. National protests erupted in the wake of these most recent verdicts, while the *Birmingham Post* and many other newspapers assailed Judge Callahan's handling of the trials (Carter, 1969, pp. 300–305).

The Alabama Supreme Court upheld the new convictions and death sentences on appeal. In doing so, it dismissed the argument that blacks had systematically been excluded from the grand jury and jury lists, concluding with dubious logic that their absence "would not, however, show discrimination, but selection only, and the exercise by the [jury] commissioners of their discretion" (*Norris v. State,* 1934, p. 563). The court dismissed Patterson's appeal without even reaching his claims of error, ruling that a filing deadline had been missed in the case (*Patterson v. State,* 1934). The U.S. Supreme Court once again agreed to review the state court holdings. During Liebowitz's oral argument, the justices took the extraordinary step of visually inspecting the juror lists that allegedly had been altered (*Norris v. Alabama,* 1935, p. 593, n. 1) and were visibly dismayed by what they saw (Goodman, 1994, p. 243; Kennedy, 1997, p. 176). In a second important ruling stemming from the Scottsboro proceedings, the justices overturned Norris's conviction because of Alabama's discriminatory jury selection procedures (*Norris v. Alabama,* 1935). The Court also vacated Patterson's conviction and remanded his case with the strong suggestion that the Alabama courts take corrective action notwithstanding the asserted missed filing deadline (*Patterson v. Alabama,* 1935).

Leibowitz continued to represent the boys, although his relations with the ILD had grown increasingly strained, especially after two ILD attorneys were caught offering to bribe Victoria Price to change her testimony (Carter, 1969, pp. 310–318). Following protracted negotiations, the ILD ceded control over the cases to a newly formed coalition, the Scottsboro Defense Committee, while the boys' cases returned to Judge Callahan's courtroom for retrial. A newly formed grand jury in Jackson County, which included a single black member, had returned new indictments against all nine of the Scottsboro Boys in November 1935.

Acknowledging the animosity that many of the locals harbored against him, Leibowitz took a backseat to Alabama attorney Clarence Watts when Haywood Patterson's fourth trial commenced on January 20, 1936. Judge Callahan quickly resumed hectoring the defense and again excluded evidence that the defense lawyers considered essential to cast doubt on Victoria Price's testimony. The new Morgan County solicitor, Melvin Hutson, pointedly reminded the trial jurors that they would have to go home and face their neighbors following their verdict. He requested the death penalty for Patterson as he

emphasized that Price "fights for the rights of the womanhood of Alabama" (Carter, 1969, p. 344). The jury once again consisted of 12 white men, as the dozen black venire members called under Morgan County's revised selection procedures either opted out of service or were challenged peremptorily by the prosecutor. The jurors' deliberations lasted the better part of a day. They returned to announce their verdict just as jury selection was being completed for Clarence Norris's trial. To no one's surprise, the jury foreman announced that Patterson had been found guilty. He then shocked the courtroom with the further announcement that the jury had fixed punishment at 75 years in prison, sparing Patterson the death penalty (Carter, 1969, pp. 346–347).

Although the conviction hardly represented a victory for the defense, the sentence was another matter. The *Birmingham Age-Herald* speculated that Patterson's case was "probably the first time in the history of the South that a Negro has been convicted of a charge of rape upon a white woman and has been given less than a death sentence" (Carter, 1969, p. 347, quoting *Birmingham Age-Herald,* January 24, 1936). As Norris's trial loomed, Judge Callahan announced an indefinite recess owing to the illness of the physician who had examined Victoria Price the day of the alleged crimes. Norris, Roy Wright, and Ozie Powell were handcuffed together and placed in the backseat of a sheriff's department vehicle to be transported back to the Birmingham jail. An altercation broke out during the drive. The sheriff characterized the affray as an escape attempt (Goodman, 1994, pp. 259–260), while Norris recounted that it had begun with an exchange of words and a deputy slapping Powell in the face (Norris and Washington, 1979, pp. 162–163). It was undisputed, however, that Powell stabbed the deputy in the neck with a knife that he had secreted on his person. In response, the sheriff, who was driving the car, shot Powell in the head. The bullet lodged in Powell's brain. Although he survived following emergency surgery, Powell "was never the same" (Norris and Washington, 1979, p. 166) following the shooting.

The Alabama Supreme Court affirmed Patterson's most recent conviction in June 1937 (*Patterson v. State,* 1937), barely a month before the remaining trials were to resume before Judge Callahan. Clarence Norris's trial began on July 15, with Clarence Watts again serving as primary defense counsel and Leibowitz playing a supporting role. Pursuant to Callahan's hurry-up procedures, the trial concluded the following afternoon, and the all-white jury returned a guilty verdict and fixed punishment of death. A devastated Watts was unable to continue, so Leibowitz took command as Andy Wright's trial commenced. Declaring that they were satisfied that Patterson and Norris had been the "ringleaders" in the rape, prosecutors conceded that they would not seek the death penalty against Wright. The trial resulted in another swift conviction, and Wright was sentenced to 99 years in prison. The prosecution similarly declined to pursue a capital sentence against Weems, whose trial an angry Leibowitz derided as a "travesty of justice." He railed to the jury that "It isn't Charley Weems on trial in this case, it's a Jew lawyer and New York State put on trial here by the [prosecutor's] inflammatory remarks" (Carter, 1969, p. 374). Weems's conviction followed, and the jury fixed his sentence at 75 years in prison.

Then, in rapid succession, the cases against the remaining defendants were resolved. Ozie Powell pled guilty to assaulting the deputy whom he had knifed; Judge Callahan imposed a 20-year prison sentence. He then dismissed the rape charge against Powell. The prosecution thereupon announced that it was dismissing the rape charges against Olen Montgomery, Willie Roberson, Eugene Williams, and Roy Wright. The lead prosecutor explained that the state was convinced that Roberson, crippled by venereal disease,

DID YOU KNOW?

The events described in Harper Lee's Pulitzer Prize winning book *To Kill a Mockingbird* were loosely based on the Scottsboro trials. While Ms. Lee was only a young girl at the time of the initial trials, aspects of the cases clearly affected the choices she made in her 1960 novel. The fictional trial of Tom Robinson in Ms. Lee's book focused on a similar crime, an alleged rape of a white woman by a black man, and was set during the same historical era (early 1930s) and place (Alabama) as the Scottsboro trials. Additional parallels can be drawn between the events of the Scottsboro trials and the fictional case in *To Kill a Mockingbird.* For example, Atticus Finch, Tom Robinson's lawyer in the book, was modeled after James Horton, who presided over the first of the retrials of the Scottsboro Boys. The motivations, economic circumstances, and social class of the defendant and accuser in the book also mirror those of the principals of the real trials. Ms. Lee's book and the Academy Award winning film that was based on it have helped perpetuate in popular culture the themes of race, class and justice that are the legacy of the Scottsboro trials.

Source: Johnson, C.D. (1994). *Understanding* To Kill a Mockingbird: *A Student Casebook to Issues, Sources, and Historic Documents.* Westport, CT: Greenwood Press.

and the nearly blind Montgomery had not been involved in the assault. Moreover, Williams and Roy Wright were juveniles and each already had served well over six years in prison (Carter, 1969, pp. 375–377). Various newspapers interpreted the dismissals as evidence that all nine of the Scottsboro Boys were innocent, a conclusion disputed by Alabama officials (Carter, 1969, pp. 377–379). Alabama Governor Bibb Graves commuted Clarence Norris's death sentence to life imprisonment in July 1938, just six weeks before Norris's scheduled execution (Norris and Washington, 1979, p. 173).

The Scottsboro Defense Committee then stepped up efforts to secure the release of the five boys who remained incarcerated. Governor Graves appeared to be primed to commute the outstanding prison sentences in November 1938, secure in the belief that Alabama newspapers would support such action. Those plans disintegrated after a disastrous encounter between the governor and the boys, during which Patterson was found in possession of a knife and Norris threatened Patterson's life (Carter, 1969, pp. 386–394; Goodman, 1994, pp. 352–355).[2] The intensity of news media coverage of the Scottsboro Boys' cases subsided shortly thereafter.

WHAT BECAME OF THE PRINCIPALS

The Scottsboro defendants met various fates. With periods of incarceration ranging from six and a half to 19 years, the nine young men in combination spent more than 100 years behind bars following their arrests for rape. Haywood Patterson remained in prison until 1948, when he escaped and made his way to Detroit. The governor of Michigan refused to honor Alabama's extradition request after the FBI discovered Patterson's whereabouts. Patterson killed a man in a Detroit bar in 1950, received a 15-to-20-year prison sentence for manslaughter, and died of cancer two years later while still incarcerated, at age 39 (Carter, 1969, p. 415; Linder, 2004a). Returning from a lengthy stay at sea while employed with the merchant marine in 1959, Roy Wright accused his wife of being unfaithful and then killed her before taking his own life (Carter, 1969, pp. 414–415; Linder, 2004a). Roy's brother Andy was originally paroled in 1944, only to be reincarcerated

for a parole violation. He finally was released from the Alabama prison system in 1950, the last of the group to gain his freedom (Goodman, 1994, pp. 370–375; Linder, 2004a).

Most of the remaining Scottsboro Boys "returned to obscurity" (Carter, 1969, p. 415). In the 1970s, however, news media including the *Washington Post,* the *Atlanta Constitution,* and the *New York Times* brought Clarence Norris, the last surviving Scottsboro Boy, back into the spotlight through their coverage of his efforts to obtain a pardon (Van West, 1981, p. 46; Goodman, 1994, pp. 384–388). Norris, who was released from prison in 1946 and then absconded to New York in violation of his parole, enlisted the assistance of the NAACP to campaign for an official pardon (Linder, 2004a). The Alabama Board of Pardons and Paroles finally issued Norris the sought-after pardon in November 1976. Governor George Wallace congratulated Norris personally in his Montgomery office and made the pardon official (Norris and Washington, 1979, pp. 229–247, 271–283). When Norris died in 1989, his obituary was widely printed in major national and international papers (Clarence Norris, Obituary, 1989; Krebs, 1989, p. 21; Associated Press, 1989).

AN ANALYSIS OF THE NEWS MEDIA PORTRAYAL OF SCOTTSBORO

The Scottsboro Boys case exemplifies a "super primary" news story, one that receives sustained coverage not just for weeks or months, but for decades; a story that influences public opinion, politics, and has a lasting impact on the fabric of society (Chermak, 1995). Indeed, the story of the Scottsboro Boys could not accurately be told without acknowledging the important role played by the media. Contemporary newspaper accounts, for example, decisively helped shape public perceptions of the boys and directly affected both prosecution and defense efforts to mobilize support. Beyond the immediate news attention ignited on March 25, 1931, the mass media, including literature, film, and the visual arts, have continued to reaffirm and redefine the social and political significance of the Scottsboro Boys case (Murray, 1977).

When the Memphis-bound freight train carrying its ill-fated passengers pulled into Paint Rock, Alabama, on March 25, 1931, a news story of dramatic proportions was in the making. By that evening, the two local weekly papers, the *Jackson County Sentinel* and the *Progressive Age,* had printed stories detailing the gruesome, violent rapes of two young white women by nine black boys. The *Chattanooga Times* initially depicted the boys as common criminals, although none had police records at the time (Maher, 1997, pp. 103–104). While only a handful of national papers covered the case within the initial days of the boys' arrest, the Associated Press released a story focusing on how the National Guard was called out to maintain order in Scottsboro (Pfaff, 1974, p. 73). The local news coverage sparked an enormous uproar that eventually captured the attention of the nation and the world, and in the process significantly shaped the issues at stake as the boys went on trial for their lives.

Racial issues inevitably permeated and helped frame news media depictions of the case over the years. In addition, during the years immediately following the arrest and conviction of the nine young men, the news media tended to depict the case as a struggle pitting the North against the South, and a Jewish New York lawyer against the Alabama attorney general. The story was also framed as a struggle between the ILD and the NAACP, as both organizations sought to represent the boys, motivated in part by the importance of securing publicity to help gain supporters for their causes. Emphasis shifted again when

DID YOU KNOW?

Powell v. Alabama (1932) was a United States Supreme Court decision stemming from the Scottsboro Boys trials. This court decision concluded that impoverished, uneducated, and otherwise disadvantaged defendants in capital cases were entitled to the assistance of court-appointed counsel. With the exception of Roy Wright, all of the Scottsboro Boys were sentenced to death in a series of one-day trials. The defendants met with their defense counsel only immediately prior to trial, raising serious questions about due process of law. The *Powell* ruling was later expanded by the Supreme Court in *Gideon v. Wainwright* (1963) to include the right to court-appointed counsel for all felony defendants unable to afford their own attorneys.

historical accounts of the case, such as *Scottsboro: A Tragedy of the American South* (Carter, 1969), criticized both the ILD and the NAACP for their handling of the case. The made-for-television movie *Judge Horton and the Scottsboro Boys* later reframed the saga to focus on the actions of Judge Horton (Van West, 1981, p. 45). While racial prejudice was at the heart of the events surrounding the arrest and prosecution of the Scottsboro Boys, the news media helped to create and convey the shifting symbolic and socially important themes related to sectional division and political ideology.

Race and Gender

The Scottsboro case involved the presumption of a crime considered to represent the most egregious breach of Southern cultural boundaries in 1931: the raping of white women by black men. The story of the nine boys and their accusers served as a lightning rod for sentiments about interracial affairs and helped focus attention on issues of racism in the criminal justice system (Bailey and Green, 1999, p. 112; Brownmiller, 1975, p. 210). Rape tended to receive relatively modest coverage in the news media at that time, and the few cases inspiring media attention typically involved blacks accused of raping whites (Brownmiller, 1975, p. 213). The media largely ignored accusations of intraracial sex crimes, particularly those involving blacks (Benedict, 1992, p. 26). News coverage thus delineated the crimes meriting public attention and had the effect of putting white women on a pedestal, elevating them to a "separate and unequal sphere" (Lawson, Colburn, and Paulson, 1986, p. 6), while the plight of black women often was overlooked.

The news media have often been criticized for disproportionately portraying blacks as the perpetrators of crimes (Barlow, Barlow, and Chiricos, 1995). Such portrayals have contributed to and helped perpetuate the image of the dangerous black man, tapping into people's fear about crime generally, and black criminality specifically (Russell, 1998, p. 71; Boser, 2002). "The case of the Scottsboro Boys is perhaps the best known example of Black men being used as racial scapegoats" (Russell, 1998, p. 79; see also Kennedy, 1997, p. 100). Historically, the most notorious false accusation against a black man has been the claim of rape made by a white woman, and in this respect the Scottsboro Boys cases resonate with an intensity similar to the trial in Harper Lee's *To Kill a Mockingbird.* During the era of the Scottsboro trials, capital punishment for rape was confined almost exclusively to the South. Moreover, nearly 90 percent (405 of 455) of the executions for this crime between 1930 and the 1964 involved black defendants, a large proportion of whom had been convicted of raping white women (Wolfgang and Riedel, 1973). The Scottsboro Boys came perilously close to being added to those rolls, with the media coverage of their cases alternatively fanning and attempting to quell the flames of racial prejudice.

Regionalism

By the start of the first trial on April 6, 1931, local townspeople and media had converged on the Scottsboro Courthouse, with only a smattering of national media sources represented (Ross, 1999, p. 50). Soon after the trials concluded and the ILD assumed representation of the boys, however, the northern news media descended en masse on Alabama, where they were not warmly received (Van West, 1981, p. 38). Alabama newspapers, including the *Huntsville Daily Times,* the *Birmingham Age-Herald,* and the local Scottsboro papers, recoiled at what they considered to be a gross imposition by northern papers such as the *Daily Worker,* the *New York Times,* and the *Nation.* The published rhetoric of the *Daily Worker,* for example, was often vehemently refuted and criticized in the southern press. The southern news media perceived northern news sources to be latching onto the case to demonize the South and play savior to the boys, actions which, some charged, would compromise justice. On the other hand, many among the northern news media were moved to assume a protective role by calling attention to the plight of the nine defendants and urging the correction of perceived injustices (Van West, 1981; Ross, 1999, p. 53).

The regional media divide remained strong until March 1932, when the Alabama Supreme Court upheld the boys' original convictions. Then, although the *Montgomery Advertiser,* a prominent Alabama newspaper, supported the state court decision, the *Birmingham Age-Herald* and the *Birmingham Post* began to express doubts about the case (Maher, 1997, p. 109). The softening stance of select southern papers may have been linked to broader national and international campaigns in support of the boys. Red Aid, the international arm of the Communist Party, mobilized support for the boys with the help of individuals including Ada Wright (the mother of Roy and Andy Wright), thus focusing international attention on the case (Miller, Pennybacker, and Rosenhaft, 2001).

The temporary lull in regional media antagonism did not endure, however, for upon losing the retrial in March 1933, defense attorney Leibowitz lashed out at southerners through the *New York Herald Tribune,* claiming that Alabamans were bigoted, dirty, and unintelligent (Maher, 1997, p. 110). Leibowitz's intemperate remarks ignited angry responses from the southern press. In similar fashion, when Ruby Bates spoke out in support of the boys in Washington, DC, Alabama's *Huntsville Times* assailed her character. Likewise, several Alabama newspapers criticized Judge Horton when he publicly expressed doubts about Victoria Price's character. It was the turn of the *New York Times* to criticize the judging in the case after Horton was replaced by the conservative Judge Callahan (Maher, 1997, pp. 110–111).

Ideology

In addition to the regional divide observed in news media coverage of the Scottsboro case, the ILD and NAACP battled for control over the legal defense of the Scottsboro Boys. These two ideologically disparate groups claimed that they were best suited to protect the boys from what they both perceived as a biased justice system. The Communist Party, relying on outlets including the *Southern Worker,* the *Daily Worker,* and international media, portrayed the case as an example of political subjugation of young blacks by the white, capitalist justice system (Maher, 1997, p. 106). The NAACP decried what that organization perceived as racially motivated injustices in the Scottsboro Boys' prosecution.

It has been argued that both groups saw the case as an opportunity to further their own goals, to promote their ideological messages, and add supporters to their rosters, with the effect of dividing what otherwise might have been unified support for the boys (Maher, 1997, p. 108). Whatever their motivations, both the ILD and NAACP utilized the news media to garner attention and mobilize action surrounding the Scottsboro Boys (Miller et al., 2001). Although the NAACP was somewhat overshadowed by the rhetoric of the ILD in the early years of the case, NAACP leaders continued to work on behalf of the boys throughout the resolution of their cases and, thereafter, to protect their legacies.

Popular Culture

The social and cultural impact of Scottsboro also endures through the visual arts, film, music, and literature. The case has influenced and inspired the creation of a vast body of artistic work, much of which conveys powerful social commentary. Though varied in their interpretations, the bulk of the artistic works that draw on the Scottsboro case are sympathetic to and supportive of the boys. These works include paintings, lithographs, and block prints that focused on the newly invigorated antilynching movement (Park, 1993, p. 311). For example, *Christ in Alabama,* a Scottsboro-inspired lithograph, depicts the lynching mentality in the South (Park, 1993, p. 334). Another lithograph shows a young white girl sitting on the lap of an older white man. Underneath the image are the words ''Alabama Code—Our Girls Don't Sleep with Niggers (1933)'' (Park, 1993, p. 337). A visual history of African American experience is portrayed in *Scottsboro: A Story in Block Prints* (originally called *Scottsboro: A Story in Linoleum Cuts*). The book traces experiences of African Americans, including slavery and subjugation to Jim Crow laws. It features an artistic interpretation of the Scottsboro case in which the Scottsboro Boys were framed and coerced by the white authorities (Williams, 2000, p. 53).

The significance and drama of the Scottsboro case also have been captured in plays and poetry. Originally produced in 1934, John Wexley's *They Shall Not Die* portrayed aspects of the case on the stage. Wexley's production, which depicted lynchings as a sort of ''southern holiday,'' included dialogue from the actual court transcripts, adding to the realism of the piece (Duffy, 2000, p. 31; Williams, 2000, p. 53). *They Shall Not Die* created controversy and stirred antiblack, anticommunist, and anti-Semitic sentiments, as blacks and whites mingled on stage to support the boys and to oppose the Southern oppression of blacks (Hilliard, 2001).

Intermingling themes of both economic and racial oppression, Langston Hughes wrote extensively about the Scottsboro Boys (Duffy, 2000, p. 24). His short poem ''Christ in Alabama,'' which originally was published in a student magazine at the University of North Carolina, encapsulates the racial, social, sexual, and regional conflicts of the case. Hughes voiced frustration during the Scottsboro trials at prominent black leaders, including college administrators, for their silence about the boys' treatment. In an essay titled ''Cowards from the Colleges,'' he blasted southern schools and their leaders for their lack of commitment to the black struggle and, specifically, the injustices associated with the Scottsboro case. Hughes's commitment to the Scottsboro case was evidenced in other work and in his philanthropy. With the help of Carl Van Vechten and Prentiss Taylor, Hughes published a pamphlet, *Scottsboro Limited,* which included a play by the same title, as well as short poems and lithographs (Thurston, 1995). The play attempted to unite the causes of economic and racial justice, evoking references to the ''Red Voices'' and the

TIMELINE FOR THE SCOTTSBORO BOYS CASES

March 25, 1931	Victoria Price and Ruby Bates allegedly are raped while on a freight train headed from Chattanooga, TN, to their home in Huntsville, AL; the nine youths soon to be known as the Scottsboro Boys are arrested in Paint Rock and taken to the Scottsboro jail.
March 31, 1931	The nine Scottsboro Boys are indicted for rape.
April 6–9, 1931	In a series of four trials, eight of the nine defendants are convicted and sentenced to death; 13-year-old Roy Wright's case ends in a mistrial when the jury cannot reach agreement about his sentence.
November 7, 1932	The U.S. Supreme Court overturns the convictions, ruling in *Powell v. Alabama* that the defendants' due process rights were violated when they effectively were denied the assistance of counsel.
April 9, 1933	Haywood Patterson is convicted following his retrial in Decatur and once again sentenced to death. Presiding Judge James E. Horton, Jr., later grants a continuance of the trials of the remaining defendants following newspaper reports of defense lawyer Samuel Leibowitz's derogatory comments about Decatur jurors.
June 22, 1933	Judge Horton sets aside Patterson's conviction, ruling that it was against the weight of the evidence.
November 20–December 6, 1933	In separate trials before Judge William Callahan, Haywood Patterson and Clarence Norris are convicted and sentenced to death; Judge Callahan continues the other trials to allow issues raised in the completed trials to be resolved on appeal.
April 1, 1935	The U.S. Supreme Court rules in *Norris v. Alabama* that blacks were improperly excluded from jury service, thereby overturning the convictions in Patterson's and Norris's cases and requiring wholesale reforms in jury selection procedures in several southern states.
January 23, 1936	Haywood Patterson is convicted of rape for the fourth time, following another trial in Decatur before Judge Callahan. The jury shocks the courtroom by sentencing Patterson to 75 years imprisonment instead of death.
January 24, 1936	Ozie Powell slashes the throat of a Sheriff's Deputy while being transported back to jail and is shot in the head by another officer. The trials of the remaining defendants are indefinitely postponed.
June 14, 1937	The Alabama Supreme Court affirms Patterson's conviction.
July 12–24, 1937	In Decatur, Clarence Norris is convicted for the third time and sentenced to death; Andy Wright and Charlie Weems are convicted and sentenced to lengthy terms of imprisonment; rape charges against Ozie Powell are dropped after he pleads guilty to assaulting the deputy whose throat he slashed, and Powell is sentenced to 20 years in prison.

July 24, 1937	The prosecution drops all charges against Olen Montgomery, Willie Roberson, Eugene Williams, and Roy Wright, and the four young men are freed after being incarcerated since their arrest in 1931.
July 5, 1938	Alabama Governor Bibb Graves commutes Clarence Norris's death sentence to life imprisonment.
November 15, 1938	Governor Graves declines to pardon the five convicted defendants.
1938–1950	Charlie Weems, Andy Wright, Clarence Norris, and Ozie Powell are paroled, although in several instances their parole is revoked and they are returned to prison before securing their final release. Haywood Patterson escapes from prison in 1948 and makes his way to Michigan; the Governor of Michigan declines to authorize his return to Alabama on extradition.
October 25, 1976	Alabama Governor George Wallace issues a pardon to Clarence Norris, the last known living defendant in the Scottsboro cases.
January 23, 1989	Clarence Norris dies.

"Red Negro." Proceeds from the pamphlet's sales were donated to the ILD fund (Duffy, 2000, p. 29; Thurston, 1995).

The stories of the nine Scottsboro youths can also be seen in films and heard in the lyrics of songs. The Scottsboro case inspired several films, including the 1976 television movie *Judge Horton and the Scottsboro Boys,* which was nominated for Emmy awards for writing and directing. In 1998, a second film, *Crime Stories: The Scottsboro Boys,* was aired on television. Most recently, a 2001 documentary titled *Scottsboro: An American Tragedy* was released to critical acclaim (Internet Movie Database, n.d.).

Many songs were written in response to the boys' struggle. For example, a song entitled "The Scottsboro Boys Shall Not Die" was inspired by the words of Samuel Leibowitz, and was composed to help in the effort to free the nine boys (Williams, 2000, p. 52). Additional songs followed, including "Song for the Scottsboro Boys," "Scottsboro Blues," and simply "Scottsboro Boys." Some of the songs dramatically portrayed southern whites as animals, while the boys were lamented as victims of a racist society and justice system (Williams, p. 59).

THE LEGACY: MEDIA INTERPRETATIONS AND JUDICIAL CHANGE

A large memorial plaque was installed in Scottsboro on January 25, 2004, to commemorate the lives of the nine Scottsboro Boys, more than 70 years after the beginning of their plight. The memorial resides on the lawn of the Jackson County courthouse, the site of the original trial. It represents the town's first official acknowledgment of the Scottsboro case. Scottsboro Mayor Ron Bailey expressed hope that the plaque would help promote the healing process. "Otherwise, [the case] will be a stumbling block to the future," he said (Associated Press, 2004). Ann Chambliss, past president of the Jackson County Historical Association, declared, "we cannot change the course of human events

that began on March 25, 1931, but we can unite to heal the long-standing wounds" (Aldrich, 2004). Similar sentiments were expressed by Reverend R.L. Shanklin, president of the Alabama Conference of the NAACP, who stated at the memorial's dedication that "today is the beginning of the healing process" (Aldrich, 2004, p. 1).

Although no memorial can repair the lives shattered in the Scottsboro Boys case, the trials and their aftermath spawned several profoundly significant living legacies. The two major Supreme Court decisions having roots in Scottsboro embody vital principles of American justice, including the right of poor people to the services of competent legal counsel, and the participation on juries of all qualified citizens, free from invidious racial discrimination. The Scottsboro trials harbingered and undoubtedly helped precipitate the civil rights struggles of the ensuing generation that subsumed yet spilled far beyond correcting inequities in criminal justice. The case threatened to cleave the country along many divides and yet, if the contemporary townspeople are correct, perhaps the healing process has begun. However viewed, the enduring significance of the Scottsboro Boys case, and its multiple symbolic dimensions, is the direct outgrowth of the media interpretations and representations of this epic historical event.

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NOTES

1. We use the term *Negroes* because this word was commonly employed in media and other reports when the Scottsboro Boys case arose in the 1930s. The term is intended to be used interchangeably with *blacks,* as frequently occurs elsewhere in this chapter.
2. The meeting between the boys and Governor Graves was arranged in anticipation of the governor issuing a pardon before his term of office expired; before acting, Graves wanted to interview the boys and satisfy himself that it would be appropriate to release them from prison.

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9

The Lindbergh Baby Murder Case: A Crime of the Century

KELLY WOLF

Charles Augustus Lindbergh was an international hero. In May 1927, he became the first person ever to fly across the Atlantic Ocean alone—3,610 miles in a single-engine plane named *The Spirit of St. Louis*. His fame and popularity with the public were enormous. He met and married Ann Morrow, daughter of Dwight D. Morrow, a U.S. ambassador and extremely wealthy man, in May 1929. Their first baby arrived on June 22, 1930. He was named Charles Augustus Lindbergh, Jr., after his father, and also became known as the ''Eaglet.'' The birth of the baby was a national sensation. The media allowed the Lindberghs little privacy; pictures of the new family were everywhere, as were pictures of their newly built house, the Hopewell Estate in New Jersey. The house was not yet finished, so the family would only spend weekends there, leaving on Mondays for the Morrow Estate where Ann's mother resided.

The Crime

One particular weekend in March, the 20-month-old baby became ill, and Ann and Charles decided to spend an extra night at the Hopewell Estate. They phoned the baby's nursemaid, Betty Gow, at the Morrow Estate and informed her that she would be driven to Hopewell to help tend to the child. Gow then phoned her boyfriend, Red Johnson, and canceled her date with him, telling him about the sick child. The butler drove her to Hopewell.

On Monday, March 1, 1932, Gow began getting young Charles ready for bed. Since he had a cold, she gave him some milk of magnesia, which the baby spit out, soiling his pajamas. Gow decided that, since there was a chill in the air, she would make the child a flannel shirt to wear underneath his pajamas. Gow rubbed some Vicks VapoRub on the child and dressed him, once again, for bed. She attached his thumb guards to prevent the baby from sucking his thumb, and put him into the crib. Pulling the blankets tightly around the Eaglet, she put two safety pins, one on each side, into the mattress to secure the blanket. The nursemaid sat in the dark with the baby until 8 p.m., when she could hear him



Figure 9.1 Baby Charles Lindbergh, Jr., 1932. Courtesy of the Library of Congress.

breathing evenly. All of the shutters were closed and locked except for the one on the southeast side of the nursery: it was warped and could not be locked. Gow went downstairs to have dinner with the other Lindbergh staff.

Lindbergh had returned home at around 9 p.m. and was having dinner with Ann when he heard a cracking sound that he later identified as slats of an orange crate falling off a chair. At the time, he dismissed it as an accident in the kitchen. Lindbergh and Ann sat in the living room reading the paper and talking for a few minutes. Lindbergh then went upstairs to draw himself a bath. After his bath he went back to the den to do some more reading. Ann decided it was her turn for a bath. While getting cleaned up, she discovered that she had run out of tooth powder. She entered the nursery, which was connected to the Lindbergh's bathroom, and went straight to the dresser. Not noticing that the baby was missing, she took the powder and returned to the bathroom.

At 10 p.m., Gow returned to the nursery for her final check on the baby before turning in. She discovered that he was gone and quickly ran to Ann's bedroom, asking if she had the child. Ann replied no, and they both went downstairs to see whether Lindbergh had the boy. Lindbergh said that he did not and rushed up the stairs, two at a time, to the nursery. He quickly scanned the room and went directly to his closet to grab his Springfield rifle. He looked at his wife and said, ''Ann, they've stolen our baby'' (Waller, 1961; Fisher, 1987; Behn, 1994, p. 46; Berg, 1998, p. 254; Hixson, 2001). Lindbergh called his personal friend and attorney Colonel Henry Breckinridge, and ordered the butler, Oliver Whately, to call the police.

THE INVESTIGATION

While scanning the nursery, Lindbergh discovered a white envelope lying beneath the open window, which appeared to have been the kidnapper's escape route. He waited for the police to arrive before he opened it. The officer read the ransom letter out loud as the Lindberghs listened intently.

> Dear Sir!
>
> Have 50,000$ redy 2500$ in 20$ bills 1 5000$ in 10$ bills and 10000$ in 5$bills. After 2–4 days we will inform you were to deliver the Mony.
>
> We warn you for making anyding public or for the polise the child is in gut care.
>
> Indication for all letters are singnature and 3 holes. (Waller, 1961; Fisher, 1987; Behn, 1994)

There was a symbol at the bottom of the letter. It consisted of two interlocking circles outlined in blue, with a solid red circle where the two other circles connected. There were three holes punched into the paper horizontally, one in the middle of the red circle and the other two in line with the outside two circles. The note was free of fingerprints. In fact, the entire nursery was free of any prints whatsoever—not even Ann's, Lindbergh's, or the nursemaid's prints were found. It was almost as though somebody had wiped down the entire nursery before the police arrived.

TIMELINE

May 21, 1927	Lindbergh is the first person to fly across the Atlantic Ocean alone.
May 27, 1927	Lindbergh marries Anne Morrow.
June 22, 1930	Charles A. Lindbergh, Jr., is born.
March 1, 1932	The Eaglet is kidnapped from the Hopewell Estate.
May 12, 1932	The remains of Charles, Jr., are found.
September 19, 1934	Richard Hauptmann is arrested for the murder.
January 2, 1935	The trial begins.
Feb 14, 1935	Hauptmann is convicted and sentenced to death.
April 3, 1936	Hauptmann is executed.

Outside, underneath the nursery window, a chisel and a wooden dowel pin were found lying in the mud. It was theorized that the chisel was brought along to pry open the window shutters. When the kidnapper realized that he did not need it, he tossed it to the ground. Footprints were also present; however, police failed to make a mold of the imprints or to take any measurements of their size. A second, smaller print was found near the scene; it was dismissed as being from Ann's earlier walk on the grounds. Fourteen feet away were remnants of a handmade ladder. The ladder could be folded into three parts for easy transportation. It weighed about 30 pounds and could be extended up to 18 and 1/2 feet. There was a split in the side rails; the position where the ladder would have split sat about five feet from the ground. Later tests with a replication ladder also proved that the ladder was able to hold the weight of the kidnapper on the way up, but unable to support both the kidnapper and the baby upon descent.

By midnight, the entire nation knew of the Lindbergh kidnapping. Radio stations broadcast the story over all the airwaves, and newspaper reporters printed special editions of the story. People began flocking to Hopewell to see the crime scene. Police, reporters, and curious onlookers were unrestrained and most likely destroyed crucial evidence. The footprints and tire impressions had been trampled, and so many people had handled the ladder that the kidnapper's fingerprints could not be singled out, if they had been present at all. The head of the New Jersey state police, Colonel H. Norman Schwarzkopf, was unable to control the mob. Schwarzkopf would be a key figure throughout the investigation and trial, and would be criticized for the investigation in the years to come.

With all of the police and media attention, Lindbergh became concerned that the kidnappers would cut off contact. After all, they had specifically told him not to contact the authorities. Lindbergh made sure the police knew that he was in charge and requested that they not interfere in his dealings with the kidnappers. Lindbergh would maintain control throughout the investigation. He set up a communications center in his garage. Five telephone lines ran from nearby Princeton University to the Hopewell Estate. It was through



Figure 9.2 Police examining the window from which Charles A. Lindbergh's baby was kidnapped, Hopewell, New Jersey, 1932. Courtesy of the Library of Congress.

this setup that he was able to control what information was released to police as well as the media.

Schwarzkopf, Lindbergh, and most of the detectives were under the impression that the kidnapping was the job of an underworld organization. Upon hearing of the kidnapping, mob leader Al Capone, then serving a prison sentence for tax evasion, offered his assistance in return for his freedom. His offer was refused. Against the advice of Breckinridge, Lindbergh hired a respected figure of the underworld, Morris "Mickey" Rosner. Rosner was given a copy of the ransom letter, which he showed several underworld criminals and forgers, in search of information on the kidnappers. Lindbergh also identified two other underworld agents, Salvatore Spitale and Irving Bitz, as go-betweens for the kidnappers. The use of go-betweens was a common practice at a time when mobsters would kidnap the children of wealthy citizens in order to collect large cash sums from them. For the kidnappers, the purpose was to have an intermediary who would later be unable or unwilling to identify them. The use of newspapers to communicate with kidnappers was also common, and this was another strategy the Lindberghs employed to reach the person who took their baby.

Three days had passed with no word from the kidnappers. Lindbergh was prepared to fully cooperate with everything they demanded. He publicly pledged to keep their identities a secret. This promise upset the authorities, who came out with a statement that

reminded the public that Lindbergh did not have the power to grant immunity and that the kidnappers would be prosecuted for their crime. Finally, on March 4, another ransom note, with the designated symbol, arrived:

> Dear Sir. We have warned you note to make anything public also notify the police now you have to take consequences—means we will have to hold the baby until everything is quite. We can note make any appointment just now. We know very well what it means to us. It is realy necessary to make a world affair out of this, or to get your baby back as soon as possible to settle those affair in a quick way will be better for both—don't by afraid about the baby—keeping care of us day and night. We also will feed him according to the diet.
>
> We are interested to send him back in gut health. And ransom was made aus for 50000 $ but now we have to take another person to it and probably have to keep the baby for a longer time as we expected. So the amount will be 70000 20000 in 50$ bills 25000 $ in 20$ bills 15000 $ in 10$ bills and 20000 in 5$ bills Don't mark any bills or take them from one serial nomer. We will form you latter were to deliver the money. But we will note do so until the Police is out of the cace and the pappers are qute. The kidnaping we prepared in years so we are prepared for everyding. (Waller, 1961; Fisher, 1987; Behn, 1994, pp. 87–88)

The letter comforted the Lindberghs that the baby was being taken care of. Ann had published a menu of what the baby ate, hoping that the kidnappers would read it and feed the child accordingly. It appeared that all the kidnappers wanted was money, and they had no intention of hurting the child. They made no threats against the child's life in any of the 13 ransom notes.

A retired schoolteacher from the Bronx took it upon himself to submit a plea in the *Bronx Home News* to the kidnappers offering his life savings of $1,000 in addition to the ransom for the safe return of the child. He also offered himself as intermediary for all ransom dealings. The following day, this man, named John F. Condon, received a letter from the kidnappers. It contained the secret signature.

> dear Sir: If you are willing to act as go-between in the Lindbergh case please follow strictly instruction. Handel incloced letter personaly to Mr. Lindbergh. It will explain everything. don't tell anyone about it as soon we find out the press or Police is notified everything are cancell and it will be a further delay. After you get the money from Mr. Lindbergh put these 3 works in the New-York American
>
> Mony is redy After notise we will give you further instruction. don't be affraid we are not out for your 1000$ keep it. Only act stricly. Be at home every night between 6–12 by this time you will hear from us. (Waller, 1961; Fisher, 1987; Behn, 1994, pp. 96–97)

Condon immediately phoned Lindbergh, who was unimpressed until he heard about the strange symbol. Lindbergh requested that Condon come to the house immediately. When he reached the house, Lindbergh and Breckinridge were waiting. It was decided that they would put the "Mony is redy [*sic*]" message in the newspaper that following day. They would use Condon's initials, J.F.C., or "Jafsie," as a name by which the kidnappers could identify Condon without alerting the public and press.

Condon received the promised phone call from the kidnappers. He was told to be at home between 6 and 12 o'clock the next evening and he would receive a note giving him further instructions. Toward the end of the phone call, Condon heard a voice in the background yell "Statti citto!" which is Italian for "Shut up!" The caller abruptly hung

up. This strange incident served to further encourage the theory that the kidnapper was a part of the underworld and not working alone.

The next evening Condon received a letter from a taxicab driver. In it were directions to a hot dog stand. He was to come alone and bring the ransom money. On reaching the stand, he found a note hidden under a rock. The note told him to cross the street to Woodlawn Cemetery. Condon went to the cemetery as directed by the kidnappers; however, the ransom money was not yet ready. He had hoped to meet the kidnapper in person and speak with him about his terms. Condon wanted proof that the child was still alive. The man in the cemetery identified himself as John and told Condon that he was one of six people involved in the kidnapping. Condon took note of John's face, which he saw only briefly. It was triangular in shape, with deep-set eyes and a small mouth. He appeared to be about 35 years old, five feet ten inches and around 160 pounds. The two talked briefly about John's involvement in the kidnapping. John insisted that his only job was to collect the ransom money, and that he had nothing to do with the actual crime. At one point in the conversation, John became nervous and asked Condon, ''What if the baby is dead? Would I burn if the baby is dead?'' (Waller, 1961; Fisher, 1987; Behn, 1994, p. 122; Berg, 1998, p. 275; Hixson, 2001). Condon was shocked; what was the point of these negotiations if the child was dead? John quickly recovered and told Condon that the baby was in good health and that there was no need to worry. Condon requested to see the baby before delivering the money. John refused, saying it was too dangerous. He would send proof that the baby was alive. He would send the child's sleeping suit.

On March 16, a package was placed in Condon's mailbox. It contained the Eaglet's sleeping suit and another letter from the kidnappers:

> Dear Sir: ouer man faill to collect the mony. There are no more confidential conference after we meeting from March 12. those arrangemts to hazardous for us. We will note allow ouer man to confer in a way like befor. circumstance will note allow us to make transfare like you wish. It is impossibly for us. wy shuld we move the baby and face danger. to take another person to the place is entirely out of question. It seems you are afraid if we are the right party and if the boy is allright. Well you have ouer singnature. It is always the same as the first one specialy them 3 holes.
>
> Now we will send you the sleepingsuit from the baby besides it means 3 $ extra expenses because we have to pay another one. please tell Mrs. Lindbergh note to worry the baby is well. we only have to give him more food as the diet says.
>
> You are willing to pay the 70000 note 50000 $ without seeing the baby first or note. let us know about that in the New York-American. We can't do it other ways because we don't like to give up ouer safty plase or to move the baby. If you are willing to accept this deal put these in paper.
>
> I accept mony is redy
>
> Ouer program is:
>
> After 8 houers we have the mony received we will notify you where to find the baby. If there is any trapp, you will be Responsible what will follows. (Waller, 1961; Fisher, 1987; Behn, 1994, p. 130)

Lindbergh wondered aloud why the child's garment appeared to have been laundered. Dismissing this oddity, Lindbergh and Breckinridge began their preparation of the ransom package. The kidnapper had specified what type of box to place the money in and even gave specific measurements. When it came time to pack the money into the box, only

$50,000 of it fit. The rest was wrapped in a sack that would later be easily identifiable to authorities.

Although many wealthy members of society generously offered to put up the ransom for Lindbergh, he insisted on coming up with the money himself. In the midst of the Great Depression, Lindbergh was forced to sell over $350,000 worth of stock to raise the $70,000 ransom. J.P. Morgan and Company delivered $50,000 to the Fordham branch of the Corn Exchange Bank; Condon had access to the special vault in which the money was placed. Against Lindbergh's wishes, the serial number from each ransom bill was recorded. Not a single bill was in sequential order. Most of the ransom bills were gold notes, meaning that they contained a round yellow seal. This was helpful in later identifying the ransom bills, as the United States was going off the gold standard. In a few months, it would be illegal to possess a gold note.

That Saturday, Condon received a letter giving him directions to a greenhouse. On the table outside, under a rock, was another set of instructions. Condon was to go to St. Raymond's Cemetery and bring the money with him. Condon got out of Al Reich's Ford Coupe and walked around the area specified by the kidnappers. Lindbergh waited in the car. He was armed. After a few minutes of waiting, Condon walked back to the truck to see what Lindbergh wanted him to do, as the kidnapper was nowhere in sight. Suddenly, they both heard a heavily accented voice call out, ''Hey Doctor! Here Doctor! Over here! Over here!'' (Waller, 1961; Fisher, 1987; Behn, 1994, p. 146; Berg, 1998, p. 281). Condon approached the man who had spoken, whom he recognized as John. A few minutes later, the ransom was turned over. Condon had talked John out of $20,000, stating that Lindbergh was suffering from hard times because of the Depression and could not afford to pay such an extra amount. John agreed to settle for the original $50,000, which turned out to be a mistake on Condon's part. What Condon failed to realize was that the $20,000 bag contained several large bills in gold notes that would be very easy to identify when they were spent. John gave Condon an envelope with directions on where he could find the baby. The stipulation was that they had to wait eight hours to open it.

Condon managed to talk Lindbergh into opening the letter as soon as they reached a private property owned by Condon. Breckinridge was also present. The letter told them that the baby could be found on a ''boad'' named *Nelly,* off the Elizabeth Islands. Lindbergh waited the demanded eight hours and began to search the waters of the Elizabeth Islands in an amphibious aircraft. He dreamed of holding his son in his arms; that moment never came. They searched for two days and did not find anything fitting the description John gave of the boat *Nelly.* They realized that they had been scammed.

Lindbergh, refusing to give up hope, contacted another possible lead. Months earlier, a man named John Hughes Curtis had said that he was in contact with the kidnap gang. He said he knew a man named Sam who had directed him to form a committee of prominent Norfolk, Virginia, citizens to act as intermediaries for the kidnappers. The ransom would be deposited in a bank in Norfolk and would be delivered to the kidnappers only upon the return of the child. Initially, Lindbergh agreed to give merit to the story if Curtis could prove that Sam actually had the child. But now, with limited options, Lindbergh followed Curtis's lead. He spent many days at sea with Curtis, searching various areas of the Elizabeth Islands, but to no avail. It was on one of these boats that Lindbergh was told of the discovery of his child's body somewhere else. He had been the victim of a cruel hoax. There was no Sam or kidnap gang. Curtis had made up the entire story.

THE DISCOVERY

On May 12, truck driver Orville Wilson and his partner, William Allen, were delivering lumber to Hopewell when Allen needed to stop on the side of the road to relieve himself. As he stepped into the brush, he discovered a small, decomposing body. Allen went back to the truck to get Wilson. They both agreed that it was the body of a child. They quickly notified the police.

The baby was found face down in a hollow in the ground. It appeared to have been covered with leaves and branches to make it less noticeable. Although the body was badly decomposed, the baby's face, which had not been exposed to air, had been fairly well preserved and was still recognizable. The signature dimple in the baby's chin and the child's overlapping toes on his left foot were key identifiers of the corpse. The child was missing his right leg from the knee down, and both hands were gone. It appeared that wild animals had been at the body. Some of the child's clothes were intact and could be identified as those that the child was wearing the night he was stolen. In the area surrounding the body, the police found tufts of blonde, curly hair, a burlap sack, a toenail, and six human bones. Then they realized that, only a few feet away, lay the cable from Princeton that Lindbergh had used to set up his communication center.

The cause of death was determined to be a blow to the head. Death was instant or within a few minutes of delivery of this blow. Gow, the nursemaid, was asked to identify the clothing that had been taken from the corpse. She said that they were indeed the same articles she had dressed the baby in the night he was kidnapped. She also went to the morgue and positively identified the body. Ann was notified immediately, and a wire was sent to Lindbergh. By 6:30 p.m., the nation had heard of the death of the Eaglet. Once again the airwaves filled with news of the Lindbergh baby. The nation was stunned. How could anyone do such a thing to a national hero?

Lindbergh had decided to view the body so no doubt was left in his mind that this actually was his baby. After only three minutes, Lindbergh remarked, ''I am satisfied that this is my child'' (Waller, 1961; Behn, 1994, p. 174; Berg, 1998, p. 290; Hixson, 2001). The Lindberghs planned to have the body cremated in order to avoid scavengers and souvenir hunters who might decide to dig up the grave. Before cremation, two unknown reporters gained access to the morgue and took photographs of the Eaglet's remains. They later sold the photographs for $5 apiece.

THE SEARCH

Since the baby had been found murdered, the public was angry and wanted those responsible to be punished. The police had been kept in the dark when it came to the dealings with John, and they had no other leads. It was time to turn to the ransom bills for clues. The previous month, a 57-page pamphlet containing the serial number of each bill had been released to banks across the country. Police now encouraged tellers to keep an eye out for the ransom bills and offered $5 for each bill coming to the authorities' attention.

On June 22, Congress passed the Cochran Bill, nicknamed the Lindbergh Law, making penalties for kidnapping harsher and allowing the Federal Bureau of Investigation (FBI) jurisdiction if the person who had been abducted was transported across state lines. This law made kidnapping a federal offense, punishable by death. However, this law was not retroactive and, therefore, would not apply to the Lindbergh child's killer.

Gold ransom bills began showing up in various places around the Bronx area, including a movie theater and several banks. A $10 gold bill had been passed at a gas station. Fearing he would get in trouble for possessing a gold certificate, the attendant wrote down the license plate number of the man who gave him the bill. Once the bill reached the bank, it was discovered as a ransom bill. The police looked up the license plate number and found that the car belonged to a Bruno Richard Hauptmann.

In the United States illegally, Hauptmann had been born in Germany in 1899. He had served in the German infantry as a teenager and later studied carpentry and machinery in trade school. He was later arrested for the burglary of three homes and robbing two women pushing young children in carriages on the street. He took their food coupons. He was convicted and served four years of his five-year sentence. He was arrested on another stealing charge, but escaped from prison and fled to the United States. His history would follow him throughout the trial and convict him in the minds of many.

The police found Hauptmann's address and began to stake out his residence. He appeared on the morning of Wednesday, September 19, 1934, and went into his heavily secured garage. He got into his 1930 Dodge sedan and drove away, presumably to report to work. The authorities followed Hauptmann onto a busy street. When they thought they might lose him, he was pulled over and searched. In his possession was a $20 gold ransom bill. Hauptmann fit Condon's description of the kidnapper and spoke with a heavy German accent. The initial search of Hauptmann's house turned up nothing. The garage was heavily padlocked, and there was even a switch that could be flipped from the bedroom that would illuminate the entire structure. Upon searching the garage, the police made a shocking discovery: they found large sums of ransom money hidden behind some loosely placed boards. It totaled $11,930. Other evidence later found inside the house included notebooks with sketches of a ladder similar to the one found at the Hopewell Estate; Condon's phone number and address written inside a closet; and Hauptmann's tool chest, missing a chisel the same size as the one found below the Lindbergh nursery (Fisher, 1987; Behn, 1994; Berg, 1998; Hixson, 2001).



Figure 9.3 Bruno Richard Hauptmann, after being questioned in connection with the Lindbergh baby kidnapping. Courtesy of the Library of Congress.

The police took Bruno to the station to be questioned. Not understanding what he was being arrested for, he simply thought that the police believed he had stolen the money they had found in his garage. Hauptmann told police that a close friend, Isador Fitch, had given him a box of money to keep until he returned from a trip overseas. Fitch

died while abroad, and Hauptmann decided to spend some of the money. Hauptmann was interrogated for 32 hours and denied food, sleep, and legal counsel. He accused authorities of tying him to a chair and severely beating him. A prison doctor confirmed that he had been struck repeatedly with a blunt object.

Eyewitnesses including Condon, the taxi driver, the gas station attendant, and the woman who sold a movie ticket to someone who paid with a ransom bill gathered for a lineup. Hauptmann, disheveled and unshaven after his interrogation, was placed in the lineup with 13 well-dressed, clean-cut police officers who were over six feet tall. Every eyewitness identified Hauptmann as the kidnapper, except for Condon. Condon asked all the men in the lineup to repeat certain phrases and to hold out their hands so he could look at them. He made a big show of this and his expertise as an eyewitness. He then refused to identify anyone in the lineup as John, stating, "I have to be sure; a man's life is at stake" (Fisher, 1987; Behn, 1994, p. 221; Hixson, 2001). Condon later received much public criticism and scrutiny for this.

Some accounts say that the police showed the eyewitnesses photographs of Hauptmann before exposing them to the lineup, telling them he was a prime suspect. At one point in his interrogation, Hauptmann was asked to repeat the phrase "Hey Doctor! Here Doctor! Over here! Over here!" from several angles in the room. Unbeknownst to him, Lindbergh was sitting in the room in a disguise. He positively identified Hauptmann as the voice he had heard in the cemetery, on the night the ransom was paid, over two years before.

THE TRIAL

In New York, Hauptmann was found guilty on the count of extortion and was extradited back to New Jersey to stand trial for the murder of Charles Augustus Lindbergh, Jr. James M. Fawcett was appointed Hauptmann's lawyer. In his first criminal trial, David T. Wilentz would act as prosecutor for the case. The trial was set to begin on January 2, 1935.

At the last minute, Mrs. Hauptmann agreed to let the *New Jersey Journal* pay for Hauptmann's defense in exchange for her exclusive story of the events occurring before and during the trial. The *New Jersey Journal* decided to hire the famous Edward J. Reilly to replace Fawcett. Reilly had been known as "Death House" Reilly because he had defended a large number of murder suspects. He had begun drinking, and his career had started to waver.

On the first day of the trial and thereafter, Flemington, New Jersey, was inundated with reporters and sightseers. Everyone seemed to take advantage of the opportunity to make money. Vendors sold food, miniature replicas of the famous kidnap ladder, and fake locks of the baby's golden blonde hair. The town was packed. People were paying huge sums of money to stay in hotels and local residents' homes. No cost was too high.

The jury consisted of eight men and four women. The 78-year-old Thomas W. Trenchard, with 28 years' experience on the bench, presided over the trial. Ann Lindbergh took the stand on one of the first days. She described the events of the evening, identified the child's clothing, and was able to provide a picture of the child to the jury. She was not cross-examined by the defense; they felt she had been through enough already. Charles Lindbergh took the stand and remained poised throughout questioning. He had carried his gun every day of the trial, except for when he took the stand. He knew Reilly would ask him whether he was armed. Rumor had it that Lindbergh would shoot Reilly if the

questioning went too far. Betty Gow summoned jurors' sympathy when she described how happy the baby had been the day of the kidnapping. She also described the garment she had sewn for the child the night of his disappearance. She told of how she was able to identify the child at the morgue and described the phone call to her boyfriend, Red Johnson. The questioning had been such a strain on her that she fainted on the way back to her seat. The testimonies of Ann, Charles, and Gow did not add much to the case against Hauptmann, but the prosecution knew that they would be able to stir up the emotions of the jury.

The prosecution's case was well prepared. Prosecution witnesses were poised and appeared credible. They remained calm during cross-examination and told their stories with confidence. Wilentz presented overwhelming evidence and spent thousands of dollars on handwriting experts, wood experts, eyewitness testimony, and autopsy reports. He was organized, well spoken, and polite. In contrast, Reilly was flamboyant, overly dramatic, and disorganized. Instead of attacking holes in the prosecution's case, Reilly came up with far-fetched theories and scenarios of what he thought might have happened that night. He often came back from lunch with alcohol on his breath and appeared to be using the case to gain publicity for himself and his career. Reilly told the press that he believed his client was guilty, and he spent only 36 minutes conferring with Hauptmann throughout the entire trial. Reilly's witnesses and experts were subpar at best. Most of them had inconsistent testimonies, as well as criminal records. He offered money to anyone who would testify on behalf of Hauptmann, and many perjured themselves on the stand in order to make a buck and be a part of the most famous trial of the time. His so-called wood experts were nothing more than lumberyard workers, and his barrage of handwriting experts backed out at the last minute, stating that their testimony would hurt the defense. His cross-examinations often led nowhere and only increased the jury's dislike for the defense. Hauptmann, from another country, did not understand the American legal system but took the stand at the advice of his attorney. It did more harm than good.

TRIAL PARTICIPANTS

THE TRIAL OF RICHARD "BRUNO" HAUPTMANN
HELD IN FLEMINGTON, NEW JERSEY
JANUARY 2–FEBRUARY 14, 1935

Presiding:
Thomas W. Trenchard
Prosecution Team:
Edward J. Reilly
Frederick Pope
Egbert Rosecrans
C. Lloyd Fisher
Defense Team:
David T. Wilentz
Anthony Hauck, Jr.
Joseph Lanigan
George K. Large
Prosecution Witnesses:
Anne Lindbergh, Charles Lindbergh, Betty Gow, Joseph Wolfe, Frank Kelly, Amandus Hochmuth, John Condon, Norman Schwarzkopf, John Tyrell, Dr. Charles Mitchell, Arthur Koehler
Defense Witnesses:
John Trendley, Sam Streppone, Peter Somner, Richard Hauptmann
Jurors:
Charles Walton, Rosie Pill, Verna Snyder, Charles Snyder, Ethel Stockton, Elmer Smith, Robert Cravatt, Philip Hockenbury, George Voorhees, May Brelsford

The fact that Hauptmann showed very little emotion (and when he did, it was in the form of angry outbursts) did not sit well with the jury. To get some sympathy for the defense, Hauptmann's wife and small child, Manfred, sat in plain view of the jury. However, the fact that the public and media had already tried and convicted Hauptmann may have made the jurors feel that they would be ostracized, if not in danger, if they did not come to the same conclusion.

THE VERDICT

The jury was sent for deliberations at 11:21 a.m., and, although the prosecution's case was based entirely on circumstantial evidence, the jury reached a verdict by 10:28 p.m. On February 13, 1935, the 32nd day of the trial, Bruno Richard Hauptmann was found guilty of first-degree murder. The sentence for murdering the Lindbergh baby was death by electrocution. Hauptmann did not show any emotion when the verdict was read, but upon returning to his cell he broke down, sobbing throughout the night. Hauptmann was transferred to the New Jersey State Prison in Trenton. He was placed in a cell only a few feet from the electric chair. The state of New Jersey had spent a total of $600,000 on the case, the most expensive trial of the time.

All of Hauptmann's appeals were rejected, even his plea for a new trial on the basis of inadequate counsel, which was clearly the case. However, the governor of New Jersey, Harold G. Hoffman, had suspicions that Hauptmann was innocent or at the very least had not received a fair trial. He felt that key evidence had been tampered with or destroyed, and upon reviewing the case he firmly believed that there had to be more than one kidnapper. Knowing very well that his involvement in the case would likely ruin his career, 30 hours before Hauptmann was scheduled to be executed, Hoffman granted him a 30-day reprieve so that further investigation could be conducted.

Among Hoffman's attempts to find evidence that would cast doubt on Hauptmann's guilt was his request to have him take a lie detector test. Hauptmann eagerly agreed to this, but the judge denied the motion. All attempts to enter evidence that would have possibly proved Hauptmann's innocence were blocked by judges as being inadmissible. Hoffman decided to take another approach to save Hauptmann's life. Prosecuting attorney Wilentz and Hoffman visited Hauptmann in prison and urged him to confess, even if he was innocent, and they would commute his sentence to life in prison instead of the death penalty. Hauptmann refused to confess, and would deny all involvement in the kidnapping and murder of the Eaglet for the rest of his short life.

Four years after the kidnapping and murder of Charles Augustus Lindbergh, Jr., Bruno Richard Hauptmann was executed for the crime. On Friday, April 3, at 8:47 p.m., after receiving 2,000 volts of electricity, Hauptmann was pronounced dead. The execution lasted three minutes, and 57 people were present. A quiet ceremony was held for Hauptmann on April 6, in Queens, with 30 people in attendance. He was later cremated.

ALTERNATIVE THEORIES OF THE CRIME

Many people still believe that the wrong man was convicted of the murder of the Lindbergh baby. Several theories have been offered since the kidnap-murder occurred. One theory is that Elisabeth Morrow, Ann's sister, was the murderer. According to this theory, the public believed that Elisabeth would be the one to marry Lindbergh. She became insanely jealous when he chose Ann. One day she went over the edge, lost control, and

killed the child. Fearing bad publicity and as a service to the Morrow family, Lindbergh agreed to cover up for Elisabeth; he did so by keeping the police and media at bay during the investigation. Lindbergh counted on the greed of extortionists to direct attention away from family members and toward the underworld. Hauptmann's possession of so much of the ransom money was just a coincidental stroke of luck. As it happened, Elisabeth died of heart disease before Hauptmann's trial began (Behn, 1994).

Another theory is that Lindbergh accidentally killed the child himself while playing one of his infamous practical jokes. He often played jokes on his family and domestic staff. Sometimes they were not so funny. There were reports that he had pretended his son had been kidnapped on a previous occasion after hiding the baby in the closet. Lindbergh might have unintentionally killed his son during one of these games (Behn, 1994; Ahlgren and Monier, 1993).

One popular, but unlikely, theory is that the Lindbergh child was never killed. The child was kidnapped, raised by his abductors, and is still alive today. The body found in the woods was that of a child from an orphanage near the Lindbergh Estate. Many people have come forward claiming to be the Lindbergh heir (Behn, 1994).

THE MEDIA: A CARNIVAL ATMOSPHERE

From the night of the kidnapping to the execution of Bruno Richard Hauptmann, and even thereafter, the media were ever-present in the Lindbergh baby kidnapping case. In many ways, the press hindered the investigation more than it helped. Reporters had arrived at the crime scene shortly after police and tramped through the estate, possibly destroying vital evidence.

However, Lindbergh had a talent for using the media to his advantage. He released only those details of the case that he wanted the press to know. In this way, he had total control of the information that reached the public. The media were also an important element in the correspondence between Lindbergh and the kidnappers, via the newspapers.

The media and the ''carnival'' atmosphere they produced were most evident during Hauptmann's trial. New Jersey was inundated with nearly 700 reporters, not to mention curious tourists who hoped to get a spot in the courtroom. Spectators were allowed a seat on a first-come, first-served basis, and every available space was filled. As many as 600 people were reported to have crammed into the tiny courtroom. Even though cameras were not allowed inside, Judge Trenchard ignored the feeble attempt made by newsreel companies to hide them, one inside a clock and another in a box on the balcony. It was quietly agreed upon that the cameras could stay as long as the footage was kept secret until the trial's end (Cohn and Dow, 2002). These clips were played in movie theaters in New York and New Jersey.

Outside the courtroom, the town of Flemington bustled with vendors and tourists. Local restaurants got in on the action by touting food specials named after important figures in the case: Lamb Chops Jafsie; Baked Beans Wilentz; and ''Lindys,'' which were nothing more than ice cream sundaes (Berg, 1998). Crowds on the street could be heard inside the courtroom shouting their beliefs that Hauptmann was guilty and deserved the death penalty.

After news of Hauptmann's conviction and his sentence to the electric chair, the media coverage died down significantly. People slowly filed out of Flemington and returned to

their normal lives. Very few people gathered outside the prison on the night Hauptmann was executed.

The Aftermath of the Major Players

The case did not end with the execution of Bruno Richard Hauptmann. The lives of the key players would be affected by the case as long as they lived. Hauptmann's wife, Anna, filed a civil suit against the New Jersey officials involved in the case. She sued for $10 million, claiming that they had framed her husband. The case was dismissed, and the U.S. Supreme Court refused to review it.

Defense attorney Edward Reilly checked himself into a mental hospital following his diagnosis of paresis as a result of syphilis. Fourteen months later at 56, he returned to a meager law practice until his death in 1940. In contrast, prosecuting attorney David Wilentz's practice flourished. He died a successful lawyer in 1988, at the age of 93.

Harold Hoffman's political career was ruined following the Hauptmann trial. He had hoped to run for the presidency, but he did not receive support from his party. He was hired as the administrator of the Division of Employment Security (DES), but then allegations of money laundering during his term as governor were made public. Authorities found that Hoffman had mismanaged funds to the tune of $450,000 and had sold political favors while in office. He was forced to step down from his position in the DES. Hoffman was found dead in his apartment on June 4, 1954, apparently from a heart attack. However, rumors spread that Hoffman had committed suicide. Attendance at his funeral was reported to be 10,000.

In 1942, during World War II, H. Norman Schwarzkopf spent five years in Iran heading a mission. He continued his military involvement for several years and then returned to work for the state of New Jersey until his death in 1958. His son, General H. Norman Schwarzkopf, Jr., following in his father's footsteps, was a war hero in Desert Storm in 1991.

The Lindberghs had enough of all the publicity following the trial and decided to flee to England, saying that they were concerned for the safety of their second son, Jon. After lying low for a while, Lindbergh would soon be back in the limelight. He and Ann flew to Germany in response to an invitation sent by Hermann Goering, a high-ranking officer in Adolf Hitler's regime. Not long after, Lindbergh made his affection for Hitler and Germany's Third Reich publicly known. Nazi leaders told Lindbergh of their vast aeronautical machinery and gave him inflated numbers of the German air force and production rates. Lindbergh reported this back to the chief of the United States Army Air Force, insinuating that Germany was invincible and it would be better that the United States stayed out of the war. As a reward for his allegiance, Lindbergh was presented with the highest honor bestowed on a civilian, the Service Cross of the German Eagle. Ann urged Charles to give it back, but Lindbergh refused. It would be a decision he would later regret. Lindbergh continued to speak publicly about keeping America out of the war, swearing that he was not pro-Nazi, just antiwar. His popularity with American citizens plummeted; they felt he had turned on them.

As time went on, Lindbergh regained some of his lost favor with the American public. His autobiography, released in 1953, immediately became a best seller. He was appointed to the Air Force Scientific Advisory Board and became an avid animal activist. He was diagnosed with lymphatic cancer in 1974 and died on August 26 of that year.

"THE CRIME OF THE CENTURY"

It is clear that the Lindbergh kidnapping had a tremendous impact on Americans. The baby of a national hero had been stolen from his crib. The public was shocked and wanted justice. The passing of the "Lindbergh Law" increased the penalties for kidnapping and made it a federal offense, allowing for capital punishment. Meanwhile, newspapers sold out and citizens were glued to their radios. With the massive media coverage, the entire affair turned into a three-ring circus. However, when the trial and execution were over and the dust had settled, many Americans believed they had seen justice done in the case that was described as "the crime of the century."

SUGGESTIONS FOR FURTHER READING

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10

Alger Hiss: No Certain Verdict

MATTHEW PATE

Alger Hiss began his career with enviable credentials. He held degrees from Johns Hopkins University and Harvard Law School. At Harvard he was the protégé of future Supreme Court Justice Felix Frankfurter. From Harvard Hiss went on to clerk for Supreme Court Justice Oliver Wendell Holmes. He experienced what might be termed as the proverbial meteoric rise in the administration of President Franklin Roosevelt. Under Roosevelt, he held numerous government positions including service as general counsel to the Nye Commission and the Agricultural Adjustment Administration. Hiss served as the director of the Office of Special Political Affairs and as the executive secretary of the Dumbarton Oaks Conference, a body pivotal in the formation of the United Nations. Perhaps the most notable, and ultimately the most ironic of positions held by Hiss, was his membership in the U.S. delegation to the Yalta Conference.[1] In 1946, Hiss left government service to assume the presidency of the Carnegie Endowment for International Peace. Hiss remained in that office until May 1949. By the time Hiss was forced out of the Carnegie Endowment, his impressive record of public service would matter much less than the scandal that consumed the rest of his life. In a drama with all the zealous players and plot twists that mid-century anticommunist furor could muster, Alger Hiss, rising statesman, became Alger Hiss, Soviet spy.

Many argue the rush to brand Alger Hiss a spy is a zealous overstatement of the facts (i.e., Cook, 1958; Smith, 1976): Facts, upon which they contend there is little consensus. Facts, that continue to grow as governments slowly release relevant documents. Facts, that increasingly cloud as the motivations and linkages of supporting players come to light. For others (Wienstein, 1997) time and revelation have only solidified the case against Hiss. Regardless of one's conclusion on the matter, the evidence against Alger



Figure 10.1 Undated photo of Alger Hiss. Courtesy of the Library of Congress.

Hiss, the central ''facts'' of the case, largely begin and end with one man, Whittaker Chambers.

THE GOVERNMENT'S STAR WITNESS

Whittaker Chambers was the first person to publicly implicate Alger Hiss in pro-Soviet espionage. Chamber's motives, reliability, and veracity in the matter are the subject of considerable debate. Where Hiss projected the cool patrician detachment of a career diplomat, Chambers has been described as, ''disturbed, idealistic, dysfunctional'' (Olmsted, 2002, pp. 28–29). Notably, though, Olmsted adds one other adjective to her depiction of Chambers, ''brilliant.''

Born Vivian Jay Chambers, the man who would later adopt the more cosmopolitan sounding ''Whittaker'' had a difficult childhood. Chambers himself described feelings of separation and the negative influence of mentally ill relatives (Tanenhaus, 1998). Despite the troubled start, Chambers was accepted to Columbia University where his writing was recognized for its superior quality and decried for its controversial content. This later aspect coalesced into a small uprising over Chamber's dramatic work ''A Play for Puppets.'' Zeligs (1967) describes the work as, ''a disrespectful treatment of an incident in the life of Christ.'' Disenchanted with the public outcry, Chambers left the university in 1923. Soon thereafter, Chambers found the path that would eventually lead him to Alger Hiss.

Looking a bit like famed character actor, Sydney Greenstreet, Chambers was a plump figure with narrow eyes and bad teeth. Not unlike the Greenstreet portrayal of self-interested and inherently suspect Signor Ferrari in the film *Casasblanca* (1942) Whittaker Chamber's shifting alliances went straight to his credibility. According to Tanenhaus (1998) Chambers was profoundly influenced by Vladimir Lenin's *Soviets at Work.* So moved was Chambers that he joined the Communist Party of the United States (CPUSA) in 1925. While a member of the CPUSA, Chambers used his literary talent to write articles and short stories for party periodicals. As a curious aside, among Chamber's more notable nonpolitical publications was the translation of Felix Stalton's classic children's book, *Bambi, a Life in the Woods.*

By 1932, Chambers involvement in Communist politics gained dimension. He was instructed to begin work as a courier, assisting Soviet agents in the transportation of documents. According to Chamber's (1952) memoir, *Witness,* he worked as part of a group supporting Soviet GRU (*Glavnoe Razvedyvatel'noe Upravlenie* [sic], Main Intelligence Directorate) operations under the command of Alexander Ulrich (aka Ulanovsky). One of the individuals Chambers encountered in this capacity was Harold Ware. Ware was the founder of the so-called Ware Group, an organization of United States government employees who belonged to the CPUSA. Among the members of the Ware Group (later identified by Chambers) were brothers Alger and Donald Hiss.

While the idealized philosophy of Lenin was highly attractive to Chambers, the machinations of late 1930s Stalinist politics were wholly another matter. Worried by the looming threat of Stalinist purges, Chambers began to distance himself from his ideological compatriots. Fearing that other CPUSA associates (e.g., Juliet Poyntz) had been lured back to Moscow, only to be ''purged,'' Chambers refused several requests that he go to the Soviet Union (Tanenhaus, 1998, pp. 131–133). As Chamber's paranoia mounted, he began to secretly collect documents that he would later use to protect himself and his family should his fears be realized. Chamber's disillusionment came to a head with the 1939 signing of the Hitler-Stalin (Molotov-Ribbentrop) Non-Aggression Pact. In an ironic twist of loyalties, Chambers became fearful that information he had funneled to the Soviets would be given to the Nazis. He discussed this with Issac Levine, a Russian-born journalist and anticommunist. In September 1939, Levine arranged a meeting between Chambers and Adolf Berle, an Assistant Secretary of State to President Franklin Roosevelt. With the encouragement of Berle and an assurance of immunity from prosecution, Chambers began to name names (Weinstein, 1997, p. 292). While most of the individuals implicated were of little consequence, others resonated more deeply. Among this later category were State Department officials, Donald and Alger Hiss.

THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE

The Congressional committee ultimately responsible for the fall of Alger Hiss began in 1934 as the McCormack-Dickstein Committee. Formally organized as the Special Committee on Un-American Activities Authorized to Investigate Nazi Propaganda and Certain Other Propaganda Activities, the most notable investigation of McCormack-Dickstein concerned the ''Business Plot,'' a foiled attempt to stage a military coup for the overthrow of Franklin Roosevelt's presidency.

In 1938 under Representative Martin Dies, the reformed House Committee on Un-American Activities (1938–1944) held superficial investigations on the Ku Klux Klan and of west coast Japanese internment camps, but ultimately focused on anticommunist activities.

In 1946 the House Committee on Un-American Activities was made a permanent house committee under Public Law 601. The primary mandate of this body was the investigation of individuals and organizations suspected of holding communist sympathies. In 1947, the committee investigated the federal Theater Project and began extensive hearings that would ultimately lead to the ''blacklisting'' of over 300 individuals connected to the motion picture industry. In 1948, the Committee undertook investigations of the federal government that brought Alger Hiss into their sights.

With its investigation of self-proclaimed ''Yippies'' Abbie Hoffman and Jerry Rubin, HUAC lost credibility. The pair openly mocked HUAC hearings with Hoffman appearing in a Santa Claus suit and Rubin blowing large bubble gum bubbles while their supporters gave committee members Nazi salutes.

Ironically, within days of Richard Nixon's assumption of the presidency, Congress voted to rename HUAC the ''House Committee on Internal Security.'' In the wake of the reformation, Committee chairman, Representative Richard Ichord, clarified the intent of the new committee, ''The present mandate is admittedly ambiguous. It gives rise to the thought that the Committee is concerned with political ideas. I am not interested in any witch hunt . . . or pillorying anybody for unorthodox thoughts'' (Geoghegan, 1969).



Figure 10.2 Miss Elizabeth Bentley seated at a table during a House Un-American Activities Committee meeting; to the right are attorney William Marbury and his client Alger Hiss, 1948. Courtesy of the Library of Congress.

Preferring to hold his trump card for a later time, Chambers did not produce his cache of incriminating documents at this meeting. As a consequence, when Assistant Secretary Berle reported the meeting to the president, Roosevelt took no action (Tanenhaus, 1998, p. 163). Roosevelt's hesitance notwithstanding, Berle referred the matter to the Federal Bureau of Investigation (FBI). While the FBI chose to interview Chambers on at least three occasions, it was not until November 1945 that his information drew full government attention. Two notable defections changed Chambers's value to the government: that of Walter Krivitsky, a former GRU agent; and Elizabeth Bentley, a former Soviet agent whose identification of over 80 American spies may have fueled much of the McCarthy era zealousness. With Bentley's testimony in front of the House Un-American Activities Committee (HUAC), the government needed the corroboration that Chambers could supply.

HOUSE UN-AMERICAN ACTIVITIES COMMITTEE

Interestingly, Chambers's fortunes had changed dramatically in the six years since he met with Adolf Berle. He had garnered a position with *Time* magazine and had managed promotion to the level of senior editor. As Dorothy Sterling (1984), a former *Time* co-worker asserts, Chambers's reversal grew into an ironic anticommunist militancy:

> Reporting from China, Theodore H. White saw his criticisms of Chiang Kai-shek's autocratic regime replaced with encomiums of Chiang as a defender of democratic principles. When

> researchers in Time's New York office protested the inaccuracy of the foreign news stories, Chambers habitually replied, ''Truth doesn't matter.'' The facts had to be altered to fit his anti-Communist crusade.

Whether Chambers's apparent about-face on the matter of communist ideology can be regarded as genuine, members of HUAC made clear their resolve. The most notable member of HUAC was a freshman congressional representative from California's 12th district, Richard Nixon. By the time Representative Nixon was appointed to HUAC, he was well practiced in the game of communist baiting. Many attribute Nixon's 1946 success in unseating Democratic rival, incumbent Jerry Voorhis, to a smear campaign that alleged Voorhis's collaboration with ''communist-controlled'' labor unions.

On August 3, 1948, Chambers appeared before HUAC. In his testimony Chambers admitted his affiliation with and ultimate defection from CPUSA, but more importantly, he gave the names of Ware Group members including Hiss.

Upon learning of Chambers's testimony, Hiss sent a telegram to HUAC chairman, J. Parnell Thomas, emphatically denying the charges and requesting an opportunity to speak for himself:

> I do not know Mr. Chambers and, so far as I am aware, have never laid eyes on him. There is no basis for the statements about me made to your committee. I would further appreciate the opportunity of appearing before your committee.

Hiss appeared before HUAC a day later on August 5. In a calm and straightforward manner, Hiss stated, ''I am not and never have been a member of the Communist Party.'' He repeated the text from his telegram asserting he had ''never laid eyes on [Chambers]'' adding ''I would like to have the opportunity to do so.''

Much of the August 5 exchange between HUAC members and Hiss was rather benign on its face. Committee members probed various aspects of Hiss's education and professional background. The questioning then turned to Hiss's knowledge of Chambers and individuals named by him as Ware Group members. Points in the hearing that otherwise augured crucial information became the site of a peculiar levity:

> *Mr. Stripling (the Committee's chief investigator):* You say you have never seen Mr. Chambers?
>
> *Mr. Hiss:* The name means absolutely nothing to me, Mr. Stripling.
>
> *Mr. Stripling:* I have here, Mr. Chairman, a picture which was made last Monday by the Associated Press. . .Mr. Hiss, and ask you if you have ever known an individual who resembles this picture.
>
> *Mr. Hiss:* I would much rather see the individual. I have looked at all the pictures I was able to get hold of in, I think it was, yesterday's paper which had the pictures. If this is a picture of Mr. Chambers, he is not particularly unusual looking. He looks like a lot of people. I might even mistake him for the chairman of this committee [Laughter] (HUAC, 1948).

The glib response aside, Hiss appeared to have largely disarmed the Committee. President Truman dubbed the matter, ''a red herring.'' Popular accounts generally hold that the membership was ready to dismiss the matter, save for Nixon. Inasmuch as the HUAC circus featured one contest of ideals: the communists versus democracy, its subplot was

equally compelling. Apart from the obvious contrast between Hiss and Chambers there was a more substantive contest at issue. In one corner stood the handsome, if slightly effete Hiss, vetted by the liberal Eastern establishment. In the other loomed the brooding figure of Nixon, the conservative working-class boy, spurned by the Ivy League, bitter and offended at the foppish diplomat. Undaunted by the will of the Committee, Nixon pressed and was made chairman of a subcommittee to determine whether Chambers or Hiss was telling the truth.

On August 7, the Nixon subcommittee met in the Federal Courthouse in New York City. At this hearing, Nixon, Representative John McDowell, Representative Edward Herbert, and investigators for HUAC interviewed Chambers. The questions varied across many topics, each designed to probe the depth of Chambers's personal knowledge of the Hiss family. Over the course of approximately three hours, Chambers provided detailed descriptions of the Hiss family home, their dog, and nicknames for one another. Chambers recounted having stayed in the Hiss home for several nights. Numerous otherwise innocuous details of Hiss family life were discussed, but on the matter of their hobbies, an important event was uncovered. According to Chambers, Alger Hiss and his wife, Priscilla, held a mutual passion for bird watching:

Mr. Mandel: Did Mr. Hiss have any hobbies?

Mr. Chambers: Yes, he did. They both had the same hobby, amateur ornithologists, bird observers. They used to get up early in the morning and go to Glen Echo, out the canal, to observe birds. I recall once they saw, to their great excitement, a prothonotary warbler.

Mr. McDowell: A very rare specimen?

Mr. Chambers: I never saw one. I am also fond of birds. (HUAC, 1948)

Approximately ten days later, Hiss was interviewed by the Nixon subcommittee, this time convened in Washington, DC. Over half of the committee's time was spent in an exchange relating as to whether Hiss could make either an identification of Chambers from a photograph or whether Hiss could recall if the person in said photograph had spent a week with the Hiss family approximately 15 years earlier.

At one point, Hiss introduces the name "George Crosley." Crosley, according to Hiss, was a writer that he met while at the State Department. In the course of their acquaintance, Hiss rented Crosley an apartment and allowed him to stay with the Hiss family a

THE PROTHONOTARY WARBLER

Protonotaria citrea

This bird takes its name from the yellow cloaks of the Roman Catholic *protonotarii apostolicii,* a class of papal official. The Prothonotary Warbler is a small insect-eating songbird with bright golden-yellow plumage. On average these birds weigh about half an ounce, measure 5.5'' in length, and fly on wings spanning 8.75''. Prothonotary Warblers can be found in wooded swamps, river bottoms, mangroves, and wet forests at low elevation. They tend to nest in hollowed tree trunk cavities left by woodpeckers (Dunn and Garrett, 1997; Petit, 1999).

few days until furniture could be delivered (Hiss, 1957, p. 20). In a detail that became a source of further legal rumination, Hiss also told the committee that he gave Crosley a long disused Model A Ford. The Committee made much of this "gift," but Hiss explained that the car was so old and forgotten that he had trouble remembering where he had parked it.

After a brief continuation on the subject of the relationship between Hiss, Crosley, and the Model A, Nixon turned the questioning to other matters. The committee discussed seemingly mundane details of the Hiss family's daily life: their apartments, their maid, the family dog. Then, in what was a defining moment for the committee, Hiss was asked about his hobbies:

Mr. Nixon: What hobby, if any, do you have, Mr. Hiss?

Mr. Hiss: Tennis and amateur ornithology.

Mr. Nixon: Is your wife interested in ornithology?

Mr. Hiss: I also like to swim and also like to sail. My wife is interested in ornithology, as I am, through my interest. Maybe I am using too big a word to say an ornithologist because I am pretty amateur, but I have been interested in it since I was in Boston. I think anybody who knows me would know that.

Mr. McDowell: Did you ever see a prothonotary warbler?

Mr. Hiss: I have right here on the Potomac. Do you know that place?

The Chairman: What is that?

Mr. Nixon: Have you ever seen one?

Mr. Hiss: Did you see it in the same place?

Mr. McDowell: I saw one in Arlington.

Mr. Hiss: They come back and nest in those swamps. Beautiful yellow head, a gorgeous bird. (HUAC, 1948)

For members of the committee, this detail confirmed that Chambers knew Hiss. In his memoir, Hiss dismisses the value of the evidence, "The prothonotary was to become . . . the prime alleged proof of a close relationship between Chambers and me—as if an enthusiast boasts of his finds only to intimate friends" (Hiss, 1957, p. 50).

Perhaps more damning than anything said by Chambers was the testimony of other individuals previously interviewed by HUAC. Several close associates and former Hiss co-workers found themselves in equally tenuous positions. Henry Collins, former Agricultural Adjustment Administration (AAA) employee, was discussed first. Committee investigator Stripling got right to his point, ". . .I happen to know pretty conclusively that not only is Mr. Collins a Communist but he has been a Communist for many years. In fact, when he used to work in the AAA he was notorious, notorious for sitting around talking about communism" (HUAC, 1948). John Abt and Lee Pressmen were given the same treatment. Hiss denied knowledge of their communist sympathies. Stripling then made the accusation more directly:

> You are an intelligent person and not naive enough that you wouldn't know a Communist if you saw one. Furthermore, I read a lot of Government files from time to time—and I don't say this disparagingly—but I have seen your name for years in Government files as a person

> suspected of Communist activity. Now, there has to be some basis for the thing. Why would Charles Kramer refuse to say whether he knew you on the ground of self-incrimination? Why would Henry Collins answer that way? Why would all these people say that? (HUAC, 1948)

In fashion typical of his notably oblique tact toward the committee, Hiss responded, ''Do you think those are relevant questions to this inquiry?'' It was a lawyerly response, a technical response, perhaps even accurate, but it failed to satisfy those who wanted a categorical denial from Hiss.

In the remaining minutes of the meeting, the committee decided to give Hiss an opportunity to directly confront his accuser in an open forum. Accordingly, the next round of hearings were scheduled for August 25. Before the scheduled meeting could take place, two important things took place. The first of these was a secret meeting between Nixon and Chambers at Chambers's farm. Several sources state that Nixon was given ''secret evidence'' that fueled his drive to get Hiss. The second intervention was of a more fateful nature. Harry Dexter White, a former Assistant Secretary of State under Roosevelt (also named by Chambers and Elizabeth Bentley) died of a heart attack several days after being questioned by HUAC. Fearing a backlash in the press, Nixon and others decided to accelerate the proceedings.

As Hiss (1957, pp. 80–81) states, he received a telephone call from a member of the HUAC administrative staff on the morning of the 17th. The staffer asked Hiss to meet committee member, Representative John McDowell later that day. At approximately 5:30 that afternoon, Hiss received a call directly from McDowell. The congressman asked Hiss to meet him at the Commodore Hotel, a few blocks from Hiss's office. According to Hiss, McDowell added that ''Nixon and one other'' would be with him.

Upon arriving at the hotel, Hiss realized that he had been summoned, not to an informal discussion, but to a speedily contrived meeting of the Nixon subcommittee. He was greeted with the presence of not only Nixon and McDowell, but a cadre of staffers, a stenographer, and, perhaps the coup de grace, notification of Chambers's imminent arrival (Hiss, 1957, pp. 82).

Chambers's version of events was not unlike that of Hiss. He had been plucked up by staffers in Washington and quietly whisked to New York. Chambers describes the scene,

> When I entered the room, Alger Hiss did not turn to look at me. When I sat down, he did not glance at me. . . . Until we faced each other . . . I had been testifying about the man as a memory and a name. Now I saw again the man himself . . . it was shocking. (Chambers, 1952; 602)

Several key things took place at the Commodore Hotel hearing. Hiss identified Chambers as the previously discussed ''George Crosley.'' Chambers denied having used the alias. The committee again returned to specifics of the apartment rental, debts between the men, and the closeness of their association. Nixon, however, got to the heart of the matter, ''Mr. Hiss, another point that I want to be clear on, Mr. Chambers said he was a Communist and that you were a Communist'' (HUAC, 1948). In trademark fashion, the reply given by Hiss was indirect, ''I heard him.''

During the exchanges that followed, Hiss inadvertently set in motion events that would culminate in his own prosecution. Representative McDowell turned to Chambers for explicit confirmation of the charges:

Mr. McDowell: Mr. Chambers, is this the man, Alger Hiss, who was also a member of the Communist Party at whose home you stayed?

Mr. Nixon: According to your testimony.

Mr. McDowell: You make the identification positive?

Mr. Chambers: Positive identification.
(At this point, Mr. Hiss arose and walked in the direction of Mr. Chambers).

Mr. Hiss: May I say for the record at this point, that I would like to invite Mr. Whittaker Chambers to make those same statements out of the presence of this committee without their being privileged for suit for libel. I challenge you to do it, and I hope you will do it damned quickly. . . . (HUAC, 1948)

On August 25, both Hiss and Chambers appeared before the previously scheduled HUAC session. This meeting was significant for a number of reasons, not the least of which is its status as the first ever televised Congressional hearing. Much of what transpired was predictable. HUAC members armed with lease agreements and various documents tried to impeach Hiss's credibility. Hiss remained defiant and aloof. In what has become a somewhat famous quotation, Chambers characterized Hiss as, ". . . a devoted and at that time a rather romantic Communist" (HUAC, 1948). More crucial to subsequent events, this hearing (and to a lesser degree, those preceding it) helped establish a timeline for the



Figure 10.3 Whittaker Chambers (right), *Time* magazine editor, takes the stand before the House Un-American Activities Committee, reiterating his testimony that Alger Hiss was a secret communist, as Alger Hiss (center) looks on. Courtesy of the Library of Congress.

association between Hiss and Chambers. According to the version given by Hiss, he last saw Chambers in 1935. Hiss discontinued the relationship after Chambers failed to pay rent for the subleased apartment. In contrast, Chambers stated that he last saw Hiss "around the end of 1938." According to Chambers's version, the association was dissolved after an unsuccessful attempt to break Hiss away from the Communist Party.

Within days of the televised hearing, HUAC published an interim report in which Hiss (1957, p. 204) was characterized as "vague and evasive." In response, Hiss (1957) published a 14-page reproach of HUAC for "using the great powers and prestige of the United States Congress to help sworn traitors to besmirch any American they may pick upon."

THE CIVIL SUIT

In an apparent answer to Hiss's challenge, on August 27, Chambers appeared on the radio program *Meet the Press* moderated by Lawrence Spivak. Chambers knew he would be asked to restate his charge that Hiss was a communist, "He [Hiss] would then be free to sue me. I did not want to be sued . . . Nor did I believe that Hiss would want a suit" (Chambers, 1952, p. 705). Following Chambers's appearance on the program, Hiss filed suit on October 8, 1949.

As part of discovery for the suit, Hiss's attorneys asked Chambers to produce, ". . . any correspondence, either typewritten or in handwriting from any member of the Hiss family" (Hiss, 1957, p. 159). Shortly thereafter, Chamber went to the Brooklyn home of his wife's nephew, Nathan Levine. From Levine's home, the pair went to Levine's mother's home. They went to a second floor bathroom, "where, over the tub a small window opened into dumbwaiter shaft that had long been out of use. Inside the shaft was some kind of small shelf or ledge. There Levine had laid 'My Things'" (Chambers, 1952, p. 736).

The large envelope Levine exhumed from the dumbwaiter contained a number of items: four notes handwritten by Alger Hiss; 65 typewritten documents (copies of State Department documents, each dated between January and April 1938); and five strips of 35mm film (Hiss, 1957, p. 160). On November 17, the papers were delivered to the defense, but Chambers chose to secretly withhold the film. The papers, soon thereafter known as the "Baltimore Papers" were a disaster for Hiss. If genuine, the Baltimore Papers showed that not only had Hiss known Chambers after 1936, but that Hiss had engaged in espionage.

When William Marbury, Hiss's attorney, continued to take a formal statement from Chambers, he was confronted by evidence that not only obviated the slander suit, but placed Hiss in direct danger of criminal indictment. Not surprisingly, the HUAC took quick notice of the new evidence.

Chambers explained his hesitance in producing the documents as an effort to protect Hiss (who he purportedly regarded as an old friend) from needless tragedy. During the course of the civil suit investigation, however, Chambers became convinced that "Hiss was determined to destroy me—and my wife if possible." It is reasonable to infer that Chambers knew a loss in the civil trial would probably result in his own Justice Department prosecution. Moreover, it is likely that Chambers knew Marbury and the Hiss legal team were attempting to assemble evidence of his reputed homosexual encounters, as well as his family's history of mental illness and suicide.

While Chambers had turned over the paper documents, he still had possession of the film. Chambers placed the film into a hollowed-out pumpkin, and returned the pumpkin

to the pumpkin patch on his Maryland farm. In his memoir, Chambers is philosophical about the choice to hide (and ultimately reveal) the microfilm:

> No act of mine was more effective in forcing open the Hiss Case than my act of dividing the documentary evidence against Hiss. . . It was my decisive act in the Case. For when the second part of the divided evidence, the microfilm, fell into the hands of the Committee, it became impossible to suppress the Hiss Case. . . That is the meaning of the pumpkin—a meaning that has been widely missed, I feel, in laughter at the pumpkin itself. (Chambers, 1952, p. 742)

On the evening of December 2, 1948, Chambers accompanied two HUAC investigators to his farm whereupon he led them to the hollowed-out pumpkin. Upon inspection, the film was found to include photographs of State and Navy Department documents. During the following months of the scandal, members of the press (amused by the opportunity for cheeky alliteration) came to call the entire set of documents and microfilm "The Pumpkin Papers."

Immediately following the "discovery" of the new evidence, the Hiss legal team published a statement promising, "full cooperation to the Department of Justice and to the grand jury in a further investigation of this matter." In an instant, the controversy was redefined. No longer was it a matter of the erstwhile diplomat defending his reputation against the slander of a godless, homosexual communist. From that point forward, it was whether Alger Hiss, former State Department official had been a Soviet agent. In an extremely small saving grace for Hiss, the statute of limitations for espionage was five years, and the incriminating evidence concerned possible acts at least a decade old.

The bombshell of Chambers's Pumpkin Papers resulted in his summons by the grand jury then empaneled for the Southern District of New York. The grand jury was investigating possible violation of espionage laws. Not coincidentally, Hiss also appeared before the grand jury. Hiss testified on numerous occasions between December 7 and December 15, 1948. On the last day of the jury's term, the panel indicted Hiss for perjury. While Hiss had managed to dodge the bullet of an espionage charge, the statute of limitations for perjury in his testimony to HUAC had yet to expire.

THE FIRST TRIAL

The first Hiss perjury trial began on May 31, 1949, at the Manhattan Federal Courthouse in New York City. Hiss was charged with two counts of perjury, both of which stemmed from his testimony before a federal grand jury the previous December. Hiss was charged with lying in his testimony that he never gave documents to Whittaker Chambers, as well as when he stated he had not seen Chambers since 1937.

Predictably, Whittaker Chambers was the prosecution's primary witness. Chambers told the court that he had begun passing State Department documents with Hiss in 1937. He stated that he and Hiss followed Soviet agent Colonel Boris Bykov's directives for espionage. Included in these directives was the instruction that documents should be carried home and retyped. Chamber identified the documents he had earlier provided and stated that they had been given to him by Hiss at Hiss's home.

Whatever misgivings Chambers may have held with regard to potential character assassination were fully realized at the hands of defense attorney, Lloyd Paul Stryker. In his cross-examination of Chambers, Stryker probed many unsavory and bizarre areas of Chambers's past. He recounted Chambers's play written while at Columbia, and deemed

NIXON'S KODAK MOMENT

One of the primary pieces of evidence against Alger Hiss were the strips of 35mm film Whittaker Chambers secreted away inside a hollowed-out pumpkin. Establishing the date of manufacture for the film would in some measure corroborate Chambers's story. Accordingly, HUAC member, Richard Nixon, sent the film to Eastman Kodak for verification. Chambers stated that he took the pictures in 1938, but results from Kodak indicated the film was made in 1945.

Nixon went ''into complete shock.'' The case that he intended to use as a springboard to national acclaim would instead forever bury him. Nixon and fellow HUAC members called a press conference. They were steeling themselves for a deep public humiliation. Nixon stated that they were going to confess, ''we were sold a bill of goods . . . we were all wet.''

The phone rang again. It was Kodak, ''an error had been made.'' According to company records, the lot code used for film stock made in 1945 was also used for a previous run in 1938. The HUAC members were spared, but in all the excitement Nixon nearly forgot to tell Chambers—who in the desperation of the moment, had purchased cyanide with which to commit suicide (Powers, 1998, p. 224; Chambers, 1952, pp. 768–771).

it ''an offensive treatment of Christ.'' Stryker asked whether Chambers had ever lived with a New Orleans prostitute called ''One-eyed Annie.'' He got to the heart of Chambers's politics by asking whether he had been, ''for some fourteen years an enemy and traitor of the United States of America?''

Chambers had little choice but to acknowledge most of the defense counsel's claims, refuting only his alleged cohabitation with the prostitute. Stryker's final press concerned Chambers's timing and whether he might be more motivated by hopes of helping Republicans portray Harry Truman as soft on communism than any abstract feelings of patriotism.

Esther Chambers, Whittaker's wife, was the next prosecution witness. In testimony generally rebuked in Hiss's (1957) memoir, she provides numerous details of the relationship between her family and the Hisses. Her primary value was her assertion that the relationship extended well beyond January 1937.

After the Chamberses' testimony, there was a parade of witnesses tying Hiss to the typewritten State Department papers supplied by the star witness. Nathan Levine described his trip into the dumbwaiter. HUAC investigator Donald Appel recounted his journey to the Chamberses' pumpkin patch. Walter Anderson, a records expert from the State Department, outlined the importance of each typewritten page and of the handwritten notes. Hiss's own secretary, Eunice Lincoln, was brought in to testify that Hiss often took work home with him.

Where the testimony of both Chambers and the other prosecution witnesses set the stage, Ramos C. Feehan of the FBI laboratory provided substance for the state's case. Feehan explained laboratory comparisons made between documents known to have been typed by Priscilla Hiss[2] circa 1936–1937 (sic. ''the Hiss Standards'') and the 65 pages retrieved from the Levine's dumbwaiter. Feehan concluded that the two sets of documents had been typed on the same Woodstock brand typewriter. Feehan stated that he ''reached

the conclusion that the same machine was used to type Baltimore Exhibits 5 through 9 and 11 through 47 that was used to type the four known Standards which were submitted to [him] for comparison with the questioned documents'' (Kisseloff, 2006). Feehan based his conclusions in part on comparisons of individual letters. This testimony, along with innumerable murky details regarding ownership, location, and condition of the typewriter would give Hiss and his supporters fodder for decades of appeals and speculation about government conspiracy. Interestingly, however, Feehan was not cross-examined at either Hiss trial.

In its presentation, the defense tried to convince the jury on three points: (a) Alger Hiss was a man of such reputation and achievement that his involvement in espionage would have been absurd; (b) The state's main witness, Whittaker Chambers, was a mentally unstable traitor with a past so suspect as to nullify anything he said; (c) The Woodstock typewriter allegedly used to prepare the Baltimore Papers was given to a former Hiss family maid sometime before the documents' 1938 date, thus rendering it impossible for either of the Hisses to have been the typist.

As to the first goal, the Hiss legal team paraded a cast of legal and diplomatic luminaries of immense public status and credibility. Supreme Court Justices Stanley Reed and Felix Frankfurter portrayed Hiss as a man of ''excellent'' character. Former Democratic presidential candidate John W. Davis as well as future candidate Adlai Stevenson made similar appraisals. If the matter were merely one of establishing credentials and references the contest was hardly close.

Defense attorney Stryker's cross-examination of Whittaker Chambers bordered on a roasting. The list of character witnesses was beyond challenge. All that remained was to

THE WOODSTOCK 5N: SERIAL NUMBER N230099

The controversy surrounding the Hiss family's Woodstock typewriter was a harbinger of the forensic detective work so prominent in modern criminal investigations. Both sides of the Hiss case raised complex technical issues that required numerous expert witnesses. Does each typewriter have a unique ''fingerprint''? Can two different typists using the same machine produce identical typed pages? Can one typewriter be altered to produce results identical to another? These issues along with questions of manufacturing process, wear profiles, and repair techniques were all explored during the Hiss trials and subsequent appeals. While typewriters are seldom the focus of modern forensic investigations, the same kind of issues raised in the Hiss case continue to be hotly debated.

Gil Green (1984), a prominent CPUSA figure, cites a 1959 correspondence between FBI director J. Edgar Hoover and a New York Special Agent in Charge, ''To alter a typewriter to match a known model would require a large amount of typewriter specimens and weeks of laboratory work. It is not felt that this technique of altering a typewriter should be considered in this connection. . .'' Adding fuel to the Hiss controversy, this exchange indicates that the FBI had at least considered the possibility of ''forgery by typewriter.''

defeat the state's case regarding the Woodstock typewriter. This last challenge proved the most difficult.

According to Hiss's testimony, the old Woodstock typewriter had been given to their former maid, Claudie Catlett, sometime in 1936. Catlett's testimony corroborated Hiss (Cook, 1958). Moreover, Catlett also recalled having seen a Hiss family visitor named "Crosby" around the time at issue. Catlett also stated that "Crosby" had visited on several occasions when the Hisses were not home.

Raymond "Mike" Catlett and Perry "Pat" Catlett, Claudia Catlett's sons, likewise remembered being given the typewriter. In fact, it was Mike Catlett who had approached Donald Hiss when the typewriter's whereabouts and provenance became an issue (Hiss, 1957, p. 271). All three of the Catletts gave testimony. Ultimately, their testimony was of mixed value to the Hiss cause (Kisselhoff, 2006). The Catletts had been repeatedly visited and interviewed by the FBI and HUAC investigators and in the process appeared to lose certainty on exact dates. This was important as the defense's case hinged on Hiss not seeing Chambers after the end of 1937. The fact that Catlett family (and related) testimony only narrowed the time window to "about three months" around the middle of January 1938 did little to help Hiss (Hiss, 1957, p. 273).

In its refutation of the charges, the defense offered an alternative theory of the purported espionage (Tanenhaus, 1998). During the same period Hiss was at the State Department, economist Julian Wadleigh was a staff member under Dean Acheson in the Trade Agreements Division. Wadleigh, like Chambers, would later admit to his CPUSA membership and, more importantly, to his theft and transmission of State Department documents. According to Wadleigh, he would take documents from the State Department and turn them over to an agent he knew as "Carl" (an alias used by Chambers). Carl would copy the documents and return them to Wadleigh for replacement. Chambers had previously testified to HUAC that Wadleigh might have passed some of the documents contained in the Baltimore Papers. Wadleigh denied that he was the source of the Baltimore documents. In an apparent change of recollection, Chambers's later testimony supported the idea that Wadleigh had not been the source of any Baltimore Papers. Nonetheless, the defense put forth the theory that Wadleigh, through his State Department access could have sneaked into Hiss' office and stolen documents while Hiss was not there.

Alger Hiss took the stand on June 23. Hiss admitted to writing the handwritten notes, but vehemently denied knowledge of either the microfilm or the typewritten State Department documents. Hiss also restated his grand jury testimony regarding the last time he saw Chambers. Echoing the testimony of the Catlett family, Hiss stated that he had given them the typewriter "in the fall of 1937."

Hiss was then subject to cross-examination by prosecutor Thomas Murphy. Murphy focused on discrepancies between Hiss's current and previous testimony. Murphy's tactics during the two trials would later become part of the appeals filed by Hiss.

Priscilla Hiss was the last defense witness in the first trial. Ironically, her testimony was more damaging to her husband's defense. Her seeming inconsistency and role as typist were treated in detail. In particular, she denied and then was forced to admit membership in the Socialist Party. Moreover, she was made to reconcile the fact that she told a grand jury that the typewriter might have been given to the Catletts as late as 1943.

The summations given by Stryker and Murphy were as impassioned and dramatic as one might expect in such a public trial. Chambers (1952, p. 791) describes de-

fense attorney Lloyd Stryker as ''spinning and flailing about like a dervish.'' In perspective, Stryker called Chambers ''an enemy of the Republic, a blasphemer of Christ, a disbeliever in God, with no respect for matrimony or motherhood.'' This is in marked contrast to the defendant, who he characterized as ''an honest . . . and falsely accused gentleman.''

Prosecutor Murphy outlined a different path for the jury, ''[The evidence left] only one inference . . . that the defendant, that smart, intelligent, American-born man gave [passed State Department secrets] to Chambers.'' As Murphy had stated in his opening, ''If you don't believe Chambers, then we have no case. . .'' (Zeligs, 1967, p. 366).

The case was given to the jury on July 6, 1949. After more than a day of deliberation, the jury notified the trial judge, Samuel Kaufman, that they were unable to reach a verdict. Kaufman urged the jury to try again. Within a few hours, the jury reported it was hopelessly deadlocked: eight for conviction; four for acquittal. Having no choice, Kaufman declared a mistrial. In later interviews, members of the jury revealed that the four voting for acquittal did so because they felt someone other than Alger or Priscilla Hiss had typed the documents on the Hiss family Woodstock.

THE SECOND TRIAL

The second perjury trial began November 17, 1949. Many changes in personnel ensured this would be a very different proceeding. Nixon and other conservatives were highly dissatisfied with Judge Samuel Kaufman's performance in the first trial. There were discussions of his possible impeachment. The ire directed at Kaufman centered on his refusal to allow the testimony of Hede Massing, a self-confessed Soviet agent. Massing was prepared to (and did eventually) testify to Hiss's involvement in espionage. Taking what might be considered a very strict view of the matter, Kaufman ruled that Massing's information was irrelevant to the trial. Kaufman was replaced by Judge Henry W. Goddard.

The defense team also made a major change. Lead defense attorney, Lloyd Stryker, was replaced by Claude Cross. The defense made a motion for a change of venue to Vermont. Thinking that Cross's more subdued style would play better in Vermont, he was brought on to head the defense effort. The defense was wrong in both instances. Their petition for a change of venue was denied; and Claude Cross's bookish style failed to connect with the jury.

As if the internal events were not sufficiently damaging, the external political climate was equally bad. In the months between the first and second trials, transforming world events had taken place. The Soviets detonated their first atomic bomb. Both the People's Republic of China and the German Democratic Republic were founded. For individuals looking to validate fears of communist domination, the timing for Hiss could not have been worse.

Returning prosecutor Murphy made one major change in his strategy: the inclusion of the aforementioned Hede Messing. Messing (1987) testified that she had met with Hiss at the home of another State Department official, Noel Field. Massing stated she told Hiss, ''I understand that you are trying to get Noel Field away from my organization into yours.'' According to Massing, Hiss replied, ''So you are this famous girl that is trying to get Noel Field away from me.'' While Massing could not remember who said it, she stated that one of them said to the other, ''Whoever is going to win, we are working for the same boss.''

Julian Wadleigh also reprised his role from the first trial. This time, he had to withstand a much more rigorous cross-examination by Cross. The defense suggested that it was

Wadleigh, not Hiss, who gave Chambers the documents. This was a substantial accusation, but it was logistically complex. In order for Wadleigh to have acted as the defense suggested, it would have required multiple thefts and multiple unnoticed returns. In the end, Wadleigh conceded that he did supply some documents to Chambers, but the defense could not prove he was the sole source.

What could have been a deft use of expert testimony for the defense degenerated into a wholesale evisceration prosecutor by Murphy. The defense called Dr. Carl A. Binger, a practicing Cornell psychiatrist, to provide an analysis of Whittaker Chambers's testimony. On direct testimony Binger categorized Chambers as a "psychopathic personality" and a "pathological liar."

In the cross-examination that followed Murphy suggested that Binger's assessments were little more than hollow psychobabble. Binger's conclusions were quickly turned back upon him. Binger suggested that Chambers's habit of repeatedly looking up at the ceiling was a sign of psychosis. When Murphy pointed out that Binger had himself looked at the ceiling over 50 times in an hour, it was clear that the witness's testimony was rapidly unraveling. Similar farcical turns took place over discussion of Chambers's "untidiness," whereupon the doctor was asked to reconcile the notably untidy Albert Einstein and Thomas Edison. Furthering the doctor's losses were questions surrounding Chambers's numerous equivocations during testimony. The doctor was asked what conclusions should be drawn from the 158 equivocations in the defendant's own testimony. Perhaps most comically, Murphy attacked Binger's assertion that the act of hiding the film in the pumpkin was a symptom of a psychopathic personality. Murphy facetiously asked what conclusions could be drawn from other famous hidings, such as the secreting of the baby "Moses in the bulrushes."

In his memoir, Hiss notes his displeasure with the latitude Judge Goddard granted Murphy:

> [He] was lenient with prosecution witnesses and brusque with defense witnesses. And though he found no occasion to restrain Murphy's attitude toward defense witnesses, Chambers received his protection when Mr. Cross was questioning him. (1957, p. 346)

Hiss's objections aside, the second trial dragged three weeks longer than the first. In his summation, Cross resorted to rather lawyerly technical points. Points that likely resonated with a methodical intellect like Hiss, but missed with less linear thinkers on the jury. An instance of this is Cross's concession that the Baltimore Papers had been typed on the Hiss typewriter. As Cross put it, "it is not the question of what typewriter was used, but who the typist was." Cross suggested that Chambers, in an effort to frame Hiss, may have secretly gotten use of the typewriter after the Hisses discarded it.

Murphy took a more emotive route in his summation. He described the evidence "immutable." Murphy concluded that the friendship between Hiss and Chambers as well as the stolen documents proved Hiss, "[is] a traitor . . . in love with their philosophy, not ours."

On January 20, 1950, the jury returned its verdict, "We find the defendant guilty on the first count and guilty on the second." Five days later Alger Hiss would be given the maximum sentence. Before Judge Goddard pronounced his fate, Hiss made a statement concluding, ". . . in the future the full facts of how Whittaker Chambers was able to carry out forgery by typewriter will be disclosed."

THE APPEALS AND AFTERWARD

Later the same year on December 7, the Second Circuit Court of Appeals affirmed Hiss's conviction. Three months later, the U.S. Supreme Court refused to hear Hiss's case. The vote was four to two. Justices Hugo Black and William Douglas voted to grant the review. Justices Frankfurter, Reed, and Tom Clark all voted to disqualify themselves, based on connections either to Hiss or to the case. Hiss reported to Lewisburg Federal Penitentiary on March 3, 1951. He served 44 months of his five-year sentence before being released for good behavior on November 27, 1954.[3]

For others involved in the Hiss trials, mixed blessings were in store. Whittaker Chambers published a memoir, *Witness,* in 1952. It was a widely acclaimed best seller. Arthur Schlesinger, Jr., called it, "one of the greatest of all American autobiographies." Chambers enjoyed financial success as a consequence of the book's reception. On July 9, 1961, Chambers died as a result of a heart attack.

Future President Ronald Reagan credited Chambers's influence in his abandonment of the Democratic Party. In 1984, President Reagan posthumously awarded Chambers the Medal of Freedom. In 1988, Whittaker Chambers's farm, site of the Pumpkin Patch was granted status as a National Landmark by the Department of the Interior. Even today, many conservatives regard Chambers as something of a national hero.

HUAC member Richard Nixon was elected as the 36th vice president of the United States under Dwight Eisenhower. The pair were reelected in 1956. Nixon lost his bid for the presidency to John F. Kennedy. In 1968, Nixon won the election against Democrat Hubert Humphrey to become the 37th president. In the wake of the Watergate Crisis Nixon resigned from office on August 9, 1974.

Nixon never seemed to forget Hiss, remarking on the matter at several occasions. Two particularly intriguing anecdotes demonstrate Nixon's perspective: In July 1972, Nixon admonished White House aide John Ehrlichman, "If you cover up, you're going to get caught. And if you lie you're going to be guilty of perjury. Now basically that was the whole story of the Hiss case. It is not the issue that will harm you; it is the *cover-up* that is damaging." Later, in 1973, Nixon told aides H.R. Haldeman and Charles Colson, "...You know the great thing about...I got to say for Hiss. He never ratted on anybody else. Never. He never ratted" (Kisseloff, 2006).

As for the final curtain on Alger Hiss, he managed to outlive nearly everyone else connected to the case. In 1957, he released a memoir, *In the Court of Public Opinion,* and in it he comments extensively on Chambers's memoir, *Witness.* Throughout his life, Hiss maintained his innocence. In 1972 the "Hiss Act" was repealed as unconstitutional. The act was passed by Congress for the sole purpose of depriving Hiss of his government pension. In 1975, Hiss was readmitted to the Massachusetts Bar. In 1978, with the assistance of the National Emergency Civil Liberties Committee, Hiss filed a petition in federal court for a writ of *coram nobis* to overturn the guilty verdict on the reason of prosecutorial misconduct. Hiss alleged this misconduct was revealed in FBI files obtained through the Freedom of Information Act (Kisseloff, 2006). Through successive appeals the petition was denied. On November 14, 1996, four days after his 92nd birthday, Hiss died in New York City.

THE VERONA POSTSCRIPT

As with any good mystery, the controversy surrounding the Hiss case did not die with Hiss. Where advances in technology and the lens of historical perspective give

closure to many scandals, the legacy of Alger Hiss remains clouded. As Roazen (2003, p. 35) states, ''The [Hiss] cases has haunted American liberalism for over fifty years now...the contours of the controversy would seem to have expanded as the years have passed.''

Numerous details have emerged, but little has been settled. In October 1999, after 51 years, grand jury transcripts in the Hiss case were unsealed by court order. Many contend that these records show misconduct by the government, by Representative Nixon, in particular. In a similarly evocative turn, former Soviet KGB officials have come forward with news that they have no proof Hiss was a Soviet agent.

Arguably the most provocative new evidence in the Hiss case has come from declassified intelligence materials. At the height of the Cold War, U.S. security agencies intercepted and decoded several thousand Soviet intelligence transmissions. These transmissions have since become known as the Verona cables. The English translations of these cables were made public in the mid-1990s. One of these transmissions in particular, ''Venona Washington to Moscow No. 1822, a March 30, 1945,'' includes discussion of an agent code-named ''ALES.'' Many believe that this was a reference to Hiss. The ensuing debate was nothing less than an academic firestorm. On one side there are scholars, such as Alexander Vassiliev and Allen Weinstein (2000), who contend Hiss was guilty. On the other side are Hiss defenders such as John Lowenthal (2000) and Victor Navasky (2005). These four Hiss researchers represent some of the most heated exchanges.

On a certain level, one might wonder why it matters. What does it change whether Hiss was a spy? To leave the question framed in terms of one man is to miss the larger point. While most of the original actors in this drama have passed into eternity, a new generation has taken up the case as a kind of litmus test. As posthumous honors by Ronald Reagan imply, Chambers versus Hiss is less a referendum on the guilt of one man than it is on a matter of political philosophy. Where one stands on Hiss reflects where one fits along the conservative-liberal continuum.

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NOTES

1. The Yalta Conference was a 1945 meeting between the leaders of the United States, the United Kingdom, and the Soviet Union to specify the terms of German surrender, the division of postwar Europe, and the formation of the United Nations.
2. Assuming Alger's guilt, many sources appear to concur on speculation that Priscilla Hiss would have likely been the typist for the Baltimore papers as Alger was known to be a ''hunt-and-peck'' typist. The ''Hiss Standards'' was a term of convenience used to describe documents known to have been typed by Priscilla Hiss that were used as a baseline for comparison.
3. From prison, Hiss wrote almost 500 letters. In 2000, Hiss's son Tony published the letters in a volume entitled *The View from Alger's Window: A Son's Memoir.*

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11

Worse than Murder: The Rosenberg-Sobell Atom Spy Affair

ERNEST L. NICKELS

The defeat of Nazi Germany in the spring of 1945 brought a close to the European theater of the Second World War (WWII). In the Pacific, Japanese forces receded against a series of key Allied victories, events that had cost both sides dearly. Plans for a November invasion of mainland Japan forecast American military casualties in the tens of thousands as the Japanese braced for total war if necessary to repel an occupation. That scenario never came to pass. On August 6, the United States Air Force bomber *Enola Gay* released its payload—an atomic bomb dubbed ''Little Boy''—over the city of Hiroshima, decimating its civilian population. Three days later, a second bomb, ''Fat Man,'' fell over Nagasaki to similar effect. Japan surrendered within the week.

The atomic weapon program of the United States, the Manhattan Project, was one of many undertaken by the WWII powers, including Japan. As the first to realize nuclear capability, the United States emerged as the original superpower of the postwar era. This monopoly was short-lived. A shade past four years after the Hiroshima bombing, the Soviet Union staged its first successful test of a nuclear weapon, the RDS-1. Operation ''First Lightening'' (codenamed ''Joe One'' in U.S. intelligence) caught the West by surprise, arriving years in advance of predictions for what had been thought to be a fledgling research program.

Mere days after the Nagasaki bombing, the U.S. government had publicly released the Smyth Report. This document declassified and described in limited detail the administrative history of the Manhattan Project as well as the elementary principles of nuclear physics involved in atomic bombs. The report did not discuss the actual methods for constructing such weapons nor did it make any mention of design differences between the Little Boy and Fat Man technologies. The unique construction of Fat Man, particularly the distinct implosive mechanism for activating its plutonium core, would not become public knowledge until 1951 when revealed over the course of the Rosenberg-Sobell trial. From the design of the RDS-1, resembling Fat Man down to its (also classified) case construction, it was clear that Manhattan Project secrets had been passed to the Soviets.

DUCK AND COVER

First in an instructional booklet and later in film with an entirely surreal, bubbly jingle, Bert the Turtle taught American schoolchildren across the country what to do in case of nuclear attack. In school, at the sight of a bright flash (indicating detonation of an atomic bomb), students were to duck beneath their desks or crouch against the nearest wall away from windows and cover themselves as best they could. At the time this informational campaign was designed, nuclear physics was still poorly understood. It was believed that the primary danger posed by atomic bombs was the severe concussive force and extreme heat generated by the blast. Initial skepticism about the ''duck and cover'' was validated a few years later when nuclear testing somewhat inadvertently stumbled upon the concept of radioactive fallout.

With Soviet achievement of nuclear weaponry, the emergent Cold War solidified as the definitive force shaping international relations and American political culture for the remainder of the century. By the close of the Rosenberg-Sobell trial, American forces had fought North Korean and Chinese forces to a virtual standstill on the 38th parallel in South Korea. U.S. support operations had begun in French-occupied Vietnam to contain the spread of communism. McCarthy had made himself a household name and ''loyalty'' the watchword of the day. Nations raced toward the next generation of nuclear weapons, the exponentially more powerful hydrogen bomb. Schoolchildren were drilled to ''duck and cover'' in the case of nuclear attack. Bert the Turtle, the Civil Defense Administration's cartoon spokesman for this (surely useless) safety measure, awaited his film debut to the American public.

The sentence Judge Irving Kaufman delivered to Julius and Ethel Rosenberg at the end of March 1951 swept past mere legal condemnation to admonish them in the face of history. Responsibility for what had passed in the wake of Joe One, as well as what must surely await the United States and the world, was laid squarely at their feet:

> I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. In committing the act of murder, the criminal kills only his victim. The immediate family is brought to grief and when justice is meted out the chapter is closed. But in your case, I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country. (Rosenberg-Sobell, 1952, pp. 1614–1615)

The couple was electrocuted in 1953, a day after their 14th wedding anniversary.

THE ATOM SPIES

Within a year of Joe One, investigation into Soviet espionage in the American atomic program yielded its first major break. In February 1950, the British scientist Klaus Fuchs was arrested in England. Fuchs, a German-born theoretical physicist and communist, had fled Nazi persecution before the war and worked in the British atomic program before collaborating with American researchers on the Manhattan Project. During and after the war, Fuchs had operated as a Soviet agent and had passed nuclear research information



Figure 11.1 Rally to save Julius and Ethel Rosenberg from execution, in the center of Paris, ca. 1953. Huge portraits of the atom spies are mounted behind the speaker's platform. Courtesy of the Library of Congress.

to the USSR. Between 1947 and 1949, Fuchs admitted to having handed over plans for the hydrogen bomb to his contact, Alexandre Feklisov, a case officer with the Soviet intelligence agency, the NKGB. Following his conviction in 1950, Fuchs received 14 years in prison.

Fuchs's confession served to implicate, among others, the American chemist Harry Gold. Under investigation in the United States, Gold admitted to having served as a courier for Manhattan Project secrets passed to the Soviets between 1944 and 1945. Like Fuchs, Gold named names. Among the identified collaborators were the Soviet General Consul Anatoli Yakovlev, an intelligence case officer with the NKVD, and David Greenglass, a machinist and sergeant in the U.S. Army stationed at the Los Alamos project site during the war. At war's end, Yakovlev had returned to the Soviet Union and was therefore beyond the reach of U.S. authorities. The Federal Bureau of Investigations (FBI) arrested Greenglass in June 1950. In custody, Greenglass claimed he had agreed to spy for the Soviets when his wife, Ruth, approached him on behalf of his sister, Ethel Rosenberg, and her husband, Julius.

Julius, born in 1918 to Jewish Polish immigrants, was raised in New York's Lower East Side and later attended the City College of New York (CCNY). There, he pursued a degree in electrical engineering alongside Morton Sobell, an acquaintance through their mutual involvement in the Young Communist League, and Max Elitcher, Sobell's friend and former high school classmate. After graduation, Sobell and Elitcher went to work for the Navy Bureau of Ordnance. Sobell left this position in 1941, but remained in contact with Elitcher as well as with Julius. Several years later, Sobell and Elitcher would reunite as coworkers at the Reeves Instrument Company in Queens, New York.

Ethel was three years Julius's senior, born into more modest circumstances on the East Side of Manhattan. Graduating high school at 15, Ethel found work as a clerk in a shipping company. Four years later, she was fired for helping organize a strike protesting labor

conditions of the women workers. Like Julius, Ethel joined the Young Communist League in her youth. The two met during a New Year's Eve union benefit. Soon after Julius's college graduation in 1939, they married and Ethel later bore two sons, Michael and Robert. In 1940, Julius took a position with the U.S. Army Signal Corps as a civilian engineer. Julius and Ethel joined the Communist Party but were no longer active members by 1943. Nonetheless, when Julius's former affiliation with the party was uncovered in early 1945, he was fired from the Signal Corps. Afterward, he briefly worked for the Emerson Radio Corporation before forming the G & R Engineering Company with his brothers-in-law Isadore Goldstein and David Greenglass in 1946.

Julius was arrested in July 1950. Fuchs, Gold, and Greenglass had each chosen to answer accusations of espionage with confessions and information implicating others in order to secure leniency. This pattern emerged as typical in the Cold War hunt for communist spies and sympathizers. Julius, however, clung steadfastly to an unqualified claim of innocence. When Ethel was arrested in August, primarily (or solely) to leverage Julius toward a plea agreement, she followed suit. Although originally denying their direct involvement initially, David Greenglass agreed to testify against both Rosenbergs in exchange for his wife's immunity from prosecution.

At the time of the Rosenbergs' arrest, Morton Sobell was residing in Mexico along with his wife and children. Abducted from his residence under false pretenses by an otherwise unidentified group of Mexican men, Sobell was turned over to FBI custody at the American border and charged as a coconspirator in the atom spy ring. Sobell, like Julius and Ethel, maintained his innocence. Elitcher, like Greenglass, had agreed to turn states' evidence, testifying against both Sobell and Julius Rosenberg.

THE ATOM SPY CONSPIRACY

Investigation into the possible transfer of atomic secrets to the Soviet Union generated a considerable volume of testimony, the result of a sequence of confessions and allegations that served to tie the many supposed co-conspirators together. As it emerged from this web of implications, the government's case against the Rosenbergs and Sobell framed the accused as the key to this conspiracy—and their prosecution as the culmination of its unmasking. From the existing record at the time of the trial, the structure of the alleged conspiracy can be traced through the chain of testimonies most immediately leading up to the involvement of the Rosenbergs and Sobell in charges of atomic espionage (see also, Sharp 1956, p. xv, for a graphical summary). Upon arrest, Fuchs gave up the names of Feklisov and Gold. Gold, in turn, implicated Yakovlev and David Greenglass. The Greenglasses then testified against the Rosenbergs, as did Elitcher. Elitcher additionally spoke to Sobell's involvement, claiming to have witnessed Sobell delivering presumably sensitive materials in a film canister to Julius. A direct connection between Feklisov, Yakovlev, the Rosenbergs, and Sobell could not be established for lack of corroborating testimony on their part. With the Rosenbergs and Sobell alone to answer the allegations against them with a claim of innocence, the final piece of the puzzle fell into place. The portrait of the conspiracy, in whatever its proportions of fact and fiction, appeared complete.



Figure 11.2 Morton Sobell (left), entering Federal Court with Deputy Marshal Eugene Fitzgerald, 1953. Courtesy of the Library of Congess.

THE ROSENBERG-SOBELL TRIAL

The trial in the case of the United States versus Julius Rosenberg, Ethel Rosenberg, and Morton Sobell opened on the morning of March 6, 1951. Accused of conspiracy to commit espionage in time of war under the Espionage Act of 1917,[1] each faced up to 30 years in prison or death. Anatoli Yakovlev and David Greenglass were named as codefendants, but were each granted a severance of trial. Coconspirators Ruth Greenglass and Harry Gold were not charged and instead appeared as state witnesses rather than defendants. U.S. Attorney Irving Saypol headed the prosecution, assisted by Myles Lane, Roy Cohn, John Foley, James Kilsheimer III, and James Branigan. Emanuel Bloch represented Julius Rosenberg; Bloch's father, Alexander, represented Ethel. Harold Phillips and Edward Kuntz represented Sobell. Judge Irving R. Kaufman presided.

Proceedings began with jury selection. The clerk read a list of the state's intended witnesses, over a hundred in all including Gold, the Greenglasses, and renowned figures such as General Leslie R. Groves and Dr. J. Robert Oppenheimer—the director and lead scientist of the Manhattan Project, respectively. Elizabeth Bentley was also named, the so-called ''red spy queen'' who gained celebrity testifying against many supposed former cooperative Soviet spies. The grand jury indictment was presented detailing the nature of the charge, specified in 11 overt acts. Potential jurors were presented with long lists of (mainly socialist and communist) organizations and publications and asked about the

associations they might have with any. After a careful vetting by both prosecution and defense, and questioning about political leanings, whereabouts during the war, and travels overseas, 11 men and one woman were empaneled.

With the jury excused, Judge Kaufman agreed to hear motions. Emanuel Bloch called for an immediate dismissal of the Rosenbergs' indictment. Despite the Court's firm assurance that defense briefs on the matter had been already considered and found unpersuasive, Bloch nevertheless pressed on. The argument comprised three specific challenges. The first two disputed the constitutionality of the Espionage Act itself as violating the First Amendment in failing to establish a definite basis for findings of guilt and, by extension, Fifth Amendment due process protections in denying the accused a fair statement of the charges accused. In prohibiting the transmission of information relating to the ''national defense,'' Bloch reasoned, the Act failed to define that term. Neither lay nor legal dictionaries define ''national defense,'' nor was the phrase an established term of art. This ambiguity effectively granted the military broad license to establish its meaning and thereby the limits of free speech—an effect plainly unintended by the legislature and, in any case, a power that cannot be delegated away. The Supreme Court had considered and rejected this same argument in *United States v. Goren.* However, that challenge was brought on Fifth and Sixth Amendment grounds. Bloch argued that when understood as a question of free speech, the language of the statute could no longer be understood as sufficiently clear as stricter standards are necessarily invoked in First Amendment cases. Bloch noted that the Atomic Energy Act of 1950 was drawn up at the urging of the scientific community in part to address these very concerns—particularly with respect to nuclear research. The failure to amend or repeal the relevant portions of the Espionage Act in light of this legislation, Bloch argued, was clearly an oversight. The third argument to dismiss more narrowly addressed the substance of the indictment, which failed to allege that the information the accused purportedly conspired to transmit to a foreign power fell under the provisions of the statute. Not all national defense information, if revealed, constitutes a crime. The indictment failed to specify that the information in question was so protected.

Judge Kaufman was unmoved. Addressing the final point first, the Court found that the alleged intention of the accused to give ''advantage'' to a foreign government necessarily implies the information is confidential. The meaning of ''national defense'' was not found to be vague. Finally, as defense secrets are not protected speech, a challenge on First Amendment grounds failed and, with it, any Fifth Amendment objection. Kaufman did allow the defense to enter their brief into the record, conceding the argument may prove persuasive on appeal.

Kaufman then allowed the prosecution and defense each a brief opening statement to the jury. Attorney Saypol spoke first. Early into this presentation, the caustic tone, impassioned rhetoric, and sharp bickering that came to characterize this trial took shape.

Opening Statements[2]—''A Fair Shake in the American Way''

''The evidence,'' Saypol claimed, ''will show that the loyalty and allegiance of the Rosenbergs and Sobell were not to our country, but that it was to Communism, Communism in this country and Communism throughout the world.''

Emanuel Bloch rose to protest—the first of many, progressively outraged, objections to the prosecution's references to the defendants' past ties to communism. Bloch asked Kaufman to direct Saypol to desist from any such remarks since, ''communism is not on trial

here. These defendants are charged with espionage.'' Saypol protested this interruption. ''I beg your pardon, Mr. Saypol,'' Bloch replied directly, in breach of courtroom etiquette, ''but I am forced to do it.''

Kaufman quickly, if impatiently, quieted the skirmish. ''Will somebody permit me to make a ruling here?'' Chastising Bloch, he complained, ''Mr. Saypol objects to your objection and you answer his objection and I can't make a ruling.'' The jury was directed to observe ''the charge in question is espionage, not political affiliation,'' but Kaufman noted he would allow the prosecution to address the defendants' ties to communism for the purpose of establishing a motive for their crime.

Saypol resumed his opening, elaborating the nature and gravity of the alleged crime. The evidence, he promised, would show that the Rosenbergs, operating at the behest of Soviet agents, had enticed David Greenglass into the role of ''a modern Benedict Arnold.'' Collectively, they had delivered the secret of the atomic bomb—''the most important weapon ever known to mankind''—to the Soviet Union. This spy ring had actively pursued the recruitment of other Americans into espionage and, when discovered, arranged to flee behind the Iron Curtain.

Bloch now demanded a mistrial, describing the prosecution's statement as ''inflammatory in character'' and as having introduced an element entirely irrelevant to the case at hand, ''to wit, Communism.'' When this motion was also denied, Phillips launched himself into the fray.

Allegations of attempting to flee the country were ''quite beside the point, entirely improper, not relevant.'' Phillips did not pause at the judge's attempt to interject, accusing the prosecution of raising the specter merely to prejudice the jurors.

''I suggest that if you will examine the law books, Mr. Phillips,'' Kaufman growled, ''you will find that it is quite relevant in a criminal case to introduce evidence of flight on the question of guilt.''

''After the proof of the act itself has been advanced,'' Philips conceded, but not before. Asked for his motion, Philips requested that the Court either instruct the jury to disregard these remarks or declare a mistrial. Motion denied. Now Bloch charged the bench's blind spot, rising to reserve his objection to incrimination by association. Judge Kaufman stopped him short: ''I wish each and every one of you gentlemen would immediately arise. Invariably, as I get ready to make a ruling, somebody else jumps up.'' The reserve was noted, and Kaufman once more directed jurors that the charge was conspiracy to commit espionage, ''in that matters vital to the national defense were transmitted to Russia for the purpose of giving Russia an advantage, with intention of giving Russia an advantage. That is the charge. . .''

''This is not the charge,'' Phillips argued. ''Nowhere in the indictment is it stated that information was actually transmitted. The indictment charges that a plan was laid to transmit information.''

The Court conceded, but Bloch pushed the point further, complaining before the jury that the indictment was not clear on what specifically was alleged and that he was only now learning what he must defend against.

''This is a very grave crime that these defendants are charged with,'' Bloch pleaded to the jury. ''Very grave. And this trial arises in a rather tense international atmosphere. And I think all of us delude ourselves that we believe that we are completely free from all of those pressures and influences that every minute of the day are upon us.'' All that he asked of the jurors on behalf of the accused ''is a fair shake in the American way.'' The

defendants stood accused of conspiracy to commit espionage, he reminded them, and this was what the government must prove—"not that they believed in one ism or another ism." Bloch enjoined jurors to be skeptical of the witnesses they would hear and to guard themselves from any sympathies, passions, or prejudices they might harbor.

Alexander Bloch spoke next in the defense of Mrs. Rosenberg, casting her as "basically a housewife, and nothing more," who should not be condemned because her brother and sister-in-law have confessed treason. They had plainly been enticed with leniency to implicate others and thus their testimonies were less than credible.

Phillips's presentation raised the more esoteric point that conspiring to transmit national defense secrets could not be considered worse if directed to the Soviet Union than to the United Kingdom, as the statute draws no distinction. Whatever the present relations with the Soviets, the prosecution's references to it could only be read as intending to "inflame your heart." Phillips cautioned he was not "trying to minimize the fact that it is a criminal offense, but for heaven sakes, why maximum it?" Of the 11 acts specified in the indictment, none mentioned Sobell by name. "We will wait and have to wait," he complained, "sit here like so many children, listening, waiting...How is the Government going to connect Sobell by truthful testimony? Untruthful testimony there may be a great deal of; I don't know anything about that." Finally, he observed that Gold, the crux of the prosecution's case, "never had anything to do with Communists and was no Communist. So where is the motive of Communism? So let that at once fly out of your minds."

By the close of the defense's opening statements, the day had expired. Jurors were warned that they would be together for weeks to come. On the next day of the trial, the parade of witnesses began.

The Prosecution

The prosecution's theory slowly unfolded during examination of the state witnesses. Each testimony added another facet to an increasingly intricate tale of subversion and subterfuge, reported back to the nation as so many serial chapters of some generic spy fiction. This story was developed primarily through the testimonies of Elitcher and David Greenglass and then fleshed out in greater detail by Gold and Ruth Greenglass.[3]

It begins shortly after Julius Rosenberg, Sobell, and Elitcher graduated from college in 1938. Working for the Navy, Sobell and Elitcher lived together and were active Communist Party members. They parted ways in 1941 when Sobell returned to school, but kept in touch on occasion. In 1944, Julius Rosenberg, who Elitcher had not seen in six years, came calling.

Julius sought to supply the Soviet Union with U.S. military secrets and was already working in cooperation with Sobell. Now, Julius hoped to enlist Elitcher as well. Initially, Elitcher abstained but later confirmed this conspiracy with Sobell while on vacation three months later. Rosenberg approached Elitcher again the following year. In 1946, Elitcher spoke to Sobell about his military work developing a gunnery control system, telling him of an unfinished pamphlet on the system and was referred back to Julius. Elitcher made contact in late 1946, but Julius had grown suspicious of a leak in the spy ring and put off discussion of the matter. Meanwhile, Sobell began to mine Elitcher for the names of any "progressive" engineering students whom he might recruit for espionage. Elitcher offered none, and decided to quit the Navy in 1948. Sobell and Rosenberg attempted to dissuade him, but without success.

Late in 1948, on a family vacation to stay at the Sobells' home, Elitcher informed his host upon arriving that he had been followed from Washington to New York. Sobell seemed panicked and impressed upon Elitcher the need to be rid of something valuable but dangerous in his home, which had to be delivered to Julius immediately. Sobell retrieved what looked to Elitcher to be a 35-millimeter film can, and the two left for the Rosenbergs' home. Upon arriving, Elitcher waited in the car as Sobell made his visit. Returning to the vehicle, Sobell mentioned Julius's association with Elizabeth Bentley. In the same year, while working together at Reeves, Sobell approached Elitcher again for names of possibly sympathetic engineering students. Elitcher again declined.

Over the same period, the Rosenbergs actively developed this conspiracy in conjunction with their in-laws, the Greenglasses. In 1944, David was assigned to the Manhattan District and was eventually sent off to a secret project at Los Alamos where he machined components for research on high explosives and served as assistant foreman of his workshop. A technical sergeant, David's security clearance denied him knowledge of a project's purpose. While on leave in late 1944, he learned of the true nature of the project from his wife who had been told, in turn, by Julius. Ethel Rosenberg informed Ruth of Julius's activities in the service of the Soviet Union, and the Rosenbergs asked Ruth to pressure David to assist them in gathering information from Los Alamos. Ruth reluctantly agreed, and eventually succeeded in recruiting her husband.

David provided the Rosenbergs with the names of some of the scientists working at Los Alamos (including Oppenheimer and Niels Bohr), the physical layout of the project, and personnel figures. In early 1945, Julius and David discussed the latter's work on high explosive lens molds. Julius asked David to write down any information he had on these parts and the experiments they were used in. David compiled some rough sketches along with some written description, a list of scientists, and the names of possible communist sympathizers in the project and turned this over to Julius. During that exchange, Julius noted that Ethel would type out David's report before sending it on.

Shortly thereafter, the Greenglasses met with the Rosenbergs and a woman named Ann Sidorovich. In that meeting, it was planned that Ruth would move to Albuquerque and serve as a courier between David and Sidorovich. Bomb secrets would be passed through an exchanging of purses with Sidorovich or another agent in a Denver movie theater (later, a Safeway in Albuquerque). The side of a Jello box was snipped into two irregular halves, like pieces of a jigsaw puzzle. Ruth would retain one side, and friendly agents would be identifiable by possessing the other. Meanwhile, David was to meet an operative to discuss the lens molds. Julius introduced the two a few days later.

Upon David's return to Los Alamos, Ruth moved to Albuquerque and David visited on weekends. Though they never saw Sidorovich again, in 1945 the man now identified as Harry Gold came to visit. Claiming Julius had sent him, Gold produced his half of the Jello box. David produced the other, but did not have the requested information ready for Gold. At a second meeting, Gold received some sketches of the lens mold experiments and a list of possible recruits, and the Greenglasses received $500 in cash.

The bomb described to David by Julius was ultimately realized as Little Boy. During his time at Los Alamos, David learned of another weapon in development—the Fat Man design. David sketched the plans and wrote up a description for the implosive device used in this bomb and provided them (along with $200) to Julius at his home. The Rosenbergs proofread the report, and Ethel typed it up. Julius also disclosed to David that he had managed to steal a proximity fuse for the bomb while working at Emerson Radio.

As business partners, Julius spoke to David about bankrolling students attending college. He offered David money to attend MIT or the University of Chicago to gain the education necessary to network with those working in nuclear physics. Julius also spoke of information he had gathered on "a sky platform project" and nuclear powered aircraft, detailed his techniques for passing secrets, and mentioned items he had received from the Soviets. These included a citation, a watch, and a console table modified to microfilm and conceal photographs. After Fuchs's arrest in 1950, David learned from Julius that Gold had been one of his contacts and that they too would likely be arrested soon. Julius insisted David leave the country, by way of Mexico. David received $1,000 from Julius to cover his debts and traveling expenses. David was to take his family to Mexico City to await trans-Atlantic passage. The Greenglasses obtained passport photos; one copy was turned over to the FBI upon arrest. Julius gave David $4,000 more, which he gave to a brother-in-law to keep, but ultimately refused to leave. The Greenglasses and Rosenbergs were arrested shortly thereafter.

The Defense

The material evidence against the defendants consisted primarily of one document from the Albuquerque Hilton Hotel showing Gold had stayed there on the date he was supposed to have met with the Greenglasses and one bank record showing Ruth had deposited $400 shortly after their meetings. The prosecution had also entered as evidence the Greenglasses' passport photos and a paper bag that supposedly once held the $4,000 Julius had given to David. Nothing supported charges that Sobell or the Rosenbergs were directly involved in espionage. The state's other exhibits were simply demonstrative, such as replications of the Jello box codex, the sketches of the lens mold, and a cross section of the bomb that David Greenglass recreated.

From a legal perspective, a case based almost exclusively upon oral evidence is the weakest of accusations against a defendant. Nonetheless, it can also be the hardest to defend against. How does one *prove* they did *not* commit a murder, much less a "crime worse than murder"? Logically, it is impossible to prove a negative.[4] Yet, a successful defense against such grand accusations would seem to require equally grand amounts of disproof.[5] A defense is left to simply and firmly deny the accusations and to attempt to undermine the credibility of the prosecution's theory.

Cross-examining the state's witnesses, the defense scored some minor blows against the prosecution's case but also suffered several miscues that weakened their own position. Elitcher baldly admitted no secrets ever actually passed between either Rosenberg or Sobell and himself. Neither could he say what the supposed film canister contained. Elitcher divulged he had perjured himself in 1947 when he denied belonging to the Communist Party while taking a federal loyalty oath, and that fear of prosecution motivated his choice to testify for the state. David Greenglass, often smirking as he testified, likewise confessed he had never actually seen any of the gifts the Rosenbergs supposedly received from the Soviets. David also revealed a history of serious financial disputes with Julius related to their business venture. Ruth's near verbatim repetition of some of her original testimony under cross-examination suggested coaching by the prosecution.

The state had called expert witnesses to testify to the technical accuracy of the sketches David Greenglass recreated and claimed to have originally passed to the Rosenbergs. In cross-examination, Bloch attempted to demonstrate that these sketches would not have revealed any substantial secret of the atomic bomb. This line of questioning generally

failed and muddled the defense's argument that the state simply failed to prove the defendants had either solicited or transferred such information to the Soviets. More egregiously, with the jury present, Emanuel Bloch moved to have David's cross-sectional sketch of the Fat Man design impounded. It was one of few defense motions granted, but it in effect conceded the prosecution's claim that this information did, in fact, constitute the secret of the bomb. Harry Gold was not cross-examined.

The defense called few witnesses of their own, relying primarily upon the Rosenbergs' testimony. Sobell elected not to testify. On the stand, Julius flatly and repeatedly denied all aspects of the prosecution story as recounted by Emanuel Bloch. Julius spoke candidly to his views of communism as compared with capitalism when prompted by Kaufman, admitting he perceived advantages in each system and professed belief that a nation should be free to select its form of government. Julius batted away elements of the Greenglasses' testimony. The Rosenbergs' humble means were highlighted to dispute allegations of access to near-limitless funds from the Soviets. Julius laughed off the suggestion that he would have suggested David attend MIT or the University of Chicago as David would never have been accepted to such prestigious institutions. In fact, Julius had pressured David to quit his part-time schooling and attend more closely to their business. Julius acknowledged owning a console table, but claimed to have purchased it from Macy's. He had made contact with Elitcher during the war years, but for purely social reasons and later in the course of challenging his firing from the Signal Corps. Julius had not seen Sobell during the entirety of the war, only reestablishing their friendship after 1946. Likewise, Ethel dismissed the prosecution's allegations. She supported Julius's testimony that the console table was a Macy's purchase. While owning a typewriter, she used it only to assist Julius with school reports, union activities, his business, and his attempt to be reinstated in his government job. She felt bad being unable to help her brother and his wife with their financial problems, but reported that when the legal troubles began Ruth had told her that she and David were innocent and intended to fight the case.

Julius portrayed a troubled relationship with David, one mired in financial disputes surrounding their failed business and David's ambitions for wealth. Julius claimed Ruth had been the one to ask him to visit the Greenglasses' apartment initially while David was in Los Alamos. There, she had revealed to him that David was scheming to make money by stealing things from the Army and that she was concerned he would be caught. After taking possession of David's share of their failing business as well as that of another co-owner in the spring of 1950, David confronted Julius a couple months later asking for $2,000. Julius, now in debt to their former co-owner, refused. David then asked Julius to help him secure a smallpox vaccination certificate and find out what other vaccinations were necessary to travel to Mexico. David seemed "disturbed" and "agitated," but refused to tell Julius what was the matter. Earlier in the year, David mentioned to Julius the FBI had questioned him about uranium. Julius inferred that David may have followed through with his moneymaking scheme, had been found out, and was now looking to flee the country.

Julius contacted his physician to ask about a certificate for David, but to no avail. David said he would handle the matter himself. In June, David called upon Julius again and now admitted to being in serious trouble and again requested $2,000. Julius again could not comply. David threatened that Julius would be "sorry" if he did not give him the money. At that point, Julius cut the conversation short and sent David home. Believing the matter had blown over, Julius volunteered to answer questions at the FBI office

after David's arrest only to discover David had implicated him as a Soviet agent. Julius denied the charge and hired Emanuel Bloch as his defense attorney.

Prosecution Cross-Examination and Rebuttal

Cross-examining the Rosenbergs, Saypol devoted little energy to deconstructing their version of events. He did suggest it was "a little fantastic" that David Greenglass would need $2,000 for a smallpox certificate, and quibbled that the console table sold at Macy's at the time cost much more than what Julius reported spending. Saypol instead emphasized prior associations with communism, returning to Julius's political activities during college. Julius invoked the Fifth Amendment, refusing to discuss involvement with Young Communist League or the Communist Party. When Saypol brought up his termination from the Signal Corps in 1945, Julius conceded there were allegations of communist ties but had denied them at the time and refused any further questions in court. Julius again spoke freely on his views of the Soviet Union, admitting that, as a Jewish American, he appreciated the role they had played in defeating Nazi Germany. He went so far as to admit he believed that as wartime allies of the United States, the Soviets deserved to be privy to the same secrets shared with the United Kingdom. Julius conceded past membership in the Joint Anti-Fascist Refugee Committee, an organization officially considered "subversive," Saypol noted, as well as to holding insurance through the International Workers Order. Saypol introduced a petition from 1939 with Ethel's name in support of a Communist Party candidate running for local office in New York City. Primarily, however, the prosecution sought to discredit Ethel by highlighting her liberal invocation of the Fifth Amendment during her grand jury testimony—questions that she willingly answered at trial. The defense agitated for a mistrial, but fruitlessly. Kaufman ruled the jury might consider the matter in evaluating the credibility of Ethel's testimony. Ethel merely noted she and Julius were under arrest at the time and had reason to believe David might have falsely implicated them.

The prosecution called additional witnesses during its rebuttal, among them a former servant for the Rosenbergs during the war. She testified that Ethel had claimed the console table had been a gift from a friend of her husband's and that it was normally stored in a large closet. Emanuel Bloch's cross-examination revealed she believed the table was purely ornamental and apparently never used for any purpose whatsoever. A surprise witness, revealed to the defense only the day before, was also called—a local photographer who claimed the Rosenbergs had purchased passport photos in 1950, purportedly for a trip to France. In cross-examination, however, he admitted he did not possess the photo negatives nor did he have any record of the transaction.

Summations and Verdict: "The Enormity of the Thing"

Emanuel Bloch delivered the first of the summations. Listing off state's exhibits, Bloch noted that for all the FBI's investigative efforts, they had not managed to locate any evidence concretely tying the Rosenbergs to the alleged conspiracy. The "repulsive" David Greenglass—one who "comes around to bury his own sister and smiles"—and his "evil" wife had fooled the government with their false implications. Already holding ill will against his brother-in-law, David had capitalized on the circumstances surrounding Julius's firing from the Signal Corps and offered up the Rosenbergs in trade for leniency for himself and Ruth. Gold offered no testimony directly implicating the Rosenbergs. Elitcher, also motivated to avoid prosecution, likewise had incentive to testify to this

fabrication. The prosecution story, Bloch argued, simply did not make sense. Elizabeth Bentley had testified that she spoke over the phone with an agent named Julius, but why would Julius use his real name? Would not the Rosenbergs' maid have noticed the modifications to the console table? If David's escape plan was so expertly arranged, why was Sobell easily apprehended in Mexico City? Surely, Bloch argued, there was at least reasonable doubt of the Rosenbergs' guilt.

Kuntz summarized Sobell's defense. Echoing Bloch, Kuntz also noted the dearth of evidence the FBI turned up investigating Sobell. Elitcher, a "miserable liar," offered the only testimony implicating Sobell, but his story strained imagination. For such a monumental crime, it would have been recklessly cavalier for Rosenberg to so casually approach Elitcher for assistance. How could Elitcher let a full three months pass before finding it worthwhile to mention the affair to Sobell? Even if Sobell had delivered a canister to Julius, Elitcher himself admitted ignorance of its contents. As for Sobell's supposed "flight" from the country, supposedly proof of a "guilty mind," why would he travel and rent an apartment there under his own name?

Saypol summarized for the prosecution. Confessing a sense of inadequacy in his ability to "express . . . in words the enormity of the thing," the prosecutor admitted that much of the conspiracy was still unknown to authorities. Nevertheless, it was certain "that these conspirators stole the most important scientific secrets ever known to mankind from this country and delivered them to the Soviet Union." The Rosenbergs' guilt was clear. The Greenglasses' testimony was corroborated by Harry Gold—who was already sentenced and therefore without any obvious motivation to lie—as well as by the documentary evidence including the Albuquerque hotel registration card and Ruth's deposit receipt for $400. Saypol reviewed the evidence of an effort to flee the country and again called into question the idea that the Rosenbergs could have purchased the much-discussed console table during the war years (when furniture was scarce) for the price they had quoted. He further noted it would seem strange for a couple to tell conflicting stories of its origin to their housekeeper and place their finest possession away in a closet. Saypol once more traced the impetus for this crime to Julius and Sobell's communist associations in college. Sobell's participation, he argued, was clear in the testimonies presented by the state witnesses as well as evidence suggesting Sobell used at least five aliases while in Mexico. There have been no defendants who "ever stood before the bar of American



Figure 11.3 Julius and Ethel Rosenberg, separated by heavy wire screen, as they leave the U.S. Courthouse after being found guilty. Courtesy of the Library of Congress.

justice less deserving of sympathy than these three'' (*Rosenberg-Sobell,* 1952, p. 1535), Saypol argued.

With that, arguments closed and the jury retired to deliberate the case. The trial had lasted only three weeks. In less than 24 hours, the defendants had their verdict—guilty. Kaufman openly approved the finding. Saypol once more trumpeted the importance of the case, characterizing the defendants as ''the sharpest secret eyes of our enemies'' whose crime involved ''implications so wide . . . [as to] . . . involve the very question of whether or when the devastation of atomic war may fall upon this world'' (*Rosenberg-Sobell,* 1952, p. 1582).

Sentencing and Aftermath

One week after the verdict, the defendants were sentenced. The Rosenbergs were called first. The Court neither formally solicited nor received recommendation from the prosecution with regard to sentencing, but Saypol indicated his preference in referencing the sacrifices of U.S. servicemen in Korea, after which he pointedly asked, ''is there room for compassion or mercy?'' (*Rosenberg-Sobell,* 1952, p. 1603). Emanuel Bloch maintained the Rosenbergs' innocence, but further noted that at the time the conspiracy supposedly took place the nations were allies and quoted expert opinion suggesting the information in question would have been a minor contribution to the Soviet program at best. When Kaufman delivered his condemnation of the Rosenbergs, it was not without concern for its moral implications. ''I am just as human as are the people who have given me the power to impose sentence,'' he observed. ''I have searched the records—I have searched my conscience—to find some reason for mercy—for it is only human to be merciful.'' However, he concluded, it would be a breach of public trust to show any leniency toward the Rosenbergs. ''It is not in my power, Julius and Ethel Rosenberg, to forgive you. Only the Lord can find mercy for what you have done'' (*Rosenberg-Sobell,* 1952, p. 1616). The couple was sentenced to death.

Sobell's attorney, Phillips, raised a motion for an arrest of judgment while Sobell contested his deportation from Mexico. The motion was denied, and Phillips pled for leniency as the prosecution had failed to implicate Sobell in any act relating to the transmission of atomic secrets. In addressing Sobell, Kaufman conceded the defendant had played a lesser role in the conspiracy. Sobell received a maximum sentence of 30 years. David Greenglass, the last to be sentenced, received 15 years.

The Rosenbergs and Sobell appealed their convictions over the subsequent two years. Concerned that Kaufman had failed to properly direct the jury in interpreting Ethel's exercise of her Fifth Amendment rights and by sentences that seemed unduly harsh, the U.S. Circuit Court of Appeals nonetheless found no reversible error in the proceedings. Repeatedly, the Supreme Court denied the case a hearing. The defense motioned for a retrial based upon new evidence—most critically that the Greenglasses had committed perjury during the trial, in full knowledge of the prosecution—but this likewise failed. Presidents Truman and Eisenhower were both petitioned for clemency, also unsuccessfully. In 1953, the Rosenbergs' execution date was set.

The government had been confident Ethel's indictment would leverage Julius into cooperation. When that failed, it was perceived to be certain that the threat of death would do the trick. When the Rosenbergs again failed to fall into line, one last offer was extended to the couple via a Justice Department report leaked to the media—if they would confess and provide information of their illicit activities, they would be spared their lives (Neville,

1995, p. 121). From prison, the Rosenbergs publicly delivered their answer, vowing they would, "not be coerced, even under pain of death, to bear false witness. . .Our respect for truth, conscience and human dignity is not for sale. Justice is not some bauble to be sold to the highest bidder" (quoted in Schneir and Schneir, 1965, p. 195).

After one final delay, the execution was carried out on June 19 just before sundown, the start of the Jewish Sabbath. Julius, whose cell was nearer the death chamber, went first to avoid having his wife pass by his cell on the way to her death. When his body was removed, Ethel followed. Neither spoke any final protest or apology, nor resisted in any way their deaths ("Husband," 1953). In a foster home, their eldest son, Michael, now ten years old, learned of his parents' fate from a brief interruption to the Yankee-Tiger game on television. When younger brother Robert, six at the time, entered the room speaking excitedly about Father's Day that coming Sunday, Michael merely winked to their caretaker who looked on—he would not let on what had happened ("Son," 1953, p. 14).

ATOMIC BOMBS AND NUCLEAR FAMILIES

With the Cold War setting in against the Soviet Union, and a hot war underway in Korea, Sobell and the Rosenbergs stood little chance of a fair hearing in the mainstream press. When a nation mobilizes in the cause of defense, even a free news media tends to err on the side of patriotism. Probative investigation and skepticism of official sources tend to assume lesser priority. During this time, the major daily and weekly periodicals served as an echo chamber to a torrent of governmental revelations regarding the nature and dimensions of the communist menace. When Sobell and the Rosenbergs were swept up into this story as perpetrators of atomic espionage, they were represented to the American public as merely one more datum in the body of evidence suggestive of an impossibly large and seamless conspiracy. The prosecution exploited this atmosphere, for example, in announcing the arrest of the suspected spy William Perl (a former classmate of Sobell and Julius in college) for perjury in denying before a grand jury any acquaintance with the defendants in the middle of the trial. In essence, this allowed Saypol to promote the government's theory of the alleged atomic conspiracy ring in the press (readily available to the unsequestered jury) without having to produce or defend any additional evidence in court (see also Neville, 1995, pp. 14, 41).

Throughout the appellate process and after the executions, their lawyers and defense committees would blast the media for underreporting their side of the story, for uncritically regurgitating inflammatory statements by the prosecution and its supporters, and for blacking out coverage of the clemency movement both in the United States and abroad. However, they were well aware that the question of guilt was already well settled in the minds of most. In pursuing support from the American public and prominent cultural and political figures, issues of fairness in the trial process and the justness of the sentences were narrowly emphasized. Allegations circulating in smaller, leftist publications and the foreign press (particularly France) that Sobell and the Rosenbergs were victims of a governmental "frame-up" or bald anti-Semitism were not openly entertained domestically. In this respect, the Rosenbergs' cause at least managed modest success in stirring an appreciable mainstream movement in their favor—in spite of this wartime journalism, the fear and loathing it voiced and fomented.

Did mere *conspiracy* to commit espionage warrant a death penalty? Even if just, what wisdom was there in permanently silencing potential informants? What American

interests would be furthered in letting the Rosenbergs martyr themselves for the communist cause?[6] Many celebrated trials fade quickly from the public consciousness after their initial resolution. The Rosenberg-Sobell affair, however, persisted even over the course of a long and complicated appellate process. Media coverage lightened during this time, peaking again on the verge of the execution, but it also sobered and at length began to entertain framing of the case that did not neatly align with the government's story of a cut-and-dried case of treason for which there was a consensus on the appropriateness of the death penalty. As debate grew at home and abroad, both in size and in volume, the press increasingly conceded its existence. The State Department's propaganda efforts in Europe to counter protests on behalf of the Rosenbergs were related back to the American public (Neville, 1995, p. 96). Public campaigns for Sobell and the Rosenbergs in the United States, initially orchestrated by leftist organizations and dismissed by leading newspapers as communist agitation and propaganda, progressively attracted respectable interests from legal, academic, and religious communities and could no longer be so easily painted as such. At the forefront were a growing number of protestant congregants and clerics—early, vocal critics of "McCarthyism" in all its forms.[7] Large demonstrations outside the White House and in New York City's Union Square in the days leading up to the execution, each with more than 5,000 in attendance, were admixtures of picketings and prayer vigils. Pickets spotted these crowds asking the government to "Show the World America is Merciful" and warning "The Electric Chair Can't Kill the Doubts in the Rosenberg Case." Top physicists likewise called for clemency. Albert Einstein wrote privately to Kaufman asking as much. Kaufman promptly turned the letter over to the FBI, who maintained a file on Einstein as a subversive. When options for relief in the courts were all but exhausted, Pope Pius XII communicated to President Eisenhower concerns with the Rosenbergs' case.

In historical perspective, there are no simple answers to whether or to what extent the defendants had, in fact, been atomic spies. In 1995, the U.S. government declassified a counterintelligence program that has offered some insight. In WWII, the Army began intercepting Soviet intelligence communications. The United States and the United Kingdom worked together decrypting these materials until 1980 when the program, then named Venona, was finally canceled. Most successful decryptions were achieved early on with messages passed between 1943 and 1944. Since its declassification, many have read the Venona documents as clearly implicating Julius Rosenberg and perhaps Ethel in espionage.[8] Additionally, in 1990 the posthumous memoirs of former Soviet leader Nikita Khrushchev praised the Rosenbergs for their critical role in advancing the Soviet Union toward nuclear capability. In 1997, the NKGB officer Alexandre Feklisov also publicly stated Julius had collaborated with him in espionage.

Though damning at first blush, these revelations at best provide an incomplete and often problematic corroboration of the government's case. Of the 19 messages thought to implicate the Rosenbergs, reference is made only to an agent alternately codenamed "Antenna" and "Liberal," which translators footnote as being Julius. When and how this determination was made is not clear, and while this agent is clearly involved in some form of cooperation with the Soviets these messages do not support the specific charges alleged of the Rosenbergs. There is no evidence to suggest Ethel participated or even received a codename. Feklisov has identified Julius as an operative, but only to purportedly set the record straight—that the Rosenbergs had turned over military secrets, but hardly the "secret" to the atomic bomb—during a time when it was

fashionable and profitable for former KGB agents (real or not) to offer such confessionals. Julius had passed a lens mold sketch, but Feklisov described it as nothing more than a ''childish scribble.'' As to Khrushchev's praise of the Rosenbergs, Feklisov merely described him as ''a silly man'' without understanding. Feklisov further claimed Ethel had not been involved, though she may have known of Julius's activities (''KGB Agent,'' 1997).

The Rosenbergs' convictions primarily resulted from the Greenglasses' testimony. In 2001, David admitted to perjury, to lying about his sister's involvement. Ethel's conviction and sentence hinged upon her supposed collaboration in typing up reports for the Soviets. David denied any recollection of this, and claims the assistant prosecutor Roy Cohn compelled that testimony.[9] Far from remorseful for sending his sister to her death, David claims he did what he needed to do to keep his family safe and blames the Rosenbergs for refusing to cooperate with authorities (''The Traitor,'' 2001).

Whatever the facts of the matter, scholars tend to agree the state's case against the defendants was quite weak and the trial botched. The defendants were charged with *conspiracy* to commit espionage quite simply because the state knew it lacked the evidence to prove actual espionage. Prosecutorial zeal (if not outright misconduct), Kaufman's lack of impartiality and failure to suppress prejudicial statements, an unwise (perhaps incompetent) defense, and the profoundly anticommunist sentiments of the time all contributed to a process that in retrospect seems substantially less than ideal. Most agree that the death penalty was unjustifiably harsh, particularly in Ethel's case. Even presuming the prosecution's theory was entirely correct, the Rosenbergs' contribution to the Soviet weapon program simply paled in comparison to that of other, more knowledgeable spies such as Fuchs. Yet, they alone received the death penalty. While technically their espionage transpired during wartime, a requirement for capital punishment in Espionage Act cases, the spirit of that Act arguably did not apply to the passage of secrets to wartime allies. The Rosenbergs were, in effect, retrospectively punished for aiding a nation that had since become an enemy. Minus any rigorous evidence, they were convicted and sentenced on little more than implication, innuendo, and association. Whatever the conclusion regarding the defendants' relative guilt or innocence, the Rosenberg-Sobell trial remains a prime example of one of the most notorious witch-hunts of modern American history[10]—the second Red Scare.

Witch-hunts tend to occur during periods of serious social upheaval as organized efforts to identify, isolate, exclude, or destroy persons seen as dangerous to conventional society—dangerous not merely for what they do, but also what they stand for.[11] While moderns no longer fear witches, witch-hunting behaviors nevertheless persist and yield many of the celebrated trials in history. The Red Scares are exemplary of this dynamic. In each, ''un-Americans,'' those deemed irreligious in the American spirit and wayward in radical devotions, were purged from respectable society and forced to renounce their heresies, to implicate their fellowship, and to suffer for their sacrilege.

While always premised upon a return to traditional values, witch-hunts tend to serve a progressive function, transitioning a culture from one historical period to another (see Schoeneman, 1975). When the worldview of a people is disrupted by social change, new and dissonant perspectives proliferate. The witch-hunt emerges to police ideological boundaries to reconstitute the cultural order. Although couched in the language of conservation, witch-hunts, in fact, pursue radical ideals. While usually effective in redefining consensus values in the short term, over time the witch-hunt reliably implodes as a social force when its very operation comes to be viewed as anathema to common ideals.[12] As

such, the Red Scare derailed precisely when the purge of "un-Americans" itself came to be viewed as profoundly un-American.

The World Wars had accelerated a number of changes in American society, including residential and occupational patterns, educational achievement, and the composition of households. For a variety of reasons, in postwar America the nuclear family (a husband, wife, and their children residing exclusively in a single home) became an important normative ideal. One powerful influence was the emergence of the evangelical movement in the Protestant churches at the time. Eschewing the social pessimism and apocalyptic yearnings of the now marginalized fundamentalist movement, evangelicalism found cultural currency and popular sway in speaking to more universal concerns about cultivating a rewarding, meaningful family life in the nuclear unit (Watt, 1991). While the reality of family life in the 1950s did not mirror the *Leave It to Beaver* formula propagated by popular media and cultural institutions of the time, that model was nevertheless perceived to be representative of middle-class households and a meaningful element of the American dream as understood by many at the time. Whatever their crimes, guilty or not, to execute a husband and wife—as such—and to orphan two minor children precisely when family life was taking a more central place in the American and Christian identity simply proved unpalatable to many.

Unfortunately for the Rosenbergs, news coverage only began to introduce framings of the case as a story about family—Julius, Ethel, and their sons—in the course of the lead-up to the execution (Neville, 1995, p. 125). In some cases, the dominant patriotic frameworks for narrating the story were neutralized altogether by taking the perspective of the Rosenbergs' children, which set aside the matter of guilt altogether to relate the ordeal in terms that would be entirely sympathetic regardless of one's position on the case as a matter of law. Had this narrative been directed into the public mainstream earlier or more often, if the execution had been delayed another year, it is unclear how their case might have ultimately resolved. However, as the Red Scare slowly ebbed, and U.S.-Soviet relations stabilized, the Rosenbergs' tale emerged as something more than simply one more casualty report from the Cold War.

Sobell has long since been forgotten as a minor, perhaps irrelevant, supporting role. Popular and scholarly consensus on the Rosenbergs' actual guilt or innocence, which has shifted several times over the half-century since their deaths, is driven at least as much by the political and cultural climate of the day as by the facts of the case. The Rosenbergs themselves were nothing exceptional. They lacked the zeal and profundity one would esteem in a visionary and are simply not credible as monsters. The cultural meaning of the Rosenbergs' affair seems to be sought instead in their suffering, in qualities of tragedy as the ancient Greeks understood the form but keenly tuned to the contemporary ear. Sophocles's classic tale, *Antigone,* about a woman who defies a king in order to obey the gods and honor her brother, taking her own life while awaiting an execution that the king concludes (too late) would be a mistake, offers a number of thematic comparisons. Most critically, however, here too one finds no heroes or villains—at least as the terms are understood today. Rather, one is presented with flawed human beings in a contest of wills who pay dearly for questionable principles nonetheless held dear. As generation after generation finds the family unit more fragile and autonomous, there is something compelling in the story of the Rosenbergs. Betrayed by kin, persecuted by the state, and condemned by popular society, this divided family remained faithful to the end. Julius and Ethel faced their deaths unflinchingly, defiantly but in quiet dignity. Even amidst favorable coverage

HUNTING THE UN-AMERICAN

The first scare occurred roughly between 1917 and 1921; the second, between approximately 1948 and 1954. In the first, the ''red menace'' was popularly understood as a pool of mainly Eastern and Southern European immigrants importing anarchist-communist orthodoxies that resisted assimilation to American values. Infusing these ideas to the organization of labor, this population was thought to have grown to the verge of a critical mass capable of triggering outright insurrection against the established order. In the second scare, the demonology of the Red had changed somewhat, reimagined as the interloper rather than the alien—the wolf in sheep's clothing, the enemy among us. This Red, the Soviet sympathizer, was thought to resemble the ''true'' American in every aspect of his (or her) outward appearance while nevertheless secretly working to collapse society from within from key positions in government, military, and education.

Bridging these two events was a smaller, and less studied, antifascist movement in the 1930s and 1940s. Targets included sympathizers of German Nazism and Italian Fascism who agitated for militarism, imperialism, and ethnic nationalism in the United States. This hunt drew upon the inquisitorial language, methods, and formal organization of the first Red Scare and contributed an evolution of these tactics to the second (see Ribuffo, 1994). Collectively, these three purges constitute a larger hunt for the ''un-American,'' on fringes of both the left and right, which largely ended when McCarthyism collapsed.

The beginning of the end is generally recognized to be Joseph McCarthy's televised inquisitions and his unwise allegations that the U.S. Army itself was harboring communists, as relayed to a nation of recent war veterans and their families and condemned by such respected figures as the journalist Edward R. Murrow. Anti-McCarthyism, however, won perhaps its earliest victory in securing the dismissal of Joseph Matthews, a zealous anticommunist, from McCarthy's senate committee who led the communist purge. Matthews, in the immediate aftermath of the Rosenbergs' execution, had published an essay in the conservative periodical, *The American Mercury,* claiming that the single largest front for communism in the United States was the Protestant clergy —an allegation inspired by the untimely public activities of this group in resisting McCarthyism, including campaigning on behalf of Sobell and the Rosenbergs' defense. Popular as McCarthy and anticommunist sentiment was at the time, this accusation outraged much of the nation and many fellow senators.

of the execution, reporters present for the event could not help but intone their own sense of awe at the composure of the condemned (see also Neville, 1995, p. 133). With the Soviet Union now a fading memory, the Rosenberg children's adult efforts to humanize and domesticate their ordeal has helped crystallize this tragic reading—a story now as much high drama as pulp (worse-than) murder mystery.

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NOTES

1. Originally 50 US Code 32. Today, the Act remains in 18 US Code 793, 794.
2. The exchange below can be found in *Rosenberg-Sobell* (1952), pp. 180–198.
3. The transcript for this trial is epic, spanning nearly 2,600 pages. Schneir and Schneir (1965) provide a more detailed and highly faithful synopsis of the testimonies.
4. For this reason, in criminal cases it is the state that is required to prove their case beyond reasonable doubt—not the defense, which need not argue a case at all. Silent defenses are rare, however, because common sense suggests silence indicates concession.
5. This dynamic is common to witch-hunts. The ''satanic panic'' of the 1980s and 1990s (Victor, 1993) is also exemplary, as in the McMartin Preschool trial.
6. Then and now, portraits of the accused as martyrs to the communist cause, as in Sacco and Vanzetti's executions in the 1920s, were never very persuasive, at least in the United States. Julius's public ambivalence toward communism rendered this framework largely unworkable. So, this concern was often raised but rarely attracted serious consideration or rebuttal.
7. Fundamentalist Christianity, largely banished from the national political scene after the 1920s, reemerged to cooperate with McCarthyism in hopes of driving out ''modernists'' from the Church (see Wilcox, 1988). Liberal and evangelical Protestants banded together in self-defense. This association eventually served to increase the influence of the evangelical movement and, in turn, initially dampened its political ambitions. Jewish interests also came to the defense of the Rosenbergs, but primarily in response to perceptions of anti-Semitism in their treatment rather than as an anti-anti-communist cause.
8. Venona intelligence was not lent to prosecutions of accused spies, which instead primarily relied on confessions and implications to secure convictions. Legally, the Venona evidence is problematic. Minus the (unlikely) supporting testimony of a party to this communication, it would possibly be ruled hearsay. Even if granted exception, the extent of declassification necessary to overcome even a rudimentary defense would have rendered the program inoperable. The project was so secret, even Presidents F.D. Roosevelt and Truman were not aware of it.
9. Cohn, who pushed Saypol and Kaufman (a family friend) for the death penalty for the Rosenbergs, would later serve as counsel to Senator Joseph McCarthy on J. Edgar Hoover's recommendation.
10. There is a tendency to either understate or overstate Soviet activity in the United States in order to fit or unfit the Red Scare to the witch-hunt analogy. Either impulse misses the point, from a scientific view. ''Proportional response'' is a moral rather than empirical concept.
11. Literally or metaphorically, for the gods or devils they regularly commerce with. Policing regulates behavior; witch-hunts persecute impurities of the soul.
12. For this reason, witch-hunts are almost invariably movements that society subsequently looks back upon with chagrin, bewilderment, or disgust.

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12

The Sam Sheppard Case: Do Three Trials Equal Justice?

KATHY WARNES

My God, Spen, get over here quick! I think they've killed Marilyn!

(Neff, 2001, p. 7)

In the early morning hours of Sunday, July 4, 1954, someone stole into the bedroom of Marilyn Reese Sheppard, the pregnant wife of Dr. Samuel Holmes Sheppard, and beat her to death in her bed. In their lakeside home in Bay Village, a wealthy suburb of Cleveland, Ohio, her seven-year-old son, Sam Reese Sheppard, slept soundly in his bedroom next door, and her husband, Sam, slept on a couch in the living room. Dr. Sheppard wove together the events of the evening and early morning for the officials who answered his frantic call for help. He and his wife, Marilyn, had entertained their friends Don and Nancy Ahern at their home the previous evening. After dinner they watched television in the living room. Later that night, Dr. Sheppard fell asleep on the couch in the living room. For the next 16 years, he told his story of what happened when he woke up countless times, never substantially changing it.

According to Dr. Samuel Sheppard, this is what happened on the morning of July 4, 1954: he was sleeping soundly on the couch when a noise on the second floor awakened him. He was not certain how much time had elapsed from the time he dozed off until he heard the noises upstairs, but he awoke when he heard Marilyn screaming and calling for him to help her, then loud moans and noises. He thought that Marilyn might be having the same painful convulsions that she had experienced during her first pregnancy.

Still half asleep, Sheppard jumped off the couch and rushed upstairs. All the lights were out except a 40-watt bulb in the upstairs dressing room, but as he entered the bedroom he saw a ''white form'' standing next to the bed where his wife slept. He could not tell whether the shadowy figure was a man or woman, and he did not know how many people were in the room. He started to wrestle with the form, but suddenly someone hit him

from behind on the back of his neck and skull and he lost consciousness. He did not know how long he was unconscious.

Dr. Sheppard woke up on the floor beside Marilyn's bed, injured and groggy. He inched himself into a sitting position facing the bedroom door. He saw his wife lying in a pool of blood on her twin bed, beaten and battered on the head and face. She had no pulse and showed no signs of life when he examined her. The doctor ran into their son's bedroom next door and assured himself that his son was sound asleep and unharmed. Then he heard a noise on the first floor and ran down the stairs. He chased what he described as ''a large, powerfully built man with a good sized head and bushy hair'' through the screen door and down the 36 steps to the beach. He attacked the man, but the man caught him in a stranglehold and choked, hit, and knocked him unconscious for a second time, again for an uncertain amount of time.

The next thing Sam Sheppard remembered was regaining consciousness at the water's edge, his head on the shore, legs in the water, and his body swaying back and forth in the waves. Staggering back to the house, he went upstairs to re-examine the body of his murdered wife. In his dazed state he thought that this might be some horrible nightmare. Then he went downstairs and called his neighbor and friend, Bay Village Mayor Spencer Houk. He shouted, ''My God, Spen get over here quick. I think they've killed Marilyn!'' (Neff, 2001, p. 7).

Mayor Houk and his wife, Esther, found Dr. Sheppard hunched in an easy chair in the first floor den. He implored them to do something for Marilyn. Esther Houk went upstairs to the northwest bedroom where she discovered the battered body of Marilyn Sheppard. Marilyn lay face up on the bed, her legs hanging over the foot of the bed, bent at the knees, and her feet dangling a few inches above the rug. Blood outlined her body, and blood from her head darkened the quilt, the sheets, and the pillow. Blotches of blood sprinkled the wall, and drops of blood trailed across the carpet and out the door. Her face was turned slightly toward the door and was coated with stringy, clotting blood. About two dozen deep, crescent-shaped gashes scoured her face, forehead, and scalp.

Someone had pushed up Marilyn's three-button pajama top to her neck, leaving her breasts bare. A blanket covered her middle. Her thin pajama bottoms had been removed from one leg and were bunched below the knee of her other leg, exposing her lower body. Esther Houk checked Marilyn's pulse. She did not feel one.

Mayor Houk called the Bay Village police, Sheppard's brother, Dr. Richard Sheppard, and Don and Nancy Ahern. The local police, including Bay Village patrolman Fred Drenkhan, arrived at the Sheppard home. Police officers, relatives, the press, and neighbors trooped through the house. Local police notified Cuyahoga County Coroner Dr. Samuel Gerber and the Cleveland police. Then, Dr. Richard Sheppard arrived, examined Marilyn, and declared that she was dead. He assessed his brother's injuries and took him to Bay View Hospital, which was operated by his family of osteopathic doctors. Conflicting medical reports about Dr. Samuel Sheppard's injuries exacerbated the tensions between osteopathic and medical doctors that existed in the 1950s. Dr. Samuel Gerber and other medical doctors were incensed that osteopaths like the Sheppards performed surgery, prescribed drugs, and competed with allopathic, or traditional, physicians. Gerber felt that osteopaths were bone twisters, a species of inferior doctors, a position that the powerful American Medical Association echoed. The American Medical Association under its bylaws refused to let its member doctors teach at osteopathic medical schools, consult for an osteopath on a patient's care, or even share a common waiting room, and as a result

the two branches of medicine did not trust each other. Dr. Gerber mistrusted the Sheppards, their osteopathic training, and their osteopathic hospital; but at this point, Dr. Richard Sheppard managed to care for his injured brother. He also drove his nephew, seven-year-old Sam Reese Sheppard, to his house.

Sam Reese Sheppard remembered that morning. ''It's kind of a frozen moment in time. I remember being kind of pushed awake by Uncle Richard, and I was told I didn't have time to get dressed—I was in my pajamas'' (Taylor, 1996). A policeman blocked his view into his parents' bedroom. Around him swarmed police officers, coroner's deputies, and jittery relatives. Reporters shouted questions and flashbulbs popped. Sam Reese Sheppard said, ''I walked out the back door and down toward the road. There was a clutch of curiosity-seekers and also the press. The flashbulbs started going off in my face. I remember it to this day—the curious murmur of the crowd'' (Taylor, 1996).

The crowd still milled around the Sheppard house as Coroner Gerber, the Cleveland police, and other officials arrived. They thoroughly searched the house and surrounding area, taking note of the ransacked living room, the empty medical bag with contents strewn over the floor, and the open desk drawers. They photographed the rooms of the house and interrogated several people, including the Houks and the Aherns. The police sealed the Sheppard home and closed it off to Dr. Sheppard and his family.

From the first moment the police answered the call to the Sheppard home, they suspected Dr. Sam Sheppard of being the murderer. They investigated the case on the theory that Dr. Sheppard had bludgeoned his wife to death, washed the blood off his clothing in the lake, faked his injuries, staged a burglary attempt to deflect suspicion from himself, and delayed calling the authorities to gain time to conceal the evidence. As far as they were concerned, Dr. Sheppard's story of fighting with a bushy-haired intruder was an attempt to cover his guilt. This was the official theory that the Cleveland authorities leaked to the press and the official version of the crime that the state presented at the trial. The authorities did not produce any concrete proof to support this theory.

On the morning of the murder, after searching the Sheppard house and premises, the coroner, Dr. Sam Gerber, is reported to have told his men, ''Well, it is evident the doctor did this, so let's go get the confession out of him.'' The coroner never denied saying this to his staff. Dr. Gerber questioned and examined Sam Sheppard while he was under sedation in his hospital room. During the interrogation, the police gave Coroner Gerber the clothes that Sheppard wore the night of the murder, including the personal items found in them (Pollack, 1972, p. 11).

Dr. E.H. Hexter, a Bay Village medical doctor, examined Sam Sheppard that evening at the hospital. Dr. Hexter reported that Sheppard had missing reflexes on his left side, but did not give his finding much weight. He told Dr. Gerber and the detectives that ''the only outward injury'' he could find was ''swelling around the right eye and cheek.'' The police used his diagnosis to discount Sheppard's story of a ''bushy haired intruder.'' The police also had Dr. Charles Elkins, a noted neurologist, examine Dr. Sheppard. Dr. Elkins found ''serious damage to the spinal cord in the neck region, bruises on the right side of his face and lacerations to the mouth.'' The extent of his injuries and whether or not they could have been self-inflicted were to play an important part in Dr. Sheppard's trial (Pollack, 1972, p. 28).

On July 7, 1954, Marilyn Sheppard was buried in a private ceremony at the Saxton Funeral Home in the suburb of Lakewood. About 250 of Sam and Marilyn Sheppard's

friends and family attended the service. The doctor came in a wheelchair, his neck wrapped in a stiff orthopedic collar. He walked in, wearing a suit with no tie, his eyes shaded with dark sunglasses. Their son, Sam Reese, or Chip, did not attend the funeral because of extensive media coverage, but he had picked some pansies for his mother. Weeping, Dr. Sheppard placed the pansies inside the casket.

The police searched the Sheppard house again during the funeral. Bay View Mayor Spencer Houk had officially turned the investigation over to Coroner Gerber and the county sheriff, and detectives had found some additional pieces of physical evidence during this search of the Sheppard house. Near Marilyn Sheppard's bed they found a small piece of leather and a chip of red paint or enamel. The front pages of the newspapers shouted, "Search Murder Home Again" and "Dr. Sheppard Weeps Beside Coffin of Wife" (*Cleveland News,* July 16, 1954).

A July 7 story in another newspaper featured assistant Cuyahoga County attorney John Mahon sharply criticizing the Sheppard family's refusal to permit the doctor's immediate questioning. From the day of Marilyn Sheppard's funeral on, headline stories, especially in the *Cleveland Press,* repeatedly hammered Sheppard's lack of cooperation with the police and other officials. The newspapers also played up Sheppard's refusal to take a lie detector test and decried "the protective ring" thrown up by his family. Front-page newspaper headlines announced that "Doctor Balks at Lie Test; Retells Story" (*Cleveland Press,* August 1, 1954).

On July 20, 1954, the "editorial front" of the campaign against Dr. Sam Sheppard fired its first salvo with the front-page charge that somebody was "getting away with murder." The editorial charged that the investigation into Marilyn Sheppard's death had been inept because of "friendships, relationships, hired lawyers, a husband who ought to have been subjected instantly to the same third degree to which any other person under similar circumstances is subjected." On July 21, another page one editorial demanded, "Why No Inquest? Do It Now, Dr. Gerber" (*Cleveland Press,* 1954).

The coroner announced on that same day that an inquest would be convened and subpoenaed Dr. Sheppard. The inquest was held the next day in a school gymnasium with Dr. Gerber presiding, the county prosecutor as his advisor, and two detectives as bailiffs. Reporters, television and radio personnel, and broadcasting equipment occupied a long table in the front of the room. The hearing was broadcast live with microphones at the coroner's seat and the witness stand. Police brought Dr. Sheppard into the room and searched him in full view of several hundred people. His counsel was present during the three-day inquest, but was not permitted to participate. When Dr. Sheppard's chief counsel tried to put some documents in the record, the coroner threw him out of the room to the accompaniment of cheers, hugs, and kisses from ladies in the audience. Various officials questioned Dr. Sheppard for five and a half hours about his actions on the night of the murder, his married life, and an affair with a laboratory technician, Susan Hayes.

The newspapers continued to stress the evidence that incriminated Dr. Sheppard and touted discrepancies in his statements to authorities. During the inquest on July 26, a large-type headline in the *Cleveland Press* blared: "Kerr [Captain of the Cleveland Police] Urges Sheppard's Arrest." The story said that Detective James McArthur "disclosed that scientific tests at the Sheppard home have definitely established that the killer washed off a trail of blood from the murder bedroom to the downstairs section," a circumstance casting doubt on Sheppard's accounts of the murder. This evidence was not presented at the trial (*Cleveland Press,* July 25, 1954).

The *Cleveland Press* and the *Cleveland Plain Dealer* also spotlighted Dr. Sheppard's personal life, citing his extramarital affairs as a motive for killing his wife. A July 28 editorial in the *Cleveland Press* asked, ''Why Don't Police Quiz Top Suspect?'' and demanded that Dr. Sheppard be taken to police headquarters. It described Dr. Sheppard in this way:

> Now proved under oath to be a liar, still free to go about his business, shielded by his family, protected by a smart lawyer who has made monkeys of the police and authorities, carrying a gun part of the time, left free to do whatever he pleases. (*Cleveland Press*, 1954)

On July 30, 1954, a front-page editorial wondered ''Why Isn't Sam Sheppard in Jail?'' After calling Dr. Sheppard ''the most unusual murder suspect ever seen around these parts,'' the editorial said that ''except for some superficial questioning during Coroner Sam Gerber's inquest he has been scot-free of any official grilling.'' It concluded by charging that Dr. Sheppard was surrounded ''by an iron curtain of protection and concealment'' (*Cleveland Press*, 1954).

On the night of July 30, 1954, the Cleveland police arrested Dr. Sam Sheppard at his father's home and charged him with murder. They took him to the Bay Village City Hall where hundreds of people, newscasters, photographers, and reporters awaited his arrival. They immediately arraigned him and bound him over to the grand jury.

Publicity continued to escalate until Dr. Sheppard's indictment on August 17, 1954. Typical headlines during this period included ''Dr. Sam: I Wish There Was Something I Could Get off My Chest—But There Isn't,'' ''Corrigan Tactics Stall Quizzing,'' ''Sheppard 'Gay Set' Is Revealed by Houk,'' ''Blood Is Found in Garage,'' ''New Murder Evidence Is Found, Police Claim,'' and ''Dr. Sam Faces Quiz at Jail on Marilyn's Fear of Him.'' There are five volumes filled with similar clippings from each of the three Cleveland newspapers, the *Cleveland Press,* the *Cleveland Plain Dealer,* and the *Cleveland News,* covering the period from the murder until Dr. Sheppard's conviction in December 1954 (''Findings of U.S. Supreme Court,'' 1996).

One of the few stories favorable to Dr. Sheppard appeared on August 18 under the headline ''Dr. Sam Writes His Own Story.'' A portion of the typed statement signed by Dr. Sheppard was reproduced across the entire front page. It read in part, ''I am not guilty of the murder of my wife, Marilyn. How could I, who have been trained to help people and devoted my life to saving life, commit such a terrible and revolting crime?'' (*Cleveland Press,* 1954).

It seemed that most local law enforcement officials and many ordinary citizens felt that Dr. Sheppard could commit ''such a terrible and revolting crime,'' because on August 17, 1954, he was indicted for murder. He would not enjoy another day of freedom for nearly ten years.

THE FIRST TRIAL

From August 17, 1954, the day of his indictment, to October 28, 1954, the first day of his trial, the print and broadcast media of Cleveland tried and convicted Dr. Sam Sheppard many times over. On October 9, 1954, a newspaper editorial criticized defense counsel William Joseph Corrigan's poll of the public to show local bias for a change of venue motion.

Twenty-five days before the trial began, 75 people were called as prospective jurors. Jury selection began on October 18, 1954. All three Cleveland newspapers published the

names and addresses of the prospective jurors, and many of them received anonymous letters and telephone calls about the prosecution of Dr. Sheppard. Jurors were not sequestered during the trial, and the newspapers printed their names and photos more than 40 times. Jurors were not queried about the media accounts they had heard, and trial transcripts were printed regularly. Police, prosecutors, witnesses, and the families of the judge and jurors gave interviews and appeared on camera.

The news media had constant access to the jurors. Every juror except one admitted to reading about the case in the Cleveland papers or having heard broadcasts about it. Seven of the 12 jurors rendering the verdict had one or more Cleveland papers delivered to their homes.

A radio debate broadcast live over WHK on October 19 featured reporters accusing Dr. Sheppard of trying to block the prosecution and asserting that he conceded his guilt by hiring a prominent criminal lawyer. Dr. Sheppard's counsel objected to this broadcast and requested a continuance, but the judge denied the motion. When counsel asked the court to give some protection from such happenings, Judge Edward Blythin replied, "WHK doesn't have much coverage. After all, we are not trying this case by radio or in newspapers or any other means. We confine ourselves seriously to it in this courtroom and do the very best we can" ("Findings of U.S. Supreme Court," 1966).

A newspaper headline on October 23, 1954, plaintively asked, "But Who Will Speak for Marilyn?" and called for "Justice to Sam Sheppard." The front-page story focused on the family of the accused. The two brothers of Dr. Sheppard were described as "prosperous and poised." His two sisters-in-law were characterized as smart, chic, and well groomed; his elderly father as courtly and reserved. The newspaper report then noted that Marilyn Sheppard's mother had died when she was very young and that her father had no interest in her murder case. Through quotes from Detective Chief James McArthur, the reporter assured readers that the exhibits of the prosecution would speak for Marilyn. McArthur stated, "[H]er story will come into this courtroom through our witnesses." The story concludes, "Then you realize how what and who is missing from the perfect setting will be supplied. How in the Big Case justice will be done. Justice to Sam Sheppard. And to Marilyn Sheppard" (*Cleveland Press,* 1954).

The intense publicity surrounding the Sheppard case continued into the trial. The trial of Dr. Samuel Holmes Sheppard began on October 28, 1954. Assistant County Prosecutor John Mahon sat on one side of the trial table, along with his assistants Saul Danaceau and Thomas Parrino. Assistant Prosecutor Mahon faced an election for a judgeship in three weeks. His two assistants later would use their public renown from the trial to win their own judgeships. The defense side of the table included Fred Garmone; Arthur Petersilge, the Sheppard family lawyer; and William J. Corrigan, Jr. Judge Edward J. Blythin had a reputation as a cautious and patient judge, but he, too, faced voters for reelection in three weeks.

On this first day of the trial, the jury visited the Sheppard home. Hundreds of reporters, cameramen, and onlookers went along with them. The time of the jury's visit was revealed so far in advance that one of the newspapers had time to rent a helicopter and fly over the house, taking pictures of the jury tour.

The newspapers had access to a daily record of the court proceedings, and the testimony of each witness was printed verbatim in the local editions of the newspapers, along with objections of counsel and rulings by the judge. Pictures of Dr. Sheppard, Judge

Blythin, counsel, pertinent witnesses, and the jury accompanied the newspaper and television accounts.

Trial testimony proved to be as damaging and controversial to the Sheppard case as the media coverage. Deputy Coroner Lester Adelson described Marilyn Sheppard's autopsy and showed pictures of her death scene and battered face. Defense Attorney Corrigan forced Adelson to admit that he had not analyzed her stomach contents, had made no microscopic study of the wounds, and did not test for possible rape.

Don and Nancy Ahern, and Spencer and Esther Houk, testified that the Sheppards had been having marital difficulties. Dr. Lester Hoverston, a college classmate of Sam and Marilyn who had been their houseguest in early July but was in Akron the night of the murder, testified that Dr. Sheppard had told him that he was considering divorcing Marilyn.

Appearing as an uncontested expert, Cuyahoga County Coroner Dr. Sam Gerber decried what he termed the Sheppard family's lack of cooperation, and described the bloody pillowcase from the murder bed in graphic detail. Dr. Gerber said that he could make out the impression of a surgical instrument in the bloodstain. He did not go into detail about the type of surgical instrument or produce it, but he insisted that the murder weapon could only be a surgical instrument.

Detective Michael Grabowski of the Scientific Investigation Unit and Mary Cowan, the coroner's chief medical technologist, testified about the physical evidence, describing their scientific tests in detail. The prosecution did not dwell on the fact that Mary Cowan testified that she had found seven human blood spots in the downstairs and basement of the Sheppard house but could not type them as Sam or Marilyn's blood. The prosecution argued that the seven spots were Dr. Sheppard's blood trail.

Mary Cowan conceded that her findings of the blood types on the wristwatches of Sam and Marilyn were not definitive. On Marilyn's wristwatch she had found Marilyn and Sam's blood and also a third, unidentified blood factor. The card recording these findings mysteriously disappeared during the trial and did not surface until the Ohio Supreme Court reviewed the case a year later. She also admitted that the bloodstains on Sam Sheppard's trousers were inconclusive. The entire body of blood evidence seemed to confuse everyone involved in the trial, including the judge, jury, prosecution, and defense.



Figure 12.1 Coroner S.R. Gerber testifies that the lower bloodstain on this pillow bore the imprint of a surgical instrument, 1953. The pillow was on Marilyn Sheppard's bed when her battered body was found, he said. © AP Photo.

But laboratory technician Susan Hayes, not blood evidence or Coroner Gerber, turned out to be the star witness at the trial. Ms. Hayes testified that she and Dr. Sam Sheppard had engaged in a long-term affair, directly contradicting his denials of their relationship and seriously undermining his credibility.

Outside of the courtroom, the media onslaught continued. On November 21, 1954, in a radio broadcast on station WHK in Cleveland, nationally known commentator Robert Considine labeled Dr. Sam Sheppard a perjurer. Dr. Sheppard's defense counsel asked Judge Blythin to question the jury to find out how many of them may have heard the broadcast, but Judge Blythin did not do so. He also overruled the motion for continuance based on the same ground, saying, "We are not going to harass the jury every morning. . . . I have confidence in this jury" ("Findings of U.S. Supreme Court," 1996).

On November 24, 1954, a Cleveland Press newspaper headline announced, "Sam Called a 'Jekyll-Hyde' by Marilyn, Cousin to Testify." The story said that Marilyn Sheppard had recently told friends that Sheppard was a "Dr. Jekyll and Mr. Hyde" character and the prosecution had a witness in the wings to testify to Dr. Sheppard's fiery temper, countering the defense claim that the defendant was a gentle physician with an even disposition. William Joseph Corrigan, the defense counsel, made motions for change of venue, continuance, and mistrial, but they were denied. Judge Blythin took no action, and no such testimony was ever presented.

In November 1954, when the trial was in its seventh week, Walter Winchell, a national broadcaster, reported over WXEL television and WJW radio that a woman named Carole Beasley, who was under arrest in New York City for robbery, claimed that she was Dr. Sheppard's mistress and had an illegitimate child by him. Two jurors admitted that they had heard the broadcast, but Judge Blythin took no action.

On December 9, 1954, Dr. Sam Sheppard testified that Cleveland detectives had mistreated him after his arrest. Although he was not at the trial, Captain David Kerr of the homicide bureau issued a press statement denying Sheppard's charges. The statement appeared under a headline calling Dr. Sheppard a "barefaced liar" ("Findings of U.S. Supreme Court," 1996).

Testimony at the trial ended on December 16, 1954, and the jury was sequestered for the first time on December 17. The jury deliberated from December 17 to 21, for five days and four nights. On December 21, the jury returned with a verdict of murder in the second degree. After the verdict was announced, defense counsel William J. Corrigan discovered that the jurors had been allowed to make telephone calls to their homes every day while they were sequestered in their hotel rooms. The judge had not instructed the bailiffs to prevent such calls. Defense counsel Corrigan moved that this ground alone warranted a new trial, but the judge overruled the motion and took no evidence on the question. Although Corrigan objected, Judge Blythin passed immediate sentence upon Dr. Sam Sheppard: life in prison.

The local and national media had obviously overstepped any bounds of objectivity and tried and convicted Dr. Sheppard before the jury did. Law enforcement officials contributed much to this conviction by contaminating the crime scene and handling the evidence incompetently. Many of the people who believed Dr. Samuel Holmes Sheppard guilty of murdering his wife Marilyn considered him a spoiled rich kid and a womanizer. He had conducted at least one adulterous affair with a laboratory technician at Bay View Hospital and slept with her at the home of a colleague, as the prosecution proved without a doubt at his trial. A few witnesses had come forward suggesting that Marilyn Sheppard, in her

turn, had at least one affair and that an outraged wife had murdered her. But the officials pressing for Dr. Sheppard's conviction prevailed.

As the U.S. Supreme Court was to point out a decade later, the prosecution errors were glaringly obvious, but the defense also made some serious mistakes that helped convict Dr. Sheppard. One of the most serious defense errors was not obtaining its own expert to examine the Sheppard house. Even though Sheppard family members charged that the police refused to turn over the keys, the defense never asked to conduct an examination. The defense also did not vigorously challenge Dr. Sam Gerber's claim that the bloody imprint on Marilyn's pillow came from a surgical instrument, and the defense could have denounced the trial as a circus, as the U.S. Supreme Court would later do, and advised Dr. Sheppard to claim his Fifth Amendment right to be silent.



Figure 12.2 Dr. Sam Sheppard returns to his jail cell after a jury found him guilty of killing his wife, Marilyn, 1954. © AP Photo.

Dr. Stephen Sheppard kept his brother from the press and alienated reporters, making the theory of a Sheppard family conspiracy to get away with murder appear plausible. The defense did not use the media in its favor as F. Lee Bailey, the lawyer who would ultimately free Sam Sheppard, did.

But Dr. Sam Sheppard delivered the most damaging blow to his defense himself. He lied at the inquest, denying his affair with Susan Hayes. One newspaperman accurately summarized the trial when he said that Dr. Sheppard was tried for murder and convicted by adultery.

INTERLUDE AND THE SECOND TRIAL

The next 12 years brought great tragedy, great hope, and, finally, freedom to Dr. Sam Sheppard. After he spent Christmas of 1954 in the county jail, he got the news that on January 7, 1955, his mother, Ethel Sheppard, had committed suicide. Eleven days later, Dr. Richard Sheppard, his father, died of a hemorrhaging ulcer and stomach cancer. In the meantime, William Corrigan presented a brief petition for a new trial, the first in a dozen unsuccessful tries to overturn the Sheppard conviction.

In March 1955, in preparation for the appeal, the defense hired Dr. Paul Leland Kirk, a criminalist. He visited the Sheppard home and submitted a 56-page report to William Corrigan in which he demonstrated that the blood evidence at the scene of Marilyn Sheppard's murder proved the presence of a third person at the scene, and the pattern of blood spatters proved that Dr. Sheppard could not have been the murderer because he was right-handed and a left-handed person had killed Marilyn.

On July 13, 1955, the state court of appeals rejected Dr. Sheppard's appeal, and that summer he was moved from jail in Cleveland to a maximum-security prison near

Columbus, Ohio. William Corrigan continued to file appeals, including one to the Ohio Supreme Court in 1956. In November 1956, the U.S. Supreme Court refused to hear the Sheppard case. William Corrigan continued to appeal the case unsuccessfully.

In the meantime, books about the Sheppard case began to appear. In 1956, Louis B. Seltzer, editor of the *Cleveland Press,* published his autobiography, *The Years Were Good.* In his book, he devoted chapter 26 to discussing the Sheppard murder case and why he wrote a series of front-page editorials alleging that the Sheppard family was engaged in a conspiracy to get away with murder. Seltzer wrote,

> I was convinced that a conspiracy existed to defeat the ends of justice, and that it would affect adversely the whole law-enforcement machinery of the county if it were permitted to succeed. Because I did not want anyone else on the press staff to take the risk, I wrote the editorial myself. (Seltzer, 1956)

In 1961, Paul Holmes, a reporter and lawyer who had covered the trial for the *Chicago Tribune,* wrote the pioneer book about the case, *The Sheppard Murder Case.* In the first two-thirds of the book, he wrote a balanced account of the trial; and in the last third, he theorized what had really happened the morning of July 4, 1954. After covering the trial and after reading Dr. Kirk's report, Paul Holmes concluded that Dr. Sheppard did not and could not have killed his wife, but was the victim of a propaganda war. He theorized that a man and a woman were the perpetrators and said, ''I think the whole business robbed luster from American jurisprudence, and is, in its more literal and reverent sense, a God-damned shame'' (Holmes, 1961, p. 78).

Dr. Stephen Sheppard wrote his account of the ordeal in 1964 with the help of Paul Holmes. He called his book *My Brother's Keeper* and included a three-page epilogue about Judge Carl Weinman's district court ruling. In 1966, Paul Holmes wrote a sequel to *The Sheppard Murder Case,* which he called *Retrial: Murder and Dr. Sam Sheppard.* The sequel was rushed into print within weeks of the verdict, and only 88 of the 240 pages were devoted to the second trial. At least 50 pages were the transcripts of testimony by Mary Cowan and Dr. Kirk.

The name of a possible suspect in the murder surfaced in November 1959, when a window washer named Richard Eberling was arrested for stealing from customers. The stolen items he had in his possession included Marilyn Sheppard's ring. He had stolen the ring from Marilyn's sister-in-law, who had received it after her death. When police questioned him, Eberling told them that he had washed Sam and Marilyn Sheppard's windows days before the murder. While he did this, he had cut his finger and dripped blood down the stairs to the basement, where he washed the cut.

The Bay Village police took his statement to John T. Corrigan, the county prosecutor (no relation to William J. Corrigan, the defense lawyer), but John Corrigan displayed little interest in the information. The police relayed the information to Cuyahoga County Coroner Sam Gerber, who said he would have Richard Eberling take a lie detector test, but then he changed his mind. The information lay dormant for 30 years.

Deaths of some of the key players in the Sheppard murder case continued throughout the years that Sam Sheppard spent in prison. In 1958, Judge Edward Blythin died; and on February 13, 1963, Thomas Reese, father of Marilyn Sheppard, committed suicide. In July 1961, William Corrigan, the original defense attorney for Dr. Sheppard, died, paving the way for F. Lee Bailey to take over the defense. On April 13, 1963, F. Lee Bailey filed a new *habeas corpus* petition in U.S. district court. On July 16, 1964, federal district court

THE SUSPECTS

MAJOR JAMES CALL

Two former FBI agents wrote books about the Sheppard murder case, writing from opposite viewpoints about the guilt of Dr. Samuel Sheppard. In April 2002, Bernard F. Conners, a former FBI agent, published a book called *Tailspin: The Strange Case of Major Call.* In 1954 Major Call, an Air Force pilot, deserted and went on a burglary spree across the country. Saying that he would kill anybody who got in his way, Call made good his threat and killed a policeman who surprised him during a burglary in New York. Agent Conners writes that about the time of the Sheppard murder, Call visited his sister in Mantua, Ohio, which is about 30 miles from downtown Cleveland. A woman from Mantua called the police the day after Marilyn Sheppard was murdered to report that she had seen a man with ''bushy hair'' catching a bus out of town.

According to Agent Connors, the Sheppard murder fit into Call's pattern. He carried a crowbar, which could have been the murder weapon, and he also carried a Luger, which could have left the bloody imprint on Marilyn Sheppard's pillowcase. Fingerprints that had been taken after his arrest for the murder in New York revealed a recent injury to his forefinger that resembled a bite mark. He was also limping in the way that Dr. Sam Sheppard had described ''the bushy haired intruder'' as doing and he did not have an alibi for the July 3–4 time frame. Connors also turned up a witness, Dr. Gervase Flick, who had picked up a hitchhiker heading east from Ashtabula, Ohio. The hitchhiker had blood on his shoes and seemed unnaturally interested in newscasts about the murder. In 1997 Flick picked out a photo of Call, identifying him as the hitchhiker.

Despite another set of witnesses who identified Call as the bushy haired man that they had seen on Lake Road before the murder of Marilyn Sheppard, Conners could not find any direct evidence connecting Call to the crime. Call was killed in an automobile accident in 1970.

RICHARD EBERLING

Despite the finding of the civil jury in Cleveland, Richard Eberling is still a suspect. The jury did not hear about his conviction for the brutal 1984 murder of Ethel Durkin and the circumstantial evidence that linked him to the suspicious deaths of her two sisters. He was familiar with the Sheppard house and had left a trail of blood there before the murder of Marilyn Sheppard. In 1959, he volunteered the information to the police that he had dripped blood in the house.

In 2001, James Neff published a book called *The Wrong Man: The Final Verdict on the Dr. Sam Sheppard Murder Case,* in which he concluded that Eberling had killed Marilyn Sheppard. He based his opinion on forensic evidence uncovered by Dr. Paul Kirk and an interview that he had conducted with a dying Richard Eberling. Neff described Eberling snapping to alertness and imagining himself back in the blood-soaked bedroom of Marilyn and Sam Sheppard. According to Eberling blood was spattered everywhere and he was horrified. ''My God, I had never seen anything like it,'' he said. ''I got out of there.''

Then catching himself, Eberling clammed up and would not talk about the scene any longer. Richard Eberling died before James Neff could return for another interview.

The opposite side of Neff's theory is that Eberling was known as a pathological liar and had previously confessed to the murder of Marilyn Sheppard. In another version he confessed, implicating Dr. Sheppard and at other times asserting his innocence.

Even after another DNA expert, Dr. Mohammad Tahir, asserted that his analysis of blood evidence implicated Richard Eberling, Bailey remained unconvinced. He thought that Eberling could have been the killer, but he still believed Esther Houk a more likely suspect.

J. Spencer and Esther Houk

The gossip around Bay Village in 1954 seemed to reinforce F. Lee Bailey's suspicions. A tooth chip that did not belong to Marilyn or Sam Sheppard was discovered in their bedroom where the murder had taken place. Rumor had it that a certain Bay Village resident had teeth extracted immediately after the murder. In 1966, the police brought former part-time Bay Village Mayor J. Spencer Houk to the Central Police Station for questioning because Dr. Stephen Sheppard had given them certain information. F. Lee Bailey suspected the Houks, and before the second trial in 1966, he hinted to reporters that the killer was a left-handed woman as opposed to Eberling who was a right-handed male. During cross-examination at the 1966 trial, Bailey established that the Houks were familiar with the Sheppard house. He also established that the Houks could travel between their house and the Sheppard house using the beach and that they had set a fire in their fireplace on a July night with a low temperature of 64 degrees. Bailey had planned to call a bakery driver who swore that he had seen Mayor Houk kissing Marilyn, but he was not allowed to do so.

After the acquittal of Dr. Sam Sheppard, Bailey persuaded Bay Village police to investigate the evidence against the Houks. The Grand Jury heard witnesses, but doubted that Mayor Houk, who walked with a limp, was the man who had run from Sheppard. Why would Sheppard have run from a neighbor that he knew well and called a friend, and why would Houk have been the first person that Sheppard called when he discovered the murder of his wife? The Grand Jury took no action.

At one point in the investigation, Samuel Reese Sheppard had acquired a tape of an interview with Spencer Houk shortly before his death in 1980 that seemed to implicate him in the murder. Sheppard took the tape seriously enough to devise two scenarios, one with Spencer Houk as the killer and the second featuring Esther. As the evidence against Eberling began to mount, Sheppard stopped following the threads of evidence implicating the Houks, but F. Lee Bailey always believed that one or both of them had murdered Marilyn Sheppard.

In his 1966 book, *The Sheppard Murder Case,* Paul Holmes maintains an objective tone devoid of speculation. However, at the end of the book he lays out a ''hypothesis'' that features Marilyn Sheppard being killed with a flashlight by a woman whose husband fakes a burglary to cover up for her. They accidentally set up Dr. Sheppard as a suspect, and the setup succeeds. As Holmes put it, ''No one will ever look for ashes in their grate or examine their car for bloodstains.''

In 1972 Jack Harrison Pollack published a book, *Dr. Sam: An American Tragedy,* and he entitled his final chapter ''The Guilty.'' In that chapter he reported that before he died, a private detective who had worked for the Sheppards had planned to write a book about the ''explosive new findings'' he had discovered. The detective, Harold Bretnall, had written in his notes, ''Marilyn Sheppard was murdered by someone who was a frequent visitor to the Sheppard home. After carefully ruling out all other possibilities, Bretnall concluded that Marilyn's killers were a woman and a bushy-haired man living in bondage with their awful secret.''

Bretnall's findings impressed Pollack and matched Pollack's conclusions. Pollack also believed that the murderers were a couple—a woman and a man.

DR. SAMUEL HOLMES SHEPPARD

No direct evidence connecting Dr. Sam Sheppard with the murder of his wife has even been found despite his conviction for murder in the winter of 1954 and nearly one decade in prison. In 1966, a jury found Dr. Sheppard not guilty ''beyond a reasonable doubt.'' Local opinion proved to be not as charitable. The 2000 jury ruling on the same evidence found him ''not innocent.''

It seems that Dr. Sam Sheppard was his own worst witness. His story of what happened in the early morning hours of July 4, 1954, did not ring true to many local and later national sensibilities. How could an intruder attack his wife while he slept downstairs without waking his son in the next room? How could a shadowy form knock him out twice? Why the long delay in calling the police? Where was the missing T-shirt? Why did he answer ''I don't know,'' to the many questions that his family, friends, and the police asked him?

At the first trial, Dr. Sheppard made some serious errors. He denied having an affair with Susan Hayes, whom the prosecution flew in from California to prove that they did indeed have an affair. She testified that he had spoken of divorcing his wife and marrying her.

Coroner Dr. Samuel Gerber's description of the murder weapon as being similar to a surgical instrument and no expert testimony to counter his evidence also eroded his creditability with the first jury. The prosecution also charged in the first trial that he had faked the injuries that he had received in his encounters with the ''bushy haired'' man.

The prosecutors requested doctors to examine him in jail, and they concluded that his injuries were genuine, but they were not called to testify at the first trial. Prosecutors did not challenge his injuries in the second trial, and Dr. Robert White, who testified for the state in the third trial, had not examined Dr. Sheppard.

Prosecutors at the second trial did not call Susan Hayes or bring in any evidence of other women in his life or attempt to introduce testimony that the Sheppards had considered divorce. As some observers said, in the first trial Sheppard had been tried for murder and found guilty of adultery. Evidence of Dr. Sheppard's extramarital activities was missing from the second trial, leaving the jurors to puzzle over Dr. Sheppard's motive for killing his wife.

For years, even his best friends had struggled with disbelief over his story about what had happened on the night of July 3 and 4, 1954. Another former FBI agent,

Gregg O. McCrary, had analyzed crime scenes and created criminal profiles. After a study of Sheppard crime photographs, police reports, and other records, he concluded that the murder was ''a staged domestic homicide committed by Dr. Samuel Sheppard.'' His former FBI supervisor, John E. Douglas, studied the same materials and arrived at a radically different conclusion. Douglas said that the Sheppard murder was a sexual and not a domestic homicide.

Judge Carl Weinman ruled that Dr. Sheppard had been denied a fair trial, and he was released from prison. In May 1965, an appeals court voted two to one to reverse Judge Weinman's decision, but on June 6, 1966, the U.S. Supreme Court agreed with Judge Weinman, ruling that the Sheppard trial had been a ''carnival'' and that Sheppard was denied a fair trial because the judge failed to control the courtroom atmosphere and prevent jury bias from excessive media coverage.

Dr. Sam Sheppard's second trial began on October 24, 1966, and the new judge immediately sequestered the jury. He also severely limited media access to the courtroom. F. Lee Bailey had intended to introduce evidence to support his belief that Dr. Sheppard's neighbors, Spencer and Esther Houk, were the real murderers, but his attempts to introduce this evidence were suppressed. But, Bailey proved to be an effective cross-examiner. He got Coroner Gerber to admit that he could not describe which ''surgical instrument'' had made a blood imprint on Marilyn Sheppard's pillowcase. He also forced Coroner Gerber to acknowledge that he had never found the surgical instrument. This admission negated the effect of his impressive testimony during the first trial. Some of the mistakes that the police had made during the original investigation came out in this trial, including missing evidence. A cigarette butt found on the scene had disappeared, and there had been no exam for evidence of rape. The defense rested without calling Sam Sheppard to testify on his own behalf. All the prosecution could do was make the rest of its case against Dr. Sheppard by the strength of its closing arguments. The strategy did not work.

VERDICT AND AFTERMATH

On November 16, 1966, the jury found Dr. Sheppard not guilty ''beyond a reasonable doubt.'' After spending ten years in prison and two years undergoing a second trial, Dr. Sam Sheppard attempted to pick up the strands of his life and forge ahead, but the ghosts of the past haunted him for the rest of his life. He married Ariane Tebbenjohanns in July 1964, when he was released from prison, but they divorced in December 1968. He drank heavily, and his attempts to resume his medical career resulted in malpractice suits. In 1969, after trying to return to medicine, Sheppard took up team wrestling and married Colleen Strickland. Four years after being declared not guilty in his second malpractice trial, Sam Sheppard died on April 6, 1970, of liver failure at the age of 46.

Two more books about the Sheppard murder case appeared in the 1970s. F. Lee Bailey published *The Defense Never Rests* in 1971, in which he admitted that he had not allowed Dr. Sheppard to testify during his second trial because the doctor was often incoherent from alcohol and drugs. Jack Harrison Pollack published *Dr. Sam: An American Tragedy* in 1972. Pollack became interested in the Sheppard case after he wrote a sympathetic

article about Dr. Sheppard before he was freed. His book is a straightforward, objective account of the story, with 16 pages of photographs and an index.

The 1980s marked the deaths of four more principals in the Sheppard murder case. Spencer and Esther Houk, who were divorced in 1962, died in 1981 and 1982, respectively; and Dr. Sam Gerber, Cuyahoga County coroner, died in 1987.

In 1989, Richard Eberling was convicted of aggravated murder in the death of Ethel May Durkin, an elderly widow, who died on January 3, 1984, after being hospitalized six weeks from a fall in her home. In October 1989, Sam Reese Sheppard began his attempts to solve the murder of his mother, Marilyn Sheppard, and to speak out publicly about his family's ordeal. Not content to have his father declared merely "not guilty," he wanted him to be declared innocent, a legal distinction in Ohio that would forever clear his father's name and possibly open the way for Sam Reese to sue the state of Ohio for damages.

THIRD TRIAL

"I had one night with Dad, after he was arrested. It was in August 1954. I think they were trying to see if he would confess to me. Anyway, I was brought back from summer camp for questioning by the coroner.
"He was let out of jail for one night and allowed to go to my uncle's house. He and I talked. He said a huge mistake had been made, but this was the United States and they couldn't convict the wrong person. Mom was in heaven, and soon they would find the right person, the one who did it. Then I woke up and he was gone."

Samuel Reese Sheppard has spent his adult life attempting to deal with the destruction of his family when he was just seven years old. For years he tried covering up his painful past, but later he decided to try to clear his father's name. In 1999, Samuel Reese Sheppard, with the help of his attorney, Terry Gilbert, sued the State of Ohio in the Cuyahoga County Court of Common Pleas for the wrongful imprisonment of his father.

Attorney Gilbert explained the motives of Samuel Reese Sheppard:

> In 1995, we initiated a legal action which seeks a declaration of innocence from the trial court. We must prove by a preponderance of the evidence that Dr. Sheppard did not commit the murder. After obtaining that declaration, we would be able to get reparations from the state for the ten years of wrongful imprisonment. The acquittal at the fair trial did not eliminate the prejudiced mindset of the people of Cleveland and elsewhere that Dr. Sheppard was guilty and simply got off because of the slick tactics of a young lawyer named F. Lee Bailey. So we need to get the legal system to go beyond the original acquittal in 1966 and to affirmatively proclaim his innocence and that he was wrongfully imprisoned.

Cuyahoga County prosecutor William D. Mason headed the trial team of the State of Ohio and assistant prosecutor Steve Dever and Dean M. Boland rounded out his team. They argued that Dr. Sheppard was still the most logical suspect in the murder of his wife, and they introduced expert testimony suggesting that her murder represented a case of textbook domestic homicide. The court ordered the exhumation of Marilyn Sheppard's body, partially to determine if Dr. Sheppard had been the father of the baby she was carrying when she died and to obtain samples of DNA and reexamine her wounds. Samuel Reese Sheppard's attorney, Terry Gilbert, suggested that the coroner's office under Dr. Samuel Gerber had possibly concealed evidence.

Samuel Reese Sheppard, his father's former attorney F. Lee Bailey, and his present day attorney Terry Gilbert, had differing theories about who had really murdered Marilyn Sheppard. Attorney Terry Gilbert pointed the finger at Richard Eberling, as the most likely person who had murdered Marilyn Sheppard. Eberling, an occasional handyman and window washer at the Sheppard home, had been caught with one of her rings after a burglary investigation. Eberling died in prison in Ohio in 1998, while serving a life sentence for the 1984 murder of Ethel May Durkin, an elderly wealthy widow from Lakewood, Ohio. DNA testing of Richard Eberling's blood to see if it matched the blood found at the murder scene proved to be inconclusive.

F. Lee Bailey testified that he believed that Eberling could not have been the killer. Instead, he suggested that Esther Houk, wife of Bay Village mayor Spencer Houk, had killed Marilyn in a jealous rage after discovering that Marilyn and Mayor Houk had engaged in an affair.

The trial lasted for ten weeks and featured 76 witnesses and hundreds of exhibits. The case went before an eight person civil jury that deliberated just three hours. On April 12, 2000, it announced its unanimous verdict that Sam Reese Sheppard did not prove that his father had been wrongfully imprisoned. It ruled that Dr. Samuel Sheppard was "not innocent" of the murder of his wife Marilyn.

Attorney Gilbert appealed the verdict to the Eighth District Court of Appeals, and on February 22, 2002, the Court ruled unanimously that the case should not have gone to the jury because only the person actually imprisoned could make a wrongful imprisonment claim. A family member, even a son, could not bring such a claim. The Court of Appeals ruled that the legal standing to bring such a claim had died with the person who had been imprisoned, Dr. Samuel Holmes Sheppard. In August 2002, the Supreme Court of Ohio affirmed the appeals court's decision.

WHO KILLED MARILYN SHEPPARD?

Books continued to be published about the Sheppard murder case as Sam Reese fought to clear his father's name. In 1995, Cynthia L. Cooper and Sam published *Mockery of Justice: The True Story of the Sheppard Murder Case.* It is written from the family's viewpoint, but comprehensively summarizes the case, with 328 pages of text, 21 illustrations, 40 pages of endnotes, and a 15-page index. In 1996, *Endure and Conquer: My 12-Year Fight for Vindication,* by Dr. Sam Sheppard, was published. Dr. Sam Sheppard's story was written, according to his son, by a ghostwriter with the doctor's notes. It narrated his prison experiences, but did not include endnotes or an index. In April 2000, Bernard F. Conners published *Tailspin: The Strange Case of Major Call,* in which he pinned the Sheppard murder on James Call, an Air Force pilot who in 1954 deserted and launched a nationwide burglary spree. Conners suggested that Call could have murdered Marilyn Sheppard while he was visiting his sister in Ohio.

In 2001, James Neff published his book about the Sheppard case, called *The Wrong Man: The Final Verdict on the Dr. Sam Sheppard Murder Case.* A former *Plain Dealer* reporter, Neff worked on the book for years. In it he pointed out the weaknesses in the case against Sheppard, dismissed the Houks as suspects, and suggested that Eberling was the killer. Neff also identified the key thread in all three trials when he said,

> [S]ome of the most compelling evidence in the Sheppard case—DNA test results on blood and semen from the crime scene—had not registered with the jury. Dr. Tahir's lab work

THE FORENSICS OF BLOOD

Two experts in the science of blood analysis applied their expertise to the Sheppard murder case. In 1955, Dr. Sam Sheppard's attorney, William Corrigan, telephoned Dr. Paul Kirk, a famous criminalist who taught at the University of California at Berkeley and performed crime scene analysis for police departments and prosecutors, free of charge. By the time Corrigan had contacted Dr. Kirk, he had helped solve over 630 criminal cases. He cautioned Corrigan that he followed his scientific findings and that he might end up building a case against Dr. Sheppard.

Dr. Kirk flew to Cleveland and visited the crime scene at the Sheppard home in Bay Village. Then he visited the Cuyahoga County prosecutor's office to view the physical evidence in the case. Dr. Kirk had arrived in Cleveland feeling that Dr. Sheppard probably was guilty of the murder of his wife. He returned to Berkeley convinced that the prosecution had gotten most of its case wrong. He sent William Corrigan his report in late April 1955. Dr. Kirk's report consisted of scientific testing and reasoned scenarios that built a strong case that someone besides Dr. Sheppard had killed his wife. He argued that the killer had swung a weapon, probably a flashlight and certainly not a surgical instrument, with a level, left-handed swing. Blood had certainly misted the killer's pants and shirt, and the blood trail in the Sheppard home came from a flowing wound, possibly a bite from Marilyn Sheppard.

One of the more telling tests that Kirk made was of the large, one inch blood spot on the closet door in the murder room. The blood spot reacted so differently from Marilyn and Sam Sheppard's blood that Dr. Kirk concluded that it came from a third person—likely the killer. Kirk believed that the Marilyn Sheppard murder was a sex crime and that it was ''completely out of character for a husband bent on murdering his wife.''

William Corrigan filed a motion for a new trial, citing new evidence that Dr. Kirk had discovered, emphasizing that the blood of a third person had been discovered at the crime scene. Coroner Dr. Sam Gerber knew that he had to destroy Dr. Kirk's credibility to maintain his standing in national forensic circles. Behind the scenes, Dr. Gerber blackballed Dr. Kirk. In the summer of 1955, the Ohio Appeals Court, a panel of three elected judges, denied the motion for a new trial, arguing that Kirk's blood typing and other interpretations were ''highly speculative and fallacious.''

Reporters called Dr. Kirk in California for his reaction and he said, ''I'm just as positive as I am of my own name that Dr. Sam didn't do it.''

Over four decades later, in the summer of 1996, Dr. Mohammad Tahir, a respected DNA scientist in Indianapolis and the director of the DNA and serology laboratories at the Indianapolis–Marion County Forensic Services Agency, began the painstaking process of attempting to extract DNA from the bits of blood and hair collected from the 1954 murder scene. They had been discovered in a vault at the Cuyahoga County coroner's office. Dr. Tahir focused on what he felt might be the key pieces of evidence: a drop of blood lifted from a basement step, the large bloodstain on the knee of Dr. Sam's trousers, and the bloodstain from the wood floor of the back porch.

Like Dr. Kirk, Dr. Tahir was working without a fee, and, also like Dr. Kirk, he told Terry Gilbert that he was taking a gamble as a lawyer because the results of his tests might incriminate Dr. Sam Sheppard. He said that the Sheppard team would have to live with the results of his tests, and Attorney Gilbert said that he understood.

Dr. Tahir conducted exhaustive tests and produced intriguing findings. He found the presence of sperm from a vaginal swab taken from Marilyn Sheppard's body at her autopsy that did not belong to Dr. Sam Sheppard, which supported the theory that Marilyn Sheppard's murder was a sexual and not a domestic homicide. He discovered that the bloodstain on Dr. Sheppard's trousers did not contain his DNA nor did it contain any DNA from Marilyn Sheppard, indicating that the killer probably put the stain there when he ripped a ring of keys from Dr. Sheppard's belt loop. A drop of blood from one of the stairs contained no DNA from Sam or Marilyn Sheppard, casting doubt on the state's theory that Marilyn's blood dropped from a murder weapon as the killer carried it out of the house.

> showed that sperm from a man other than Dr. Sheppard was in his wife's vagina when she died. But Tahir's heavily accented testimony was "hard to follow," as Judge Suster put it. Furthermore, Terry Gilbert's direct examination of Tahir failed to give the jurors a solid understanding of how DNA worked, said Assistant prosecutor Steve Dever, who was grateful. (p. 281)

Just as in the first trial, confusion and misunderstanding about blood and semen evidence worked in favor of the prosecution, and Dever dismissed Tahir's results as junk science. His position revealed a great irony, since he, as a criminal prosecutor, routinely used DNA test results produced by coroner's office technicians trained by Dr. Tahir to get convictions. The jury in this trial simply dismissed the DNA evidence. Just as in the first trial, the jury ignored forensic evidence that could possibly exonerate Dr. Sheppard.

Eliminating Dr. Sam Sheppard and James Call as possibilities, the writers and scholars of the Sheppard murder case have suggested three strong suspects in Marilyn Sheppard's murder. Despite the civil jury's finding, Richard Eberling remains a strong suspect because of the long string of suspicious deaths connected to him and his conviction for the 1984 murder of Ethel May Durkin. Eberling knew the Sheppard house well, including the basement entrance, which often was left unlocked. The trail of blood down the steps is almost certainly Eberling's. He stole repeatedly over decades and may also have burglarized homes that he knew.

On the other hand, there is no evidence to place Eberling in the house on the morning of the murder, although he did fit the general description of the "bushy haired intruder" that Dr. Sheppard wrestled. There is no evidence that Eberling was ever involved in a sex crime, and he was believed to be homosexual. Dr. Leland Kirk in his extensive analysis of the blood evidence said that the killer was left-handed, while Eberling was right-handed.

James Neff, in his book *The Wrong Man,* concluded that Eberling was the killer. He based his opinion on the same evidence that Pollack uses in *Dr. Sam: An American Tragedy* and on a final interview with a dying and possibly delirious Eberling.

F. Lee Bailey favored the theory that Spencer and Esther Houk separately or together killed their neighbor Marilyn Sheppard, although on superficial examination it seems far-fetched. But suspicion of Mayor Houk goes back to August 1966 when police unceremoniously brought him to the central police station for questioning as a result of a lead that Dr. Steve Sheppard had given the police. Before the second trial, F. Lee Bailey had hinted to reporters that the killer was a left-handed woman and the Houks were his suspects at the second trial. During cross-examination, Bailey brought out that the Houks

were familiar with the Sheppard home and could get between their house and the Sheppard's house by walking on the beach. He brought out that they had set a fire in their fireplace on a July night when the overnight low was 64 degrees. If he had been allowed, Bailey would have called a bakery driver who had seen Houk kissing Marilyn Sheppard to testify.

After Dr. Sheppard's acquittal, Bailey convinced Bay Village police to investigate the evidence against the Houks, but after hearing the evidence the grand jury did not act. Grand jurors doubted that Houk, who walked with a limp, could have been the man who ran from Dr. Sheppard.

In 1982, the owners of the property that had formerly belonged to the Houks found a pair of fireplace tongs buried four to five inches under their back yard. The tongs were nearly two feet long and weighed one and three-quarters pounds. They appeared to match some but not all of the wounds in Marilyn's head, but a metallurgist said that the absence of corrosion indicated that they could not have been buried for 28 years.

Sam Reese Sheppard said that he had a tape of an interview with Spencer Houk made shortly before he died in 1980 that appeared incriminating. He took the accusations seriously enough to lay out two scenarios, one in which Spencer Houk was the killer and one in which it was Esther. He stopped his inquiry into the Houks only when the evidence against Eberling began to mount.

Paul Holmes avoided speculation through most of *The Sheppard Murder Case,* but in the end he suggested a ''hypothesis'' in which Marilyn was killed with a flashlight by a woman whose husband faked a burglary to cover up for her and inadvertently set up Dr. Sheppard as a suspect. Holmes wrote that no one ever checked their car for bloodstains or tested the ashes in their grate.

Jack Harrison Pollack titled the final chapter of his 1972 book, *Dr. Sam: An American Tragedy,* ''The Guilty.'' In this chapter, he reported that Harold Bretnall, a private detective who worked for the Sheppards, had planned before he died to write a book about the Sheppard murder. In his notes, Bretnall had written, ''Marilyn Sheppard was murdered by someone who was a frequent visitor to the Sheppard home.'' Pollack said, ''After carefully ruling out all other possibilities, Bretnall concluded that Marilyn's killers were a woman and a bushy-haired man living in bondage with their awful secret'' (Pollack, 1972, pp. 225–235).

Pollack was impressed with Bretnall's findings, and he also concluded that the finger of suspicion still pointed most stubbornly to a couple, a woman and a man. According to Pollack, the gossip of Bay Village seemed to support this theory, especially the word that a tooth chip belonging to neither Marilyn nor Sam was found in the bedroom after the murder and the tooth of one Bay Village resident was reportedly extracted immediately after the crime. Pollack did not document or give a source to these statements.

When the accusations resurfaced in the 1990s, the Houks were both dead, but their grandchildren insisted that their grandparents could never have committed such a horrible crime. They said that Esther was not left-handed as had been often reported, and they said that as Esther lay dying in 1982, she called her daughter to her bedside and asked her to defend her if they accused her of the Sheppard murder (McGunagle, *Crime Library*).

Marilyn Sheppard was the first victim in this 50-year-old murder case, but her murder irrevocably changed and claimed other lives as well. Other victims included her husband, her mother- and father-in-law, her father, and her son. But perhaps the most tragic victim of all is the belief of ordinary citizens in the impartiality of the American judicial system.

SUGGESTIONS FOR FURTHER READING

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13

The Emmett Till Murder: The Civil Rights Movement Begins

MARCELLA GLODEK BUSH

In the early hours of a Saturday morning in August 1955, two men kidnapped 14-year-old Emmett Till from his great-uncle's house near Money, Mississippi. Three days later, Till's tortured, swollen, and decomposing body was found snagged on some tree branches in the Tallahatchie River—one eye gouged out, one side of his forehead crushed, a bullet in his skull, and a 75-pound cotton gin fan tied around his neck. His body was so badly bloated and disfigured that his great-uncle Mose Wright could only identify Till by the initial ring, once his father's, that he wore.

Till was a black adolescent from Chicago, Illinois, the only son of Louis Till and Mamie Carthan. He had suffered from nonparalytic polio since age three, and the effects of the disease left him with a slight stutter. His mother taught him to whistle to aid his fluency. His speech impediment did not make him shy, however. His family and friends described him as an outgoing boy who liked to tell jokes. Till's father was killed while serving in the army in World War II. When the army returned his father's personal effects, the ring bearing the initials LT was included. Emmett Till's mother later married, and divorced, Gene Bradley.

Mrs. Mamie Till Bradley, Till's mother, was born in Mississippi but moved to Chicago with her parents when she was two years old. Many aunts and uncles still lived in Mississippi, and Emmett and his cousin Curtis Jones planned to visit relatives for two weeks in August 1955. The boys would stay with their great-uncle, Wright, a preacher and a sharecropper who grew cotton. Till was looking forward to seeing his Mississippi cousins again, and his mother was happy that her son could enjoy the countryside after a hot city summer.

On August 20, Mrs. Till took her son to the 63rd Street railroad station in Chicago. Knowing that her son was unskilled in the differences between segregation in the North and segregation in the South, and aware of his impulsive nature and penchant for jokes,

she warned him about his behavior while in the South. She advised him not to speak to white people or risk trouble with them, and to be humble if necessary.

MONEY, MISSISSIPPI

In 1955, only 55 residents lived in Money, Mississippi, a cotton gin town with a gas station and three stores. On the evening of August 24, Jones and Till drove with several cousins to Bryant's Grocery and Meat Market, which was owned by Roy and Carolyn Bryant. The Bryants had two small sons and eked out their living selling basic necessities to poor black sharecroppers. Poor themselves, the Bryants lived in a room behind the store. The Bryant-Milam family owned a chain of such stores in the Mississippi delta (Huie, 1956).

Till and Jones joined several other black youths who were listening to music and talking on the front porch of Bryant's store. While Jones played checkers with an elderly black man, Till boasted about life in the North, particularly his friendships with white people. When he showed the others a photograph of a white girl that he kept in his wallet, and bragged that she was his girlfriend, the Mississippi youths dared Till to go into the store and flirt with Mrs. Bryant. Till took the dare. Accounts differ about what Till did after he entered the store. After Mrs. Bryant testified at the trial, various newspapers reported that Till said, ''Bye baby,'' ''What's the matter baby? Can't you take it?'' ''You needn't be afraid of me,'' and ''I've been with white women before'' (Metress, 2002). Some mentioned that he gave a ''wolf whistle'' as he was leaving the store, but that was not mentioned in Mrs. Bryant's testimony. If he did whistle, however, he may have been using the whistle to overcome his stuttering. Till's actions shocked the crowd outside the store. The old man playing checkers warned Till about the consequences of his actions and urged him to leave the area. When Mrs. Bryant came outside to get a gun from her brother-in-law's car, Jones, Till, and the cousins jumped into the truck and fled the scene.

Bryant was not alone in the store that evening. When her husband was out of town, her sister-in-law Juanita Milam came to the store with her children in the afternoon and stayed until closing: 9 p.m. on weekdays and 11 p.m. on Saturdays. Milam then drove Bryant and her children to the Milam home. In the morning, either Milam or his wife would drive Mrs. Bryant back to the store. Bryant's husband carried a .38 Colt automatic, and Milam kept a .45—a souvenir from World War II. Mississippi law permitted its citizens to carry guns whenever they thought they were in imminent danger. Mrs. Bryant was afraid that evening. She knew that Till was not from the area, and she claimed later that she thought he was a man. Till was five feet, five inches in height and weighed about 160 pounds. Bryant was 21 years old and stood five feet tall and weighed 103 pounds.

REPRISAL

Initially, the adolescents kept the incident secret from their great-uncle, but news of Till's actions quickly spread throughout the black community. Till wanted to go back to Chicago and his cousin, Jones, agreed, but the Wright family thought that if he stayed away from Bryant's store, he would be safe. No one in Wright's family thought that Mr. Bryant would come looking for Till—he was only a boy and he was from the North. Three days later, however, when Mr. Bryant returned from a trucking job in Texas delivering shrimp, he heard about Till's action from the black community. He could not ignore the situation or he would be labeled a fool. He asked his half-brother Milam to meet him early Sunday morning.

In his *Look* magazine article, Huie (1956) detailed the events of Till's kidnapping. Bryant and Milam drove out to Wright's cabin sometime after midnight, demanding to see the boy from Chicago. Wright tried to bargain with the two men in an effort to minimize their anger, and Wright's wife Elizabeth offered to pay them for any trouble that her nephew caused. Wright begged them to just give Till a whipping and pleaded that they not take Till with them. The two men, however, ordered Till to dress and to get into the back of their pickup truck. They ordered Wright not to cause any trouble, and they drove off. Associated Press correspondent Sam Johnson and Global News Network editor Olive Arnold Adams (1956) both state that Wright testified to this kidnapping sequence of events at the trial (Metress, 2002, p. 222).

TIMELINE

May 17, 1954	Supreme Court orders public schools desegregated.
1955	Black activists Lee and Smith killed in Mississippi.
August 21, 1955	Till in Mississippi.
August 24, 1955	Incident at Bryant's Grocery.
August 28, 1955	Till kidnapped and murdered.
August 28, 1955	Bryant and Milam arrested.
August 31, 1955	Till's body found.
September 3, 1955	Till's body viewed in Chicago.
September 6, 1955	Till's funeral/trial date.
September 15, 1955	*Jet* magazine publishes corpse photograph.
September 19–23, 1955	Bryant and Milam acquitted.
November 9, 1955	Jury refuses to indict for kidnapping.
December 1, 1955	Rosa Parks incident in Montgomery, Alabama.
January 24, 1956	*Look* magazine publishes Milam's confession.
1980	Milam dies of cancer in Mississippi.
1990	Bryant dies of cancer in Mississippi.
January 6, 2003	Till's mother Mamie Till Mobley dies.
May 10, 2004	The U.S. Department of Justice reopens Till's case.
May 31, 2005	Till's body exhumed and reburied.
August 26, 2005	Body positively identified; federal investigation closed.

THE ARRESTS

Wright did not call the police, but Jones informed Leflore County Sheriff George Smith the next morning that Till was missing. The sheriff questioned Milam and Bryant, who both admitted abducting the adolescent, but reported that they had turned him loose, unharmed, that same night. They were arrested and charged with kidnapping. When Till's body was found three days later, the indictment changed to murder. Because the body was found in Tallahatchie County, that county was ascribed jurisdiction. The two defendants remained, however, in Sheriff Smith's custody until the grand jury convened the following Monday, September 5.

The sheriff wanted to bury the body immediately, stating that because the body was so badly decomposed, identification could not be made. Jones called Mrs. Till to tell her about her son's death and his forthcoming burial in Mississippi. Till's mother wanted

her son's body and insisted that it be shipped back to Chicago. The sheriff directed the mortician in Mississippi, however, to sign an order for the coffin to remain unopened.

Initially, no local lawyers agreed to defend Milam and Bryant. Therefore, the state appointed a special prosecutor but gave him no budget or personnel to conduct a probe. The sheriff did not investigate the murder, nor did he help the prosecution prepare its case.

THE MEDIA

When Milam and Bryant were arrested, several Mississippi newspapers reported the story, but when Till's mother insisted on an open-casket funeral, she brought national attention to her son's murder. During the four days of the viewing at the Rainer Funeral Home in Chicago, thousands of people saw Till's body. Till's photograph gained national attention in newspapers and magazines and mobilized the National Association for the

BIOGRAPHICAL DESCRIPTIONS

Bradley, Mamie Carthan Till (1921–2003), Emmett Till's mother
Breland, J.J., lead defense attorney
Bryant, Carolyn Holloway (1934–), Roy Bryant's wife; present during the incident in the family's grocery store
Bryant, Roy (1931–1994), accused killer of Emmett Till
Chatham, Gerald, lead prosecutor
Collins, Levy ''Too Tight,'' tied to Till's murder by various witnesses
Cothran, John Ed, deputy sheriff of Leflore County; arrested J.W. Milam on kidnapping charges
Hodges, Robert, discovered Emmett Till's body
Hubbard, Joe Willie, alleged accomplice of J.W. Milam and Roy Bryant in Till's murder
Huie, William Bradford, *Look* magazine reporter
Loggins, Henry Lee, alleged accomplice to Milam and Bryant
Milam, John William ''J.W.'' (1919–1980), Roy Bryant's half-brother; alleged murderer of Emmett Till
Milam, Juanita Thompson, J.W.'s wife; present in Bryant's Grocery during incident
Mobley, Gene (1923–2000), married Mamie Till Bradley two years after Till's death
Reed, Willie, testified that he heard the beating in the tool shed on Milam's plantation
Strider, Henry Clarence ''H.C.,'' sheriff of Tallahatchie County; witness for the defense
Swango, Curtis M., presiding judge
Till, Emmett (1941–1955), son of Mamie Charthan and Louis Till
Till, Louis (1921–1945), father of Emmett Till; he died during WWII
Wright, Moses (1892–1977), sharecropper, preacher, and Till's great-uncle; identified J.W. Milam and Roy Bryant in court as the men who kidnapped Emmett Till

Advancement of Colored People (NAACP). According to media reports, the photograph inflamed both northern and southern audiences, who subsequently denounced the barbarity of segregation in the South and demanded justice in Mississippi in the Till case. When the case became a national event, five prominent Mississippi delta attorneys signed on to the case; they raised $10,000 for the defense fund. *Jet* magazine published an unedited photograph in its September 15 issue of Emmett as he lay in his coffin.

MOUNTING THE TRIAL

In Mississippi, the severe censure from northern press editorials and civil rights groups solidified white public opinion in defense of their society. Influential African American weeklies such as the *Chicago Defender,* the *Baltimore Afro-American,* the *New York Amsterdam News,* and the *Cleveland Call and Post* denounced southern injustice and promised reprisal if Mississippi failed to provide a fair trial. The National Association of Colored People labeled the crime a ''lynching'' and, in doing so, received recrimination from southern newspapers. Tom Ethridge, a writer for the *Jackson Daily News,* explained that ''lynching'' was defined by militant Negro zealots as ''any killing involving a colored victim and a white killer'' (Metress, 2002). Mississippi Governor Hugh White and others stated that the crime was not a ''lynching'' but a murder. More than 70 newspapers and magazines sent reporters—including the black press—to the trial. Medgar Evers, the first field secretary for the NAACP, was also present.

Indicted for murder by the grand jury on September 6, Bryant and Milam were taken to Tallahatchie County for arraignment; the sheriff's office held no inquest prior to the trial. Again the accused admitted to kidnapping Till, but insisted that they released Till unharmed. At the time of the trial, Mississippi preserved transcripts of appealed cases only; consequently, no transcript exists of the Bryant and Milam trial. Information, therefore, about court proceedings depends on newspaper and other media accounts as well as personal recollections and interviews.

Circuit Judge Curtis M. Swango presided over the trial and determined that the case would be tried in open court; he ruled that no photographs, sketches, recordings, or broadcasts would be allowed in the courtroom. District Attorney Gerald Chatham served as the prosecuting attorney and was assisted by former FBI Agent Robert B. Smith; five defense attorneys included senior defense attorney J.J. Breland, C. Sidney Carlton, J.W. Kellum, John C. Whitten, and Harvey Henderson. All officers of the court were white.

JURY SELECTION

Jury selection began on September 19, and it took a day and a half to appoint an all-male, all-white jury from the defendants' county. According to an article published in the African American newspaper the *Chicago Defender,* prospective jurors were dismissed if they had contributed to the defense fund of the defendants, if they were related to the attorneys or defendants, if they had formed any definite opinions about the defendants' guilt or innocence, or if they lived in the county where the killing took place (Metress, 2002).

Accounts differ about court attendees, but men outnumbered women and whites outnumbered blacks; the courtroom was segregated with blacks sitting in a corner in the back of the hot, crowded courtroom, and the white press near the judge and jury. The press included local, national, and foreign representatives, and the three existing national

television networks also covered the trial, but did not broadcast from the courtroom. The defendants faced the judge with their wives and children (four boys, ages two to four years) next to them each day. Till's mother arrived on the second day of the trial with her father, a cousin from Chicago, and Congressman Charles Diggs from Michigan; both Mrs. Till and Diggs sat at the black press table. Sheriff Strider placed the two defendants under guard and called out the National Guard to support city police because he had received anonymous letters and telephone calls that threatened mob violence. In coverage by the *Jackson Daily News* on September 5, 1955, Strider is quoted as reporting that most of the letters were postmarked from Chicago.

Testimony

The state based its case on identification: the jury would find that both defendants could be identified as Till's assailants, and the identification of the body pulled from the river could be identified as Till's *beyond a reasonable doubt.* The state called six witnesses: Wright; Till's mother; Mrs. Bryant; Chester Miller the undertaker; Levy (''Two Tight'') Collins (a black who allegedly accompanied Bryant and Milam in the kidnapping and murder); Sheriff Strider (who stated that a bullet caused the hole in the deceased's head); and Robert Hodges, the boy who found the body. Mrs. Till testified that she positively identified her son's body and her late husband's ring, and had warned her son about his behavior with white people while visiting his Mississippi relatives. When defense counselor J. J. Breland began questioning her about the newspapers that she read in Chicago, Prosecutor Smith objected to that line of questioning, fearing that the photo of Till might be introduced. Judge Swango removed the jury to determine whether the defense's line of questioning was relevant or diversionary. He subsequently deemed it not relevant to the case, excluded every question, and allowed no references to the questions. As a result of the ruling, the defense had to drop Till's mother as a witness.

Prosecutor Chatham's opening statement promised to put the defendants together with Till and in the area where Till's body was found. The NAACP undertook the responsibility to provide a safe place for the trial witnesses that Chatham had ferreted out from their hiding places. Chatham well understood how dangerous it was for blacks to testify against whites in a court of law in Mississippi.

Chatham opened with the prosecution's first witness: Mose Wright, who testified that Milam and Bryant were the two men who had taken his nephew Emmett that night. Chatham's other witnesses, also blacks, testified that they had seen Bryant and Milam at a plantation and had heard screams and cries coming from a shed in the back. They testified also that they unloaded a tarpaulin from that shed and then cleaned the truck used to transport the tarpaulin. After their testimonies, the NAACP secured hiding places for them outside Mississippi.

Cross-Examination

On cross-examination, Defense Attorney Carlton challenged Wright's identification of Bryant and Milam as the two men who came to his house in the early morning hour of August 28. Wright insisted that he could identify the two accused even though the only light available was a flashlight allegedly held by Milam. Then the judge ruled out Smith's testimony about a conversation with Bryant that placed Bryant at Wright's home and later with Till at his store; the jury was out of the room, however, for that testimony. According



Figure 13.1 Roy Bryant and J.W. Milam, charged with murdering Emmett Till, sitting in a courtroom with their attorney, 1955. Courtesy of the Library of Congress.

to Associated Press correspondent Sam Johnson, the judge ruled that the state must first prove that Till was murdered before an identification of the murderers could be allowed.

The defense next raised the issue about the identification of the body. Leflore County Deputy Sheriff Cothran's testimony suggested that the cotton gin fan might have caused the damage to the body's head. Sheriff Strider testified that the decomposition of the body was more like that of a body that had been in the river ten days, not three, and a Greenwood physician concurred. Strider also testified that a photograph of Till did not match that of the body pulled from the river. Neither defendant took the stand in the trial.

Closing Remarks and the Verdict

The defense attorneys argued that there was no motive for the crime, no positive identification, no reasonable theory, no identification by Bryant of Till, and no positive identification of the body from the river. Defense attorney Kellum appealed to the jury that because they were white men, they should not convict other white men in a black man's killing (Gado, 2003). Defense attorney Carlton argued that the theory of the crime offered by the prosecution was unreasonable: if the men who came to Wright's house planned to murder Till, why would they identify themselves?

The prosecution appealed to moral and legal issues. District attorney Chatham—a southerner—argued that a whipping, not a killing, would have been the moral thing to do if Till had insulted Bryant. He stressed that Wright, Willie Reed—a black field hand whose testimony placed J.W. Milam and Till together on the morning after the kidnapping—and the others were telling the truth, and he urged the jury to consider the case



Figure 13.2 District Attorney Gerald Chatham sitting at the prosecution's table during the trial of Roy Bryant and J.W. Milam for the murder of Emmett Till; the cotton gin wheel tied to Till's body stands in front of the table. Courtesy of the Library of Congress.

on its merits—Till's mother identified the body as her son's; several people on the river scene identified the body as a black male.

On the fifth day of the trial, in 67 minutes, the jury returned a verdict of not guilty. One jury member later told a reporter, "It would have been even shorter, but we stopped to drink some pop" (Huie, 1956). Bryant and Milam were free men who, under double jeopardy, could not be tried again for the murder.

THE OUTCOME OF THE TRIAL

The outcome of the trial caused controversy in the media. In the months following the trial, northern white daily newspapers and black weeklies condemned Mississippi for its inability to bring justice in a particularly brutal murder of a youth; some called for federal intervention (Metress, 2002). Others raised questions about what truly happened in the case. Few, if any, focused on the effects that the murder and its subsequent trial had on citizens in the hamlet of Money, Mississippi. Most white southern newspapers tempered their censure of Mississippi and focused blame on the sheriff's lack of investigation in the case, and on the prosecutors who went to trial with flimsy evidence (Metress, 2002). Mississippi media blamed organizations like the NAACP for agitating the situation or decried it as a communist plot to destroy the South's way of life and to display America's racial inequality to the world. Individuals expressed their opinions in letters to newspaper editors, and radio announcers stated their views in on-the-air editorials and on-the-spot coverage of the trial (Metress, 2002; Smith, 2003). Some northerners expressed moral outrage about the verdict as a miscarriage of justice, while others wrote about equal justice out of religious convictions; still others demanded equality for blacks. Some southerners defended southern mores, insisting that white women deserved protection from black men in the South. Individual expressions of feelings included impotence, frustration, revenge, and retaliation. Black commentators expressed anger, but not surprise about the verdict (Metress, 2002).

LOOK MAGAZINE INTERVIEW

In the months following the trial, theories of conspiracy surfaced in the press. In 1956, the two defendants told their story to William Bradford Huie, a *Look* magazine journalist and author, and were paid $4,000[1]—not for their interview, but for a release for their movie rights. Other sources report different amounts paid to Milam and Bryant. During

the interview, Milam confessed to the killing and rationalized his reasons for doing so. Milam revealed that at first they planned to scare Till. When they failed, Milam rationalized that ''as long as I live and I can do anything about it, niggers are going to stay in their place. . .and when a nigger even gets close to mentioning sex with a white woman, he's tired of livin''' (Metress, 2002). Milam interpreted Till's bravado as arrogance. Till was a troublemaker. He came from the North with money to spend and nicer clothing than his cousins living in the South. He gave blacks in the South ideas about racial equality. Milam decided to make an example of Till (Gado, 2003). He and Bryant and two black men drove for several hours trying to find a cliff that Milam had discovered when he was duck hunting the year before—a bluff with an impressive 100-foot drop to a canyon below. Milam intended to scare Till by pistol-whipping him, during which he would then shine a flashlight into the canyon with the implication that he would push Till over the cliff. After Milam's failure to locate the cliff in the dark, Milam took him to a shed in back of his house. There, Milam pistol-whipped the boy, and when Emmett still would not humble himself to Bryant and Milam, they wrapped him in a tarpaulin, put him back in the truck, and drove to the Tallahatchie River. At the river, Milam gave Till one last chance to humble himself. When Till did not, Milam ordered him to remove his clothes, made him carry the 75-pound cotton gin fan to the river's edge, and shot Till in the head with his .45 Colt revolver.

TRIAL PARTICIPANTS

STATE OF MISSISSIPPI VS J.W. MILAM AND ROY BRYANT

Held in Sumner, Tallahatchie County, Mississippi
September 19–23, 1955
Presiding:
Judge Curtis M. Swango
Prosecution Team:
Gerald Chatham
Robert B. Smith, III
James Hamilton Caldwell, Jr.
Defense Team:
Jesse Josiah Breland
C. Sidney Carlton
Robert Harvey Henderson
Joseph W. Kellum
John W. Whitten
Prosecution Witnesses:
Mary Amanda Bradley, Mamie Till Bradley, John Ed Cothran, Robert Hodges, Chester Miller, Benjamin L. Mims, Charles Nelson, Add Reed, Willie Reed, George Smith, C.A. Strickland, Moses Wright
Defense Witnesses:
Lee Russell Allison, L.W. Boyce, Carolyn Bryant, Grover Duke, Pete McGaa, Harry D. Malone, Juanita Milam, Luther B. Otkens, Harold Perry, James Sanders, Franklin Smith, Henry Clarence Strider
Jurors:
Howard Armstrong, Ed Devaney, George Holland, Bishop Matthews, Davis Newton, Jim Pennington, Lee L. Price, Gus Ramsey, James Shaw, Jr., Travis Thomas, James Toole, Ray Tribble
Alternate:
Willie D. Haven

Milam and Bryant felt that they had nothing to hide when telling their story. They never thought that they were in legal jeopardy. They assumed that the white community knew what they did and later sanctioned their act by contributing money to their defense fund. In the rural South in 1955, the plantation system still existed. Because blacks were not well educated in the South, they were tied to low-paying jobs, and most were

sharecroppers. Milam rented Negro-driven mechanical cotton pickers to plantation owners. He was considered a bully who kept blacks working hard and in their place. In an interview with Milam and Bryant's defense attorney, John C. Whitten, Huie quotes Whitten as saying "that Milam was the killer and Bryant a coat-holder. Milam is older; he won a battlefield commission; he looks like the family leader. . . . He's the overseer type; he works Negroes, lives among them" (Metress, 2002).

The blacks who helped Milam and Bryant on the night of Till's murder did so because their lives and livelihood depended on their support. Neither Milam nor Bryant regretted killing Till, but they understood why the black community shunned them after the trial. They could not understand, though, why the white community shunned them. Journalist Huie wrote in his *Look* magazine article that a Tallahatchie citizen explained the situation to him: "[Y]ou know there's just one thing wrong with encouraging one o' these peckerwoods to kill a nigger. He don't know when to stop—and the rascal may wind up killing you" (Metress, 2002).

AFTER THE TRIAL

The NAACP's field secretary Medgar Evers attended the Till trial and continued to investigate the murder after the trial to ferret out issues not raised at the trial. Other black organizations staged major rallies in the northern cities and in the Midwest. They promoted black marches both to protest the verdict in the Till case and to engender their cause for equality. Looking ahead to an indictment and trial of Bryant and Milam for kidnapping, and the need for black witnesses to testify, black organizations requested defense funds for these witnesses' safety. Bryant and Milam were never indicted on charges of kidnapping, however, even though they had publicly confessed. The state of Mississippi never explained why.

In fear for their lives, Wright's family left Money after the night Bryant and Milam appeared at their home; Wright returned for the trial, but his wife did not. Other blacks who testified include Willie Reed, who placed Bryant and Milam at the plantation shed, and Amanda Bradley, who testified to the beating in the shed. They, too, needed and received assistance to relocate away from Mississippi and the South.

Wright and his family moved to Chicago and never returned to Mississippi. Blacks boycotted Bryant's store, it closed, and the family moved to Texas. Eventually, all the stores that the Bryant-Milam family owned closed also. The Bryants divorced in 1979. Milam tried farming, but blacks refused to work for him, and whites demanded a salary that he could not afford to pay. Eventually, he, too, moved to Texas. Both brothers died of cancer.

Emmett Till's mother became a teacher in Chicago. Sponsored by the NAACP, she lectured throughout the United States about segregation and her son's death. She retired in 1978 and died in 2002 at the age of 81. Her death once again brought Emmett's memory to the public forum. Nearly complete at the time of her death, Mamie Till Bradley's memoir *Death of Innocence: The Story of the Hate Crime That Changed America* (written with Christopher Benson) has been subsequently published by Random House. Public Broadcasting Service (PBS) aired *The Murder of Emmett Till* on January 20, 2003.

On May 10, 2004, the U.S. Justice Department and the Mississippi District Attorney's office for the 4th District reopened the case after learning about new witnesses discovered by Keith Beauchamp when he created his documentary, *The Untold Story of Emmett Louis*

Till. Beauchamp does not name the witnesses in his film, but believes at least ten people were involved. Witnesses claim that Henry Lee Loggins—a black man, who worked for Milam—was in the truck with Till, when Till was abducted. Mose Wright also testified that there was a black man on the porch that night. Wright also reported hearing a woman's voice—believed to be Carolyn Bryant—from the truck.

An FBI report states that a warrant was issued for Mrs. Bryant, now Carolyn Donham, but she was never arrested or charged. Federal investigators exhumed Till's body on June 1, 2005, because defense attorneys had argued that the body found in the Tallahatchie River was not Till's. DNA tests, however, confirmed Till's identity. He was reburied on June 4. The FBI also found a copy of the trial transcript that would allow them to compare testimony given then to testimony in a new trial. Although the five-year statute of limitations expired, Carolyn Bryant Donham was brought before a grand jury in Leflore County, Mississippi, but on February 23, 2007, a grand jury issued a "no bill," a term that indicates insufficient evidence to support criminal prosecution. Donham is probably the only living person who could possibly be associated with the murder. Till's death continues to raise issues about racial inequality in America.

Social, Political, and Legal Issues

The U.S. Supreme Court's school decision in *Brown v. Board of Education* on May 17, 1954, opened to the world the social fabric of the southern way of life—a society in which racial segregation permeated all spheres of life. In response to the court ruling, southern states each began a movement of resistance. Mississippi formed the Mississippi Sovereign Commission to prevent federal and judicial interference in the powers of the state government. A new group, the Citizen's Council, formed to control blacks economically by threatening their jobs, credit, and mortgage renewal if they participated in desegregation.

Public Remarks about Segregation in Mississippi

Mississippi Senator James Eastland advised his constituency that "[o]n May 17, 1954, the Constitution of the United States was destroyed because of the Supreme Court's decision" in *Brown v. Board of Education* and admonished them to "not be obliged to obey the decisions of any court which are plainly fraudulent [and based on] sociological considerations" (Williams, 1987, p. 38). Lew Sadler, a white Mississippi radio announcer covering the trial, defended the South's way of life and stressed that blacks and whites mingled daily without ramifications in Mississippi. He said, "the only line we draw is at the door of our schools" (Metress, 2002).

Election Year Efforts for Voting Registration

In contrast, while blacks in the North also faced discrimination and segregation, they had access to the voting ballot and entry-level jobs in the city government. In the summer of 1955, the executive secretary of the NAACP, Roy Wilkins, addressed an audience on the city of Chicago's "Salute to Negroes in Government" day. In the North, blacks were moving against the apartheid of American history.

The South feared and subdued any efforts to mobilize the black vote—by lynching if necessary. Just prior to Till's arrival, two black men were killed in Mississippi: Lamar Smith, an NAACP activist, and the Reverend George W. Lee, both solicitors of black

voting registration. In Tallahatchie County in 1955, more than half of the residents were blacks, but none were registered voters. Therefore, none of them could serve on the Bryant-Milam trial jury. Milam, in his interview with Huie, asserted, ''Niggers ain't gonna vote where I live! If they did, they'd control the government'' (Metress, 2002).

Political and Social Overtones at the Trial

The media crush that descended on Tallahatchie County soon recognized the political and social scene of the South. Sheriff Strider had segregated black and white reporters and photographers, and audibly announced to the assembled courtroom audience, ''We haven't mixed so far down here and we don't intend to'' (Metress, 2002). He acknowledged black reporters by saying, ''Hello, niggers'' (Metress, 2002). Another deputy sheriff also audibly expressed his opinion in the courtroom about the political position of Charles C. Diggs, a U.S. congressman, when Diggs requested seating in the courtroom. ''What?'' he asked. ''A nigger Congressman?'' (Williams, 2002, p. 51).

In his closing remarks, District Attorney Smith moved for a justice that protected the rights of both blacks and whites. He stated that ''Emmett Till down here in Mississippi was a citizen of the United States; he was entitled to his life and his liberty'' (Metress, 2002). Defense attorney Kellum, however, used his summation to continue prevailing southern tradition. He declared, ''I want you to tell me where under God's shining sun, is the land of the free and the home of the brave if you don't turn these boys loose; your forefathers will absolutely turn over in their graves'' (Williams, 2002, p. 52).

National-Level Observations

Both Mississippi writer William Faulkner and former first lady Eleanor Roosevelt mirrored Smith's concern for justice, especially since, as a nation, American democracy must uphold justice. But President Eisenhower made no official statement about the Till murder and subsequent trial outcome. In a letter to Attorney General Herbert Brownell and FBI Director J. Edgar Hoover, James L. Hicks drew a blueprint for justice in the Till case. Hicks, an investigative reporter, had the credentials to warrant their interest. He served as bureau chief for the NAACP and, in 1955, became the executive director of the *New York Amsterdam News*. He was the first black member of the state department's correspondence association and the first black reporter to cover the United Nations. Newspapers throughout the United States ran his coverage of the trial.

In the letter to Brownell and Hoover, Hicks appealed for a federal investigation of the trial based on his charge of witness tampering. In minute detail, Hicks described how the sheriff's office prevented witnesses from testifying, named witnesses who knew details of the case not brought out at trial, and named accomplices to the murder, along with their locations. Neither the attorney general nor the FBI offices responded.

Social Effects of the Trial in Mississippi

A small group of Mississippi citizens pulled Emmett Till's body from the Tallahatchie River and tried to bury it, both literally and figuratively, in Mississippi's consciousness and soil. Till's mother, however, determined that the world would be witness to the fate that her only son, 14 years old, endured in a South that alienated, segregated, and discriminated against blacks. While the world saw the injustice of the South, the black citizens of the delta saw black witnesses testifying against white citizens—the beginning of the mobilization of the black response to their lack of basic legal, social, and political

rights. The civil rights movement, sparked by the death of Till, would bring political, legal, and social upheaval in a time of unprecedented economic prosperity in America. Television would be the new medium to bring these events into the American living room.

Although television shows in the 1950s emphasized traditional white family roles and society's conformity, young people were becoming aware of the increasing integration of black and white cultures in America, especially in music. While conformity and complacency defined Americans in the 1950s, Americans were socially challenged by a rebellious youth culture, the Beat Generation, and the decisive civil rights struggle.

EMMETT TILL FACTOIDS

- December 1, 1955: Rosa Parks recalled the photo of Till's corpse when she refused to give up her seat to a white man on an Alabama bus.
- July 1, 2005: Two U.S. Senators introduced *The Unsolved Civil Rights Crimes Act* (The Till Bill) to prosecute civil rights–era murder cases.
- February 24, 2006: Emmett Till's elementary school in Chicago became the Emmett Till Math & Science Academy on February 24, 2006.
- Civil Rights Activist Medgar Evers was field secretary for the Mississippi chapter of the NAACP at the time of Till's murder. He was gunned down in his driveway on June 12, 1963.
- Ruby Hurley, who disguised herself as a field worker to procure witnesses for the prosecution in the Milam-Bryant murder trial, was the first professional civil rights worker in the South.
- David Jackson, photographer for *Ebony* and *Jet* magazines, took the photograph of Emmett Till in his coffin that shocked the nation; the photograph appeared in *Jet* magazine.

THE TRIAL IN LEGAL AND POPULAR CULTURE

The train traveling to Mississippi on August 20 conveyed Till and Jones to a society that had developed a Jim Crow legal system after the Civil War —a system that treated blacks as inferior to whites. Jim Crow laws violated blacks' civil rights despite the 1868 constitution of Mississippi, which guaranteed in its bill of rights that "[a]ll persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi" (Johnson, 1955). Under the U.S. Supreme Court ruling of the 1896 *Plessy v. Ferguson* "separate but equal" doctrine, blacks could be legally segregated as long as equal accommodations were provided for them; thus, blacks were segregated from public parks, buildings, and classrooms. Blacks could vote but had to pass a literacy test in order to do so. Most could not pass the literacy test because they were segregated from the white school system. Blacks were also fixed to a limited economic position that reduced them to segregated, inferior public accommodations and low-quality housing. Blacks drank from separate water fountains and could not use public toilets. They could not enter a white person's house through the front door, and they had to step aside when a white person passed them on the street. A black man had to remove his hat and bow his head when spoken to by a white person. Businesses and restaurants refused to serve blacks or provided separate counters away from white customers. Blacks could not rent or purchase homes in white neighborhoods. Whites in Mississippi, therefore, did not fear public opinion or punishment when white supremacists felt it necessary to punish black transgressions, because white supremacists controlled the court system and legislature.

Till violated the most sacrosanct category of black behavior toward whites: he did not show respect to a white woman. In the *Look* magazine interview, Milam claimed that he and Bryant only wanted to scare Till, but Till refused to acknowledge his transgression against Bryant's wife, and he would not even beg for mercy. Operating within a supremacist mind-set, the men felt that they had no other choice but to kill Till. An all-male, all-white-supremacist court of law justified their action when they voiced the words *not guilty.*

Southern Violence, National Involvement

Emmett Till returned to Chicago by train—not as the young man returning home from a visit to relatives in the South—but as a body in a wooden casket bearing an order to remain sealed. His mother's insistence to open that casket at the railroad station in Chicago sparked the civil rights movement, and when *Jet* magazine released the photograph of Till's body, it spotlighted the violence that blacks in the South suffered. Till's death focused national attention on American racial inequality that ultimately led to the passage of the Civil Rights Act in 1964 and the Voting Rights Act in 1965 (Crowe, 2003). The civil rights movement also elevated black consciousness and racial pride.

Popular Culture

Till's murder inspired numerous songs, poems, essays, and novels by both famous artists and amateurs, who submitted their entries to local newspapers. Popular songwriters Bob Dylan and Pete Seeger, poet Langston Hughes, authors Toni Morrison and Lewis Nordan, and actors and producers Ossie Davis and Ruby Dee are among the famous artists who memorialized Emmett Till. Chris Crowe's (2002) book *Mississippi Trial, 1955* blends history and fiction, in which his protagonist determinedly tries to solve the murder. Amateur writers and poets submitted their works primarily to local newspapers. The realities of the case may have been misconstrued in some works, but their primary focus portrays injustice. We do not know exactly what Till said or exactly how he reacted to Milam and Bryant during his ordeal, but the literary response was "bravery," and his bravery helped raise black consciousness. Some contend that Till was a murder victim and should not be called the sacrificial lamb of the civil rights movement. Till's mother, however, made the nation look at her son and face how he was killed. The media's coverage of Till's murder increased civil rights organizations' membership, and the civil rights movement attracted young people who began to peacefully boycott buses and march for equality. According to Christopher Metress (2002), editor of *The Lynching of Emmett Till,* the proliferation of materials about Till enables the reader to appreciate how people grappled with the issues of the murder and trial in 1955, and allows us to continue the process today.

SUGGESTIONS FOR FURTHER READING

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NOTE

1. $3,000 for Milam and Bryant; $1,000 to Defense Attorney J.J. Breland's law firm according to Randy Sparkman. (2005, June 21). *Slate Magazine.* Retrieved July 28, 2007, from http://www.slate.com/id/212078$3,500 to Milam and Bryant according to CourtTV.com. Retrieved July 28, 2007, from http://www.courttv.com/onair/shows/specials/emmett_till/key_players.html $3,150 to Milam and Bryant; $1,260 to Defense Attorney J.J. Breland's law firm according to Steve Duin. (2006, December 9). William Bradford Huie and Emmett Till. *The Oregonian.* Retrieved July 28, 2007, from http://steveduin.blogs.oregonlive.com/default.asp?item=379248

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14
Mississippi Burning

SHANI P. GRAY

The 1960s were turbulent times for the entire South as many Blacks, collectively, began to demand and pursue equal rights. During the Civil Rights Era, Mississippi became known as one of the most racist and violent states in the country (Bell, 1973; Kennedy, 1997). Since 1955, when 14-year-old Emmett Louis Till was beaten, killed, and weighed down by a gin fan in the Tallahatchie River, in Money, Mississippi, for whistling at a White woman, Mississippi had been under the watchful eye of the nation (Benson, 2006). Mississippi was again thrust into the national spotlight when on the evening of June 13, 1963, Medgar Evers, Mississippi's most prominent Black leader, was assassinated. He was shot by Byron De La Beckwith while entering his house after returning home from work (Johnson, Jr., 2000; Smith, 2002). In the wake of the Till and Evers deaths the founding meeting of the White Knights of the Ku Klux Klan of Mississippi was held on February 15, 1964, and, to inform the nation of their existence and unity, on April 24, 1964, the KKK burned 61 crosses at separate locations across Mississippi (Linder, 2006d).

In the summer of 1964 the Student Nonviolent Coordination Committee had decided to send 600 student volunteers into every corner of the state of Mississippi to assist Blacks in registering to vote. This project, known as the Mississippi Summer Project, had been established under the premise that if segregation could be cracked in Mississippi, it could be cracked anywhere (Linder, 2002). Mississippi's 1890 constitution supported the state-enforced segregation policy, which facilitated the prohibition of Blacks' participation in many activities (e.g., attending state universities and registering to vote) (Burns, 2003; *U.S. v. State of Mississippi,* 1964).

In spite of the violence that had been perpetrated as a symbol of the extent to which the segregationist ideal would be defended in Mississippi, some churches had agreed to allow student civil rights workers to conduct voter registration schools on-site. In Longdale,

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Mississippi (Neshoba County), Mt. Zion Methodist Church had agreed to house a voting registration school at their facility. Civil rights workers were aware that Neshoba County was a high risk area for violent attacks from people who were against the provision of civil rights to Blacks, and that the sheriff, Lawrence Rainey, and the deputy sheriff, Cecil Price, had a reputation of being tough on Blacks and were also suspected of being Klansmen. Michael Schwerner and James Chaney, two civil rights workers associated with the Mississippi Summer Project, spoke to the congregation of Mt. Zion Methodist Church on Memorial Day 1964. On June 16, 1964, armed KKK members, looking for Schwerner, assaulted leaders of Mt. Zion Church, and on June 17, 1964, the Klan burned Mt. Zion Church to the ground. It is believed that the church was intentionally burned to lure Schwerner back to Mississippi. Mt. Zion church became one of the 20 Black churches in Mississippi that were firebombed in the summer of 1964. The FBI's investigation of the church bombing was codenamed ''MIBURN,'' for ''Mississippi burning,'' a name that would be used to encapsulate not only the church bombing of Mt. Zion Methodist Church but all the tragic events that ensued (Linder, 2006d).

MURDER IN NESHOBA COUNTY

At the time of the church burning Chaney and Schwerner were in Ohio attending training for the Mississippi Summer Project. While there they recruited Andrew Goodman to assist them in their efforts in Neshoba County. On June 21, 1964, Schwerner, Chaney, and Goodman drove to Mt. Zion Methodist Church to investigate the church burning. They also spoke with church leaders to hear their account of what happened. Later in the afternoon the three began their return to the Congress of Racial Equality (CORE) headquarters in Meridian, Mississippi. They never made it. On their way back to Meridian, they were arrested by Deputy Sheriff Cecil Price allegedly for suspicion of their involvement in the church arson. They were taken to the county jail in Philadelphia, Mississippi. While Chaney, Goodman, and Schwerner were held in jail, Price and other local Klan members (e.g., Edgar Ray Killen) conspired to murder the three civil rights workers. At approximately 10 p.m. someone paid Chaney's bail and the three were released from jail. As Chaney, Goodman, and Schwerner drove back to Meridian, the blue CORE station wagon was overtaken on a rural road by Price and other Klansmen (e.g., Killen, Wayne Roberts, Sam Bowers, and James Jordan). They were removed from the car, placed in Deputy Sheriff Price's patrol car and taken to a remote site, on Rock Cut Road. The three civil rights workers were removed from the patrol car and were shot and killed by Wayne Roberts as other Klansmen watched. James Jordan would later tell FBI agents that Doyle Barnette also fired two shots at Chaney. Forensic evidence suggests that they were beaten before they were killed; however, Klan members deny beating the three civil rights workers. The three bodies were transported to the Old Jolly Farm owned by Olen Burrage and buried in a dam (Federal Bureau of Investigation, 1964; Linder, 2002, 2006a, 2006d).

THE MISSISSIPPI BURNING INVESTIGATION

On June 22, 1964, the FBI, authorized by John Doar—the U.S. Assistant Attorney General for Civil Rights, began its investigation into the disappearance of Chaney, Goodman, and Schwerner. Joseph Sullivan, the FBI's major case inspector headed the investigation and worked closely with Meridian-based FBI agent John Proctor (Linder, 2006a, 2006d).



Figure 14.1 The burned automobile in which civil rights workers James Chaney, Michael Schwerner, and Andrew Goodman were riding when they disappeared. Courtesy of the Library of Congress.

Many Southerners were well aware of Hoover's reluctance to get involved in civil rights matters. There were reports of FBI agents watching idly as many Blacks and their supporters were assaulted. While Hoover may have personally gone to Mississippi to check on the progress of the investigation and for the first time poured endless resources and manpower into the MIBURN investigation to give the impression to the North that the government cared, Sullivan and Proctor were determined and dedicated to the discovery of what happened to the three civil rights workers and bringing those involved to justice (Bell, 1973; Kennedy, 1997; Linder, 2006a; Rossman, 2005).

While looking for the three civil rights workers in the Mississippi River, Navy divers found parts of two bodies that were later identified as Charles Moore and Henry Dee. One body only had a torso and the other was headless. They had been weighed down with bricks and an engine block so that they would not be found. Moore had just been expelled from college for participating in a student demonstration. He and Dee were looking for jobs when Klansmen found them and thought they were Black Muslims trying to organize an uprising. After this discovery it became clear to both Sullivan and Proctor that unless they received local cooperation they would never know what happened to the three civil rights workers (Benson, 2006; Linder, 2002, 2006a, 2006b).

Therefore from June to July 1964, the FBI interviewed about 1,000 Mississippians, at least half of whom were believed to be Klansmen. Proctor used his rapport with the community to gather information from informants in and around Philadelphia, Mississippi.

TIMELINE*

May 25, 1964 (Memorial Day)	Michael Schwerner and James Chaney speak at Mt. Zion Methodist Church in Neshoba County and urge its all-Black congregation to register to vote.
June 14, 1964	Student volunteers attend training session for Summer Project volunteers in Oxford, Ohio. Andrew Goodman and CORE members Schwerner and Chaney are among the attendees.
June 16, 1964	Armed KKK members assault leaders of Mt. Zion Methodist Church.
June 17, 1964	Mt. Zion Methodist Church is burned to the ground by Klan members. FBI begins its investigation into church bombings in Mississippi codenamed ''MIBURN,'' for ''Mississippi burning.''
June 20, 1964	Schwerner, Chaney, and Goodman drive from Ohio to the CORE office in Meridian, Mississippi.
June 21, 1964	Schwerner, Chaney, and Goodman drive to site of burned church in Neshoba County. On their way back to Meridian, they are arrested by Deputy Sheriff Cecil Price and taken to the county jail in Philadelphia, Mississippi. Price releases the three from jail at 10 p.m., and shortly thereafter the three civil rights workers' station wagon is stopped on a rural road by Price and other Klan conspirators, the three are beaten and shot, their bodies buried in an earthen dam, and their car burned.
June 22, 1964	The FBI begins its investigation into the disappearance of the three civil rights workers. Joseph Sullivan is appointed to head the investigation.
July 2, 1964	President Lyndon B. Johnson signs the Civil Rights Act of 1964 into law.
August 4, 1964	The bodies of Schwerner, Chaney, and Goodman are discovered.
December 4, 1964	Nineteen members of the conspiracy are arrested and charged with violating the civil rights of Schwerner, Chaney, and Goodman.
December 10, 1964	A U.S. Commissioner dismisses charges against the 19.
January 1965	A federal grand jury in Jackson reindicts the 19.
February 24, 1965	Judge William Cox dismisses the indictments (except against Price and Rainey) on grounds that the conspirators were not ''acting under color of state law.''
March 1966	The United States Supreme Court reinstates the original indictments, overruling Judge Cox.
February 28, 1967	A new grand jury indicts the 19 conspirators.
October 7, 1967	The trial of the Neshoba County conspirators begins.
October 20, 1967	The jury returns verdicts of guilty against seven conspirators, nine are acquitted, and the jury is unable to reach a verdict on three of the men charged.
December 29, 1967	The conspirators found guilty are sentenced to prison terms ranging from three to ten years.

*Information obtained from Linder, 2006d.

After two months of investigation and offering a $30,000 reward for information, on July 31, 1964, the FBI was informed, through a third party, of the probable location of the bodies. A search warrant was obtained on August 3, 1954, to search for the bodies of the three civil rights workers in the dam at the Old Jolly Farm. Later that day the bodies of Chaney, Goodman, and Schwerner were discovered. Local law enforcement, including Deputy Sheriff Cecil Price, were on-site to assist in the recovery of the bodies (Federal Bureau of Investigation, 1964; Linder, 2002, 2006a).

By this time, Sullivan and Proctor had begun to suspect that local law enforcement agents were involved with the KKK and that they had assisted with the murder of the three civil rights workers. Over the next few months Proctor worked relentlessly to obtain confessions from local Klansmen. On October 13, 1964, with a promise of $3,500 and a staged arrest, James Jordan confessed his involvement in the conspiracy to murder the three civil rights workers and agreed to testify for the prosecution. Klan member Horace Barnette also admitted his involvement in the conspiracy and provided an account of the actual shootings; however, he reneged on his agreement to testify for the prosecution at the trial. In spite of Barnette's refusal to testify, Proctor and Sullivan had collected enough evidence to obtain warrants for the conspirators' arrests. Proctor and Sullivan's theory about needing local involvement to crack the case had been correct. Ironically, all the key informants obtained during the MIBURN investigation were members of the Lauderdale County chapter (klavern) of the KKK, which is in Meridian. They were unable to develop key informants in Philadelphia, which is in Neshoba County where the murders took place. Had Sullivan and Proctor continued spinning their wheels in Neshoba County or had the Neshoba County chapter of the KKK carried out the murders on their own, the bodies of the three civil rights workers and the details of the killings may have never been discovered (Federal Bureau of Investigation, 1964; Linder, 2002, 2006a).

On December 4, 1964, the FBI arrested 19 members of the conspiracy and charged them with conspiring to violate the civil rights of Schwerner, Chaney, and Goodman under the code of law and for conspiring to defraud the national government (U.S. Code, Title 18, Chapter 13, 2004; U.S. Code, Title 18, Chapter 19, 2004). Six days later the charges were dismissed on grounds that the confession used to obtain the arrests was hearsay evidence. In January 1965 John Doar and other U.S. Department of Justice

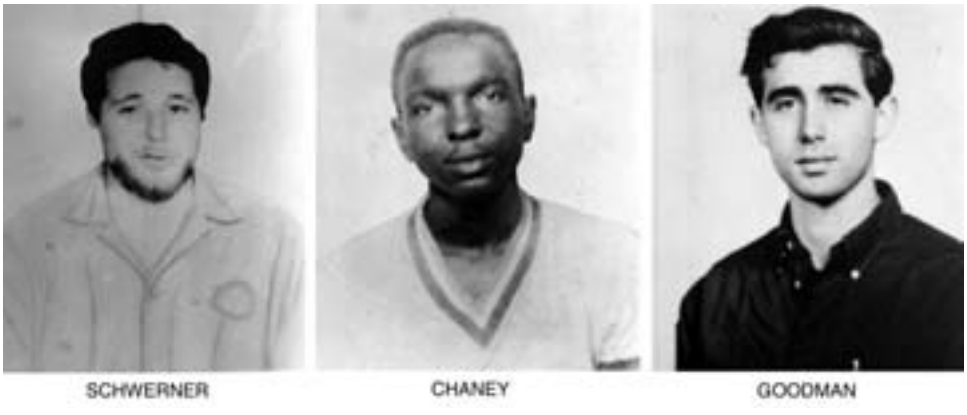


Figure 14.2 The FBI distributed these pictures of civil rights workers, from left, Michael Schwerner, James Chaney, and Andrew Goodman, who disappeared in 1964. © AP Photo/FBI.

KEY FIGURES IN THE MISSISSIPPI BURNING TRIAL*

VICTIMS

James Chaney: CORE chief aid, native of Meridian, Mississippi, eldest son of five children, first affiliated with CORE in October 1963, duties ranged from working in the office to traveling to rural counties to set up meetings, plasterer by trade, killed June 21, 1964, at the age of 21, Black male.

Andrew Goodman: Mississippi Summer Project volunteer, native of New York, second son of affluent parents, active in integration protests in high school, spent only one day in Mississippi, killed June 21, 1964, at the age of 20, White male.

Michael Schwerner: also known as ''Mickey,'' Meridian, Mississippi, office, CORE director, native of New York, youngest of two sons, while obtaining his sociology degree successfully campaigned for his fraternity to admit a Black member, dropped out of graduate school to work as a social worker in an impoverished area of New York, very active in civil rights issues, first White civil rights worker permanently based outside of Jackson, Mississippi, despised by the KKK for his efforts to register Blacks to vote and his success in getting a local hardware store to hire a Black employee, referred to as ''Goatee'' or ''Jew boy'' by the Klan, death ordered by Imperial Wizard Sam Bowers in May 1964, killed June 21, 1964, at age 24, White male.

CONSPIRATORS

Cecil Price: deputy sheriff of Neshoba County, known for terrorizing Blacks in the county, key conspirator in the murders of Schwerner, Goodman, and Chaney, stopped the blue Ford CORE station wagon on June 21, 1964, arrested and jailed the three civil rights workers in the Neshoba County Jail, released the three civil rights workers at 10:30 p.m. sending them into a trap, found guilty at trial and sentenced to six years in prison, which he served in Minnesota, returned to Philadelphia upon release and worked in the community, died on May 6, 2001, at the age of 64, from injuries sustained from falling from a lift in an equipment rental store in a hardware store three days prior.

Lawrence Rainey: elected sheriff of Neshoba County in 1963, native of Neshoba county, known for being tough on Blacks through the shooting of a Black from Chicago and his involvement in the naked whipping of a Black man, not present during the murders of Chaney, Goodman, and Schwerner, one of 19 arrested in December 1964 on conspiracy charges to deprive the three civil rights workers of their civil rights, acquitted in the 1967 trial, became a folk hero to local Whites, term as sheriff ended in November 1967, never able to work in law enforcement again, died from throat and tongue cancer on November 8, 2002, at the age of 79.

Wayne Roberts: known for his temper and drunkenness, involved in the Mt. Zion Methodist church beatings, wanted Schwerner dead, shot and killed Schwerner, Goodman, and Chaney on Rock Cut Road on June 21, 1964, kicked a CBS cameraman in the groin and hit him in the head after a 1965 hearing, found guilty of conspiracy to deny the civil rights workers their civil rights in the 1967 trial, sentenced to ten years in

prison, served his sentence in Kansas, returned to Meridian and worked in a car dealership in Meridian.

Edgar Ray Killen: ordained Baptist minister, lead conspirator in the murders of the three civil rights workers in Mississippi on June 21, 1964, ''kleagle,'' or klavern recruiter and organizer, for the Neshoba and Lauderdale County Klan, organized the Mt. Zion Church arson, notified by Price that the civil rights workers were jailed, organized the murders of Chaney, Goodman, and Schwerner down to the minute detail including telling participating Klan members to get rubber gloves, one of the 19 men arrested on December 4, 1964, acquitted in the 1967 trial, retried on state charges in June 2005, convicted of manslaughter of Chaney, Goodman, and Schwerner, sentenced to three 20-year terms.

Sam Bowers: known as a proponent of White supremacy who did not support the views held by the Supreme Court and loved guns and swastikas, Navy veteran, manager of Sambo Amusements in Laurel, Mississippi, established the White Knights of the Klu Klux Klan in 1963 that had a well structured organization, which included a rank-ordered chain of command, chapters in several counties, and armed tactical squads, became the imperial wizard of the KKK of Mississippi in 1964, which had approximately 10,000 members, authorized Schwerner's ''elimination,'' found guilty of conspiracy in the 1967 Mississippi Burning trial, for overseeing the ''elimination'' of Chaney, Goodman, and Schwerner, sentenced to ten years, imprisoned in Washington State, upon his release resumed management of Sambo Amusements, in August 1998, at the age of 74, sentenced to life in prison for the 1966 murder of Vernon Dahmer, a civil rights activist who was killed in a firebombing of his house after he allowed Blacks to pay the $2 poll tax to register to vote in his store.

Conspirators and Prosecutorial Witnesses

James Jordan: in 1964 he was a newcomer to Meridian, worked in a motel and operated an illegal speakeasy outside of Meridian, recruited Meridian Klansmen to participate in the June 21 conspiracy, suspected of having shot Chaney in the abdomen, claims he was a lookout at the turnoff onto Rock Cut Road and was not near Deputy Sheriff Price's car until after Roberts had shot Chaney, Goodman, and Schwerner, prosecution's only witness to the June 21, 1964, shootings of Chaney, Goodman, and Schwerner, was paid $3,500 for his full testimony, brought into custody through a staged arrest after which his family was moved to Georgia, testimony was given on October 12, 1967, under heavy guard and after suffering from hyperventilation and one fainting spell, tried in Atlanta for his role in the Mississippi Burning murders, pled guilty, sentenced to four years in prison.

Delmar Dennis: Methodist minister and Klan member, at the age of 24 joined the Lauderdale County Klan and became the chaplain (klavern's kludd), claimed that he was tricked into joining the Klan, refused to purchase a gun, declined to attend or participate in the Mt. Zion Methodist church burning, encouraged by Wallace Miller, the first Klan informant to the FBI, to assist in the investigation, a vital witness for the government in the Mississippi Burning trial, met FBI agents in secret at Meridian cemeteries and the naval air station, was paid $15,000 over three years for his testimony, agents compiled 40 pages of notes on the conspiracy from his testimony, described

the June 16 Klan meeting in which the plan to murder Schwerner was discussed, described and explained a coded letter from Sam Bowers instructing Klan members to say nothing about the murders during the FBI investigation, contributed to Bower's conviction by quoting him as saying of the murders of the three civil rights workers: ''It was the first time that Christians had planned and carried out the execution of a Jew.''

Criminal Justice Agents

Joseph Sullivan: became FBI's Major Case Inspector in 1963, directed FBI's nine month MIBURN investigation, began working for the FBI in 1941, joined the FBI's Domestic Intelligence division in the early 1950s, known for his thoroughness and efficiency, realized conducting an investigation and not a search was the only way to discover what had happened to the three civil rights workers, developed key informants that were all members of the Lauderdale County chapter (klavern) of the KKK, which is in Meridian, but was unable to develop key informants in Philadelphia, which is in Neshoba County where the murders took place.

John Proctor: born in 1926 in Reform, Alabama, FBI agent based in Meridian, in 1952 began working for the FBI, in 1962 became a resident agent in Meridian working under the supervision of the FBI's New Orleans office, duties included investigating alleged violations of civil rights laws, to assist in performing his duty he cultivated friendships with all types of people (e.g., bootleggers, Klansmen, local law enforcement officials, Black leaders, and civil rights workers), very knowledgeable about the people in Neshoba county and their ways, on June 22, 1964, began investigation of the disappearance of the three civil rights workers and initially concluded that no federal laws had been violated, on June 23, 1964, ten additional FBI agents and Sullivan joined him in Meridian to conduct the investigation, received the tip that disclosed the whereabouts of the burned CORE station wagon, on August 4, 1964, took photos of Chaney's, Goodman's, and Schwerner's bodies that would later be used in the 1967 trial, broke open the Mississippi Burning case by obtaining James Jordan's confession and convincing him to turn state's evidence, persuaded Sheriff Rainey to not cause problems during Martin Luther King, Jr.'s visit to Philadelphia, retired from the FBI in 1978 and opened his own detective agency in Meridian.

John Doar: born 1921 in Minneapolis, Minnesota, in 1960 began working for the Justice Department in the Civil Rights Division, in June 1963 prevented a riot in downtown Jackson, Mississippi, after the assassination of civil rights leader Medgar Evers, in 1962 assisted James Meredith in becoming the first Black student to register for class and attend classes at the University of Mississippi, in 1964 was the Assistant Attorney General for Civil Rights, instrumental in the passing of the Voting Rights Acts in August 1965, first federal official notified of the disappearance of Chaney, Goodman, and Schwerner, authorized the FBI to investigate the case, lead prosecutor in the 1967 Mississippi Burning Trial, in 1967 left government service to begin his private practice in New York, returned briefly to government service in 1974 as counsel to the House Judiciary Committee during the Nixon impeachment crisis.

William Cox: federal district judge, known segregationist, appointed to the federal bench by President Kennedy in exchange for Senator James Eastland's support of

Thurgood Marshall's placement in the Second Circuit Court of Appeals, constantly frustrated the Justice Department's integration initiatives, rulings were consistently overruled on appeal, almost impeached in 1964 for calling a group of Black witnesses ''a bunch of chimpanzees,'' threw out the indictments against most Neshoba County conspirators in February 1965, which was overruled by the Supreme Court in 1966 and the indictments were reinstated, presided over the October 1967 Mississippi Burning trial, endorsed the guilty verdict reached by the jury.

*Information obtained from Linder, 2002, 2006b.

attorneys convinced a federal grand jury in Jackson, Mississippi, to reindict all 19 conspirators, but on February 24, 1965, Judge William Cox dismissed the indictments brought against the 17 private citizens accused of conspiracy on grounds that the conspirators were not ''acting under color of state law.'' However, in March 1966 the U.S. Supreme Court reinstated the original indictments, reversing and remanding Judge Cox's ruling. Consequently, on February 28, 1967, a new grand jury, again at the prodding of Doar and his team of attorneys, indicted 19 conspirators (*U.S. v. Price et al.,* 1966). Included in the final list of indicted conspirators were Sheriff Lawrence Rainey, Deputy Sheriff Cecil Price, Imperial Wizard Sam Bowers, Wayne Roberts, Jimmy Snowden, Billy Wayne Posey, Horace Barnett, Olen Burrage, Frank Herndon, and Edgar Ray Killen (Federal Bureau of Investigation, 1964; Linder, 2002, 2006a).

MISSISSIPPI BURNING HEADLINES

The difficulties the FBI encountered in trying to obtain information related to the case are mirrored in the articles published in the *New York Times* and *Washington Post* from June 23, 1964, to October 21, 1967. Many of the articles documented the problems FBI agents encountered when searching for the three civil rights workers. However, many of the articles primarily focused on the federal government's commitment to finding the missing civil rights workers. Articles detailed increases in FBI manpower, the arrival of 200 sailors to assist in the investigation, and Hoover's visit and inspection of the progress of the MIBURN investigation. The continued reported failure of the federal government to make much progress in the investigation was dotted with successes such as the discovery of the car, the discovery of the corpses of other civil rights workers, and eventually the discovery of the bodies of Chaney, Goodman, and Schwerner (''Rest of mutilated bodies,'' 1964; Sitton, 1964a, 1964b).

In the midst of the reports of the federal government's involvement in Mississippi, another story line weaved its way through the headlines and newspaper articles. Initially, it was presented in the form of shock as local officials suggested the three men were hiding to build publicity for their voting registration campaigns. During the investigation, it could be found in the officials' supposed inability to provide information surrounding the three civil rights workers' disappearances and the numerous statements made to the media expressing their frustration about not being informed of the FBI's progress in the case. Finally, it was evident when Sheriff Rainey refused to talk to FBI agents without a warrant on August 11, 1964; the officials in Neshoba County, Mississippi, were hiding something, and if left up to them it would never be revealed to outsiders, especially not ones from the North. Neither the media from the North nor local sources would overtly

say it, but little had changed in Mississippi in spite of the MIBURN investigation. Racism was still rampant and death was highly likely for anyone who challenged the segregationist establishment (Rossman, 2005).

However, once the trial began, the successes and failures of the U.S. Department of Justice were chronicled as well as the overtly racist actions of Neshoba County citizens and members of the Mississippi legal system. Most articles simply reported the facts with very little commentary. Occasionally a journalist would question the absurdity of withholding information that the state of Mississippi claimed did not contain incriminating evidence or point out the number of violent acts against Blacks that had gone unpunished in the South. However, for the most part the media allowed the facts of the case to speak for themselves: three civil rights workers were murdered, and the perpetrators of the offense were charged by the federal government, not the state of Mississippi, for conspiracy to violate the civil rights of the civil rights workers, not murder, when they planned and executed their killing (''7 Klan convictions,'' 1969; Bigart, 1965; Corrigan, 1964; Herbers, 1964, 1965a, 1965b; ''Judge in Mississippi,'' 1967; ''Murder in Mississippi,'' 1964; Rossman, 2005).

In the late 1980s the media began to cover the Mississippi Burning case differently. This was especially true of southern papers such as the *Clarion-Ledger,* which is based in Jackson, Mississippi. Investigative reporters began to dig up information that had been covered up, inaccessible, or unintentionally overlooked during the 1964 investigation and 1967 trial. No person (e.g., Edgar Ray Killen) or entity (e.g., southern newspapers) found to be involved in said miscarriages of justice were exempt from investigation and critique by various media sources.

For example, Mississippi-based papers such as the *Clarion-Ledger* and the *Jackson Daily News* participated in the segregationist tradition for many years. Without asking any questions or conducting their own investigations, both papers often published information that had been secretly spoon-fed to them by segregationist organizations like the Mississippi Sovereignty Commission, which was a state-run spy agency. Once Jerry Mitchell, a news reporter for the *Clarion-Ledger,* discovered this during his investigation of the Mississippi Sovereignty Commission, he was able to successfully convince the *Clarion-Ledger* management to let him run a story admitting both papers' involvement in assisting the commission by printing racial propaganda. The running of this story signified a new era in Southern media, where media were being used as advocates against discrimination that were willing to identify all perpetrators of injustice even if it involved pointing a finger at themselves (Smith, 2002). Eventually, Mitchell's investigation of a statement made by Sam Bowers, imperial wizard of the KKK in Mississippi in 1964, during an interview was instrumental in getting the Mississippi Burning case reopened. Bowers said of the 1967 trial that he was glad to be indicted because it in essence allowed the person who orchestrated the murders of the three civil rights workers to go free. Mitchell was able to identify Edgar Ray Killen as the orchestrater Bowers referred to, which eventually aided in reopening the Mississippi Burning case (Montagne, 2005).

This was a stark contrast from how the events surrounding the case were covered in the 1960s as segments of the media were now willing to become involved in covering all aspects of a case and openly scrutinize their sources and findings. This new strategy used to cover cases, and a new generation of district attorneys and legislators in Mississippi dedicated to punishing past injustices that were tried as civil rights violations during the state's segregation era, would lead to the first manslaughter conviction in the Mississippi

Burning case and open the door for the potential of additional arrests in the future (Alberts, 2005; ''Brother recalls,'' 2005; ''Civil rights,'' 2005; ''Defense opens,'' 2005; ''Ex-Klansman sentenced,'' 2005; ''Ex-Klansmen to testify,'' 2005; ''Former Klansman,'' 2005; ''Man claims innocence,'' 2005; ''Mississippi burning,'' n.d.; '''Mississippi burning' trial begins,'' 2005; '''Mississippi burning' trial set to start, 2005; Montagne, 2005; Smith, 2002).

The Mississippi Burning Trial

After two dismissals of the indictments, the Mississippi Burning trial, which included 19 defendants, began on October 7, 1967 (*U.S. v. Price et al.,* 1967). Judge William Cox presided over the trial and John Doar was the lead prosecutor for the United States. The case was tried in front of an all White jury composed of a panel of five men and seven women who ranged from 34 to 67 years of age. During jury selection Judge Cox denied a challenge for cause of a White male, who admitted being an ex-member of the KKK. It was clear early on that Judge Cox's segregationist viewpoints would influence his ruling in this trial as it had in his dismissal of the previous indictments brought against the conspirators. During cross-examination, defense council Laurel Weir asked whether Reverend Johnson, the prosecutor's witness, and Schwerner had attempted to get young Negro males to sign a pledge to rape one White woman a week during the summer of 1964. Surprisingly, Judge Cox demanded to know who asked the question and reprimanded the defense council for his inappropriateness. Edgar Ray Killen, a defendant, was identified as the author of the question. Thus, it was also clear that Judge Cox intended to run a tight courtroom and, while his segregationist views may have affected some of his ruling, those views were not going to cause him to allow the defense to skate through the trial. If they wanted their clients to walk as free men, they would have to present a sound case (Linder, 2002, 2006a).

The government's case was built around the testimony of three witnesses and co-defendants to the conspiracy: Wallace Miller, Delmar Dennis, and James Jordan. Miller's testimony detailed the organization of the Lauderdale chapter of the KKK and the plans made on June 21, 1964, by Frank Herndon and Edgar Ray Killen. Dennis's testimony sealed the fate of Sam Bowers, the Imperial Wizard of the White Knights of the KKK in Mississippi. Dennis told of Bowers's comment that Schwerner had been the first Jew killed by Christians. Dennis also deciphered a letter from Bowers that warned Klan members that the FBI investigators were getting close and that they should continue to remain silent. Jordan's testimony was the most vital to the case as he was the only witness who could provide an account of the actual shootings of Chaney, Goodman, and Schwerner. Jordan's testimony was highly anticipated, and there was a grave concern that the Klan might attempt an assassination. Even Jordan was nervous as he had a hyperventilation incident and a fainting spell that delayed his testimony by one day. Thus, Jordan was escorted into the courtroom by five agents with their guns drawn. His testimony described the events surrounding the killings, from the time the Klan members gathered in Meridian on June 21, 1964, to the burying of the bodies in the dam at Old Jolly Farm (Linder, 2002, 2006a).

The defense's case was composed solely of alibi and character witnesses who testified about the integrity of the accused and their alleged whereabouts on June 21, 1964, during the time of the murders. On October 18, 1967, closing arguments were presented and the

jury began its deliberations. On October 19, 1967, the jury reported being deadlocked, and they were charged by Judge Cox to reach a verdict (Linder, 2002, 2006a; Rugaber, 1967).

GUILTY IN MISSISSIPPI

The jury returned its verdict on October 20, 1967, just two days after it had begun its deliberation and one day after it had reported being deadlocked. Deputy Sheriff Cecil Ray Price, Jimmy Arledge, Sam Bowers, Wayne Roberts, Jimmy Snowden, Billy Wayne Posey, and Horace Doyle Barnette were found guilty. Bernard Akin, Sheriff Lawrence Rainey, Olen Burrage, Frank Herndon, Richard Willis, Herman Tucker, and James Harris were acquitted. The jury was unable to reach a verdict for three of the conspirators: Edgar Ray (Preacher) Killen, Jerry McGrew Sharpe, and Ethel Glen ''Hop'' Barnett (Linder, 2002, 2006a; ''7 Klan convictions,'' 1969).

On December 29, 1967, Judge Cox sentenced Roberts and Bowers to ten years in prison, Posey and Price to six years in prison, and Arledge, Barnette, and Snowden to three years in prison. They did not begin serving their sentences until March 19, 1970, after they had exhausted all their appeals (Linder, 2002, 2006a; ''Ex-Klansman sentenced,'' 2005; ''Ex-Klansmen to testify,'' 2005; '''Mississippi burning' trial begins,'' 2005; '''Mississippi burning' trial set to start,'' 2005).

Noticeably missing from the list of conspirators that were convicted was Edgar Ray Killen's name. Many, including John Doar, believed Killen played an integral role in the conspiracy to murder Chaney, Goodman, and Schwerner. There were speculations that Killen escaped conviction because much of the evidence tying him to the case was more circumstantial than the evidence used to convict the other conspirators, and that the one juror who caused the 11-1 deadlock during deliberations over Killen's guilt stated that he refused to convict a preacher (''Defense opens,'' 2005; Linder, 2006a; ''Ex-Klansman sentenced,'' 2005; ''Ex-Klansmen to testify,'' 2005; '''Mississippi burning' trial begins,'' 2005; '''Mississippi burning' trial set to start,'' 2005).

In 1999, thirty-five years after the murders of the three civil rights workers, the state of Mississippi reopened the case. Since the state did not do any investigations in 1964, the FBI turned over 40,000 MIBURN files to assist them in their investigation. One of the many problems that the state faced during the investigation is that many of the key witnesses for the case were dead as were many of the potential defendants. To have a successful case, they would either need to find new witnesses who were still alive or convince some of the living coconspirators to testify for the prosecution. Time was the enemy as many of the coconspirators were also dead or would end up dying during the investigation, such as Cecil Price who died on May 6, 2001, three days after falling from a lift in an equipment rental store (''Brother recalls,'' 2005; Byrd, 2006; Linder, 2006a; '''Mississippi burning' trial begins,'' 2005; '''Mississippi burning' trial set to start,'' 2005).

Regardless of the state's concerns about the strength of their case, the citizens of Mississippi demanded action. ''On October 6, 2004 approximately 500 people marched in support of state prosecution of former Klan preacher Edgar Ray Killen for the murder of James Chaney, Andrew Goodman, and Michael Schwerner'' (Linder, 2006a, p. 7 of 9, ¶3). Thus, despite the death of Cecil Price, who could have been either one of the state's key witnesses or a primary defendant in the reopened case, on January 6, 2005, the state of Mississippi charged 79-year-old Edgar Ray Killen, another of its key defendants in the reopened MIBURN case, with the murder of Chaney, Goodman, and Schwerner. In his

arraignment on January 7, 2005, Killen pleaded not guilty to all three murder charges (''Brother recalls,'' 2005; ''Man claims innocence,'' 2005).

Killen's case is significant as it was the first time that the state of Mississippi brought charges against anyone in the 1964 MIBURN case. There were mixed feelings about Killen's arrest and indictment. Billy Wayne Posey, one of the original seven coconspirators convicted and sentenced in 1967, expressed outrage that Killen was being prosecuted after 40 years. However, Carolyn Goodman, Andrew Goodman's mother, was excited about the news. Even at age 89 she was still hopeful that her son's killers would eventually be imprisoned (''Brother recalls,'' 2005; Linder, 2006a).

Jury selection began in the Killen murder trial on June 13, 2005. Killen, who had broken his legs in March in a tree-cutting accident, watched the proceedings from a wheelchair. While family members of the victims (e.g., Ben Chaney—brother of James Chaney) were encouraged by the prosecution, other civil rights advocates were not satisfied as they wanted to see other surviving conspirators prosecuted together with Killen. As of June 19, 2006, nine of the 19 coconspirators originally indicted on federal charges were still alive (e.g., Olen Burrage—owner of the dam site where the bodies of the three civil rights workers were buried) (''Brother recalls,'' 2005; Byrd, 2006; Linder, 2006a; '''Mississippi burning' trial begins,'' 2005; '''Mississippi burning' trial set to start,'' 2005).

Opening statements in the Killen murder trial began on June 15, 2005 (''Ex-Klansmen to testify at,'' 2005). The trial was recessed indefinitely on June 16, 2005, as Killen was taken from the courtroom on a stretcher. Killen's failing health would be a concern throughout the trial (''Edgar Ray Killen,'' 2006). Two days after Killen was taken from the courtroom to the hospital, the defense presented its opening arguments and the prosecution presented Judge Marcus Gordon with a motion requesting that the jury be allowed to consider the lesser charger of felony manslaughter in addition to the original murder charge (''Defense opens,'' 2005). The motion was granted by Judge Gordon—a decision that may have prevented a mistrial or a not guilty verdict.

On June 21, 2005, Judge Gordon sentenced 80-year-old Edgar Ray Killen to 60 years in prison. He was ordered to serve three, 20-year consecutive terms, one for each manslaughter conviction in connection with the deaths of Chaney, Goodman, and Schwerner. Killen was not convicted of murder because the jury was not certain that Killen intended for the Klansmen to kill the three civil rights workers. Ironically, Killen's conviction was handed down exactly 41 years after the murders of Chaney, Goodman, and Schwerner (''Ex-Klansman sentenced,'' 2005; ''Former Klansman,'' 2005; Linder, 2006a; ''Miss. Supreme Court,'' 2006).

Killen has been serving his 60-year sentence at the Central Mississippi Correctional Facility in Pearl, Mississippi, which is in Rankin County (''Killen released,'' 2006; ''Miss. Supreme Court,'' 2006). Killen has been at the correctional facility since he was sentenced in June 2005, aside from a brief release on a $600,000 bond in August 2005 due to concerns about Killen's failing health. The bond was revoked after several witnesses notified Judge Gordon that they had seen Killen driving and walking around at a gas station (''Edgar Ray Killen,'' 2006).

Killen is appealing his three manslaughter convictions. Judge Gordon's decision to grant the prosecution's motion to allow the jury to consider the lesser charge of felony manslaughter after the trail had already begun, the prosecution's timing in pursuing the case—intentionally waiting for better political climate, and his denial of due process by not receiving a speedy trial have become the basis for Killen's appeal (''Defense opens,''

2005; Elliot, 2006; "Ex-Klansman sentenced," 2005). Killen will have to continue to await the outcome of his appeal in prison as he was denied bond on July 14, 2006 (Times Wire Reports, 2006). On December 8, 2006, the Mississippi Supreme Court notified Killen's attorneys that oral arguments would not be heard in the case. The attorneys will be allowed to present their arguments in briefs, which the justices will use to assist them in making their decision (Elliot, 2006; "Miss. Supreme Court," 2006).

Social, Political, and Legal Issues

The Mississippi Burning case shed light on several social, political, and legal issues that were either being abused or ignored prior to the 1964 murders and 1967 trial. The precedent had been set by the Supreme Court that states had sovereignty over addressing legal issues. The absence of checks and balances from the federal government fueled the abuse of power, especially among law enforcement and the judiciary. This is the legal system that was in place on June 21, 1964, when Deputy Sheriff Cecil Price assisted in planning and executing the murders of Chaney, Goodman, and Schwerner and used his marked sheriff's patrol car to stop them, transport them to the murder scene, and transport his coconspirators to and from the murder scene.

Race relations had become increasingly strained in the 1960s because of the national efforts of Blacks to obtain equal rights. There was significant mistrust of Whites among Blacks. This was especially true of members of the law enforcement, since some were known to be and others were suspected of being members of the KKK. It was no secret that Hoover, the FBI Director, did not support the civil rights movement and that some FBI agents were often just as racist as local law enforcement, often turning a blind eye to the abuse perpetrated on Blacks. The amount of time and money put into prosecuting the Mississippi Burning trial suggested the federal government, including the FBI, seemed willing and capable to avenge the injustices associated with the violation of civil rights, but in the 1960s it was not clear if they were willing and capable of proactively protecting civil rights activists (Kennedy, 1997; Rossman, 2005).

While the guilty verdicts in the Mississippi Burning trial took a large step toward ensuring the government would protect Blacks as they pursued their civil rights, the fact that the conspirators were charged only with a violation of the civil rights act and interfering with a federal investigation, in lieu of murder, sent society the message that Blacks' and other minorities' lives were devalued. Many civil rights activists argue that the fact that to date, over 42 years later, only one of the 19 conspirators has been tried for murder and convicted of manslaughter symbolizes to society that minorities' lives are devalued (Rossman, 2005; Saigo, 1989). In addition, many civil rights activists also argue that this symbolic devaluation of minority life transcends race lines. Within the Black race, this negative stigma (devaluation) has been attached primarily to lower class Blacks. In an effort to escape the negative stigma and feel valued, middle class Blacks move to more affluent areas and in so doing remove themselves as middle class role models in the Black community. In time middle class Blacks also begin to see lower class Blacks as the other, inferior, of lesser value, in effect taking part in the actual devaluation of lower class Blacks. This phenomenon has resulted in a wider gap between Blacks who have and Blacks who have not (a deepening of the poor situation), as well as a divided Black race and the absence of a unified Black community (Fishman, 2002; Walker, 2000).

INVESTIGATIVE REPORTER: JERRY MITCHELL*

Jerry Mitchell is an investigative reporter for *The Clarion-Ledger* in Jackson, Mississippi. He has been employed at the *Clarion-Ledger* for the past 14 years. He was born in 1959 in the South, received his education in the Midwest (The Ohio State University), and now lives in Jackson, Mississippi, with his wife and their two children. Mitchell is most known for his investigative stories that helped put some of the most notorious civil rights murderers behind bars:

- Imperial Wizard Sam Bowers for the 1966 murder of NAACP leader Vernon Dahmer.
- Former Klansman and minister Edgar Ray Killen for helping orchestrate the June 21, 1964, killings of Michael Schwerner, James Chaney, and Andrew Goodman.
- Klansman Byron De La Beckwith for the 1963 murder of NAACP leader Medgar Evers.
- Former Klansman Bobby Cherry for the 1963 bombing of a Birmingham church that killed four girls.

Using the information he gathered from his investigation of Killen, Mitchell authored *The Preacher and the Klansman* (1998). This book is used with special curricula as a supplemental text in many classrooms in the United States. His worked has earned him 14 national awards. Mitchell's exploits were documented in the movie *Ghosts of Mississippi,* and he has been featured on ABC's *20/20,* in *Civil Rights Martyrs,* a Learning Channel documentary, in the ''First Person'' segment of *ABC Evening News,* and in *Newsweek* as one of ''America's Best'' in 2005.

Mitchell is also recognized as an expert in his field and as a result has often appeared on CNN, the *Lehrer News Hour*, and other programs. In spite of all his notoriety, Mitchell is known as a very humble man who shies away from the spotlight. He is a man who is motivated by the pursuit of truth and justice, his love for the South, and his desire to see the South do what is right regardless of how much time has passed.

*Information obtained from ''Investigative Reporter,'' 2006; ''Jerry Mitchell,'' n.d.; Johnson, Jr., 2000.

IMPACT ON LEGAL CULTURE

The Mississippi burning case has had a tremendous impact on justice in the United States. The FBI agents of 1964 demonstrated that law enforcement can protect and serve all people regardless of race, religion, or sex (Linder, 2002, 2006a). The jury of the 1967 case demonstrated that the use of jury nullification as a legal strategy to keep Whites from being punished for violence against Blacks was no longer a viable strategy for avoiding conviction. The federal government also expressed its intolerance of the jury nullification strategy by adding Section 245 to the U.S. criminal code, giving the federal government the jurisdiction to prosecute perpetrators for violating ''federally protected activities'' (Kennedy, 1997; U.S. Code, Title 18, Chapter 13). Prosecutor John Doar set the precedence for the extent to which the federal government will respectfully interfere in local government when the rights of citizens, including minorities, are violated. In addition, Doar jump-started the practice of U.S. Justice Department attorneys' leaving Washington and going to the scene of the crime to prepare for a case (Linder, 2002).

Despite Doar's effort to use his office as the voice of the victims of civil rights violations, the law and legal processes were and are still seen by many minorities as the "means by which the generalized racism in the society was made particular and converted into standards and policies of social control" (Burns, 2003, p. 158). The Supreme Court's 1966 ruling set the precedent for demanding that conspiracy and civil rights charges be looked at seriously by the court, and that said violators are prosecuted to the full extent of the law. This precedent gave some hope as it suggested that even the sheriffs in the Deep South were not out of the reach of the "long arms of justice." The MIBURN case helped dispel the ruling of *Stanford v. Scott,* which found that Blacks did not have the same rights as Whites nor could they obtain them as Blacks had been treated as inferior to Whites for years. Every civil rights case won by the U.S. Department of Justice in conjunction with the MIBURN cases added value to the Black life and supported the notion that Blacks and Whites are equal and should be treated as such. In essence, law was the tool used "to effect positive social change," at least in theory (Burns, 2003, p. 161).

IMPACT ON POPULAR CULTURE

Forty-two years later, popular culture is still affected in a variety of ways by the Mississippi Burning trial. A fear of the Deep South and its dirt roads, rivers, lakes, streams, and dams, whether it is real or perceived, still permeates the minds of many minorities. Still others look on the South with disgust. Some southerners and many northerners, still have a view of southerners as uncultured, rural, and barbaric. Last, the younger generations see the South as a boring place and are not inclined to visit and spend many tourist dollars because of the previously mentioned assumptions that many people still hold about the South (Bell, 1973; Jansson, 2005; Kennedy, 1997; Salvaggio, 1991).

One of the clearest ways to see the impact of the Mississippi Burning trial on popular culture is in film. *Mississippi Burning* is an Orion Pictures film directed by Alan Parker. It appeared in the cinema in 1988 and cast notable actors such as Gene Hackman and Willem Dafoe in lead roles. They play two FBI agents who are sent down to Jessup County to investigate the disappearance of three civil rights workers. Alan Ward (Dafoe) is the chief investigator who goes by the book. His partner, Rupert Anderson (Hackman), is the direct opposite of Ward and uses the aggressive tactics he learned growing up and serving as a sheriff in Mississippi to collect evidence in the investigation. Both characters are based loosely on the two key FBI investigators in the 1964 MIBURN case. Anderson's character is based loosely on FBI agent John Proctor, and Ward's character is based loosely on FBI agent Joseph Sullivan. There were other characters in the film who were loosely based on real participants associated with the MIBURN case. In the film Geoffrey Nuffts plays Goatee, a nickname the Klan had given to Michael Schwerner. Deputy Sheriff Clinton Pell's character played by Brad Dourif represented Deputy Sheriff Cecil Price, and Sheriff Ray Stuckey's character played by Gailard Sartain represented Sheriff Lawrence Rainey's involvement in the case.

Reviews of the film were mixed as many film viewers and some critiques such as Vincent Canby called the film "first-rate" and Roger Ebert gave the film four stars, calling it "the best American film of 1988" (Canby, 1988, p. C12; Ebert, 1988, p. 3 of 4, ¶2; Emerson, n.d.; Linder, 2006c). Most critics, while acknowledging that the film was indeed dramatic and provocative, argued that *Mississippi Burning* did more to overemphasize the zeal of the FBI in solving the MIBURN case, paint southern Blacks as passivists, and depict southern Whites as Klansmen than it promoted positive dialogue about how to address

current racial issues that were carry-overs from or mimicked the racial issues of the nation's past. It was argued that the filmmakers were more concerned with selling out the box office than promoting social change, which critiques argued was evident in the limited number of facts about the case and the large amount of Hollywood drama that appeared in the film (Emerson, n.d.; Linder, 2006c; ''Mississippi burning,'' n.d.).

Brinson (1995) argued that the underlying themes in the story attempt to communicate the old myth of White supremacy. In so doing the film ''symbolically and rhetorically asserts the solutions provided in *Mississippi Burning* are the same answers for current problems'' (p. 211). Brinson sees the film as an attempt by White elites to demonstrate how they have lost power (sociocultural, political, and economic). This perspective stands in sharp contrast to the film critiques that acclaimed the film as the best of 1988 and heralded the film for its use of fiction to historically account the events surrounding the 1964 deaths of the three civil rights workers and bring to light many of the discrimination issues that still needed to be addressed 24 years later (Brinson, 1995; Canby, 1988; Ebert, 1988; Emerson, n.d.; Linder, 2006c).

Jansson (2005) argued that there is an American national identity born out of the view of the South as a region that is fundamentally different from the rest of the United States. It is a place where racism, violence, poverty, and other negative characteristics dominate the culture. In contrast to the tyrannical South, ''America'' stands in opposition and is the proponent of tolerance, justice, and peace. The film is said to contribute to the construction of such a national identity.

Emerson (n.d.) echoed Jansson's assertion and offered a critique that examined the *Mississippi Burning* film from all angles—capturing both the film's flaws and value. Emerson argued that Parker did a terrible job accurately portraying history. For example, the FBI is represented by two White agents who use the Klan's tactics of violence to solve the case (e.g., using a Black FBI agent to get a confession from the mayor by threatening to castrate him). In many ways the FBI is portrayed as the hero that rescues the passive Blacks of the South and conquers the violent Whites of the South, when in actuality it was a combined effort of both Blacks and Whites dedicated to the peaceful strategies, advocated by Dr. Martin Luther King, Jr., and the advancement of the civil rights movement as well as a $30,000 bribe paid to a Klan informant that lead to the cracking of the case. Hoover, the director of the FBI during the MIBURN investigation, was known for his dislike of Blacks and their leaders, especially Dr. King. Hoover had agents constantly looking for dirt on Dr. King, especially related to his sex life. In addition, most of the FBI agents involved in the case had no desire to work the case and shared Hoover's dislike of Blacks. The MIBURN case is an important event; it was a turning point in the civil rights movement during the 1960s. Thus, many critiques argue that to distort the facts surrounding that event, in any way, especially in the way Parker did in the film *Mississippi Burning*, whether intentional or not, denigrates the contributions made by so many Blacks and Whites during that era (e.g., James Chaney, Andrew Goodman, Michael Schwerner, Dr. Martin Luther King, Jr., Medgar Evers, Robert Kennedy, and John Doar).

Emerson also argued that Parker did an excellent job accomplishing his goal of shocking the senses of film viewers. Parker used music, actors, scenery, and other cinematic tools to draw the viewer in.

> The movie leaves no room for considerations of history, ethics, justice, or morality—things you'd think would be vitally important to this story. Instead, like the exploitation picture it is, it sacrifices all such matters to the throat-grabbing thrill of the ''powerful'' moment.

> You're too busy flinching to experience anything deeper than an autonomic response. (Emerson, n.d., p. 3 of 5, ¶4)

In many ways the film *Mississippi Burning* did not condemn the racial violence of the 1960s as much as it showcased it (Emerson, n.d.; "Mississippi burning," n.d.). Many critics agree that this is Parker's way of reaching the audience (Canby, 1988; Ebert, 1988; Emerson, n.d.). He uses tension, gut-wrenching scenes, and dramatic moments to shake up the audience, provoking them to think about the key issues portrayed in the film (e.g., racism and excessive violence). While Parker's strategy may be somewhat over the top resulting in a film with fewer facts about the case than originally advertised, Emerson and other critiques argue that this in and of itself does not make *Mississippi Burning* a bad film (Emerson n.d., "Mississippi burning," n.d.).

> Even so, although you can certainly take issue with the many bizarre choices Parker has made, lots of movies—even great ones—have distorted history. Just because *Intolerance* or *Citizen Kane* or *Gone With the Wind* or *Chinatown* take liberties with historical fact, that alone doesn't diminish them as brilliant movies—any more than it would make sense to condemn Stanley Kubrick's vision of the future in *2001* if it doesn't turn out to be exactly accurate. The best movies create their own worlds; they're timeless. (Emerson, n.d., p. 2 of 5, ¶6)

Ultimately, what seems to turn many critics against the film *Mississippi Burning* is the polish, attention to detail, and aesthetic appeal of the film that used "cinema as a sledge hammer to pound knee-jerk reactions out of audiences, compelling them to kneel, mindlessly and helplessly, before the altar of 'powerful' moviemaking," instead of facing the facts surrounding the MIBURN case, acknowledging how the facts affect current events, dialoguing about positive solutions, and moving toward them (Emerson, n.d., p. 5 of 5, ¶2).

The effect of the MIBURN case on popular culture can also be seen in the declining support of the Ku Klux Klan. The Klan whose membership has always been secretive in the South used to receive public support of their philosophies and activities. The Klan, in the South, no longer enjoys that public support, as it is no longer politically correct to support KKK activities or adhere to such ideals. What has not changed is the difficulty in solving race crimes. Crimes that are racially motivated are still clandestine and difficult to prove. There is still a strong sense of camaraderie or deep-seated loyalty that keeps anyone from talking (Linder, 2002, 2006a; Rossman, 2005). Consequently, race relations are still strained as there is still an unspoken mistrust of Whites by Blacks and of law enforcement by minorities. (Bell, 1973; Jansson, 2005; Kennedy, 1997; Salvaggio, 1991).

Finally, the Mississippi Burning case and other civil rights cases have led to the development of and the idolizing of the investigative reporter who is part detective and part reporter. The investigative reporter is someone who pursues the "missed or ignored facts of the case" and ends up cracking the case and actively assisting the prosecution in obtaining convictions. It is unclear whether the relentless coverage of racially motivated crimes, whether confirmed or suspected, by the national media and the continued extensive coverage of any follow-up to said cases is creating an overemphasis on the issue, which could be fueling either an oversensitivity or desensitization to the issue ("Investigative Reporter," 2006; Jerry Mitchell, n.d.; Johnson, Jr., 2000). Recent discoveries in civil rights crimes of the 1960s have prompted the legislature to consider bills (e.g., "The Unsolved Civil Rights Crime Act" or "The Till Bill") that would allow for the reopening

of unsolved civil rights cases so that known perpetrators could be brought to justice (Benson, 2006). It is probable that the Mississippi Burning case will continue to influence popular culture for years to come as this case has come to signify the United States' value of Black life and an absence of tolerance for the savagery Blacks have experienced and in many covert forms are still experiencing.

SUGGESTIONS FOR FURTHER READING

An extensive collection of information on this case can be found on the bibliography page of the Mississippi Burning trial Web site: http://www.law.umkc.edu/faculty/projects/ftrials/price&bowers/bibliography.html

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15

The Bombing of the Sixteenth Street Baptist Church: The Turning Point of the Civil Rights Movement

MARCELLA GLODEK BUSH

By the fall of 1963, Birmingham, Alabama, had a history of racially motivated bombings—so many that the city earned the nickname ''Bombingham'' (Sikora, 2005). But none of the bombings against blacks had happened in daylight, nor killed anyone, until September 15, 1963, when a dynamite bomb exploded in the Sixteenth Street Baptist Church basement killing four girls and injuring more than 20 other adults and children. The four girls murdered were Addie Mae Collins, 14; Denise McNair, 11; Carole Robertson, 14; and Cynthia Wesley, 14. Their bodies were found together within minutes after the explosion. Denise McNair was the first to be pulled from the wreckage; a chunk of cement was embedded in her skull. All were badly burned and mangled, and Cynthia Wesley suffered decapitation. The basement clock captured the moment when the bomb exploded: 10:22 a.m.

September 15th was the inaugural Youth Day at the Sixteenth Street Baptist Church. The Reverend John Cross hoped to enliven his conventional congregation by adding a monthly Youth Day. By 9:00 a.m., the 80 teenage girls, who were members of Mrs. Ella Demand's Sunday school class, were gathered in the basement, while several hundred adults attended formal Sunday service on the first floor. Mrs. Demand's focus of instruction that morning was ''the love that forgives.''

The girls usually went to a nearby drugstore to wait for the adult services to end, but today they were going to sing and act as ushers during the 11:00 a.m. service. Denise, Addie, her sister Sarah, Carole, and Cynthia went to the basement restroom to primp. After a while, Mrs. Demand sent Bernadine Mathews to admonish the girls to return to the classroom. Cynthia said that she needed more time to fix her hair, causing Bernadine to comment, ''Cynthia, children who don't obey the Lord live only half as long''

(McWhorter, 2001). Earlier that morning, as Cynthia and her father were about to go to church, Cynthia's mother admonished her to fix her slip. Her mother frequently told Cynthia to "Always put your clothes on right, 'cause you don't know how you might be coming back" (McWhorter, 2001).

As Sarah Collins washed her hands at the sink in the women's restroom, she remembered seeing her sister Addie tying the sash on Denise McNair's dress. She awakened in the darkened rubble.

THE CRIME SCENE

The bomb—a bundle of dynamite that exploded under the girls' restroom—collapsed the Sixteenth Street wall and left a crater five-and-one-half feet wide and two-and-one-fourth feet deep; demolished the foundation; and decimated the staircase that connected the door to the sidewalk. All the stained glass windows on the upper floor shattered. Pieces of mortar had crushed the basement ceiling and filled the basement with debris and dust from the upper floor. The bomb had created a seven-feet-by-seven-feet hole in the women's restroom wall. Amazingly, the stained glass window, whose sill was about four feet above the lounge floor, remained intact; only the face of Jesus was gone. Broken glass littered the sidewalks outside. Nearby cars were overturned and crushed, windows smashed. The blast also blew out the windows of neighboring shops. One man claimed that he was blown out of his car; another from a telephone booth. People in the neighborhood houses felt the blast and people as far as 30 blocks away reported hearing the noise. Another bomb had struck Birmingham.

VICTIMS AND SURVIVORS

Dazed survivors began emerging from the church, covered in dust, some bleeding profusely from glass shrapnel from the stained glass windows. Reverend Cross found his daughter and assessed her injuries as minor. He next searched the classroom and guided children outside to find their parents. He returned to the church with several deacons and civil defense workers to excavate the basement rubble looking for more survivors. Various accounts describe finding the bodies in the restroom rubble. One reported that the girls flew through the air like rag dolls; another stated that the girls were stacked up like firewood. Still another stated that their clothes had torn off their bodies, they were burned, and they looked like old women. The man who had found Cynthia Wesley's skull could not describe it as human.

Deacon Pippen recognized his granddaughter Denise by her shoes. Samuel Rutledge found Sarah Collins alive, but initially unrecognizable because glass shards and blood covered her face. She called again and again for her sister Addie and hoped that because Addie did not answer it meant that she had escaped.

THE SCENE OUTSIDE THE CHURCH

A large crowd gathered quickly after the explosion and soon became unruly. City police, unable to protect the crowd scene because of rescue efforts, fired their weapons over the heads of people, who were throwing bricks and bottles at them (Hansen & Archibald, 1997). Reverend Cross and Reverend Billups used bullhorns to urge the crowd to return home and to forgive as Jesus did.

TIMELINE

September 15, 1963	A dynamite bomb explodes at Sixteenth Street Baptist Church, killing Denise McNair, Cynthia Wesley, Carole Robertson, and Addie Mae Collins, and injuring 20 others.
1965	FBI agents recommend charging four suspects with the bombing.
1968	FBI closes its investigation with no charges filed.
1971	Alabama Attorney General Bill Baxley reopens the bombing investigation.
September 1977	A grand jury indicts Robert Chambliss for the murder of Denise McNair.
November 18, 1977	A grand jury convicts Robert ''Dynamite Bob'' Chambliss of first degree murder in the death of Denise McNair and sentenced to life in prison.
1980	Jefferson County, Alabama's District Attorney reopens the case after a U.S. Department report states that FBI Director J. Edgar Hoover blocked evidence in 1965. No additional charges were filed.
1985	Robert Chambliss died in prison at age 81.
October 1988	Federal and State prosecutors reopen the investigation after Gary A. Tucker confessed that he helped set the bomb. No new charges were filed.
July 10, 1997	The FBI reopens the investigation after a secret, yearlong review.
May 17, 2000	Thomas Blanton, Jr., and Bobby Frank Cherry surrender to Jefferson County, Alabama, authorities after a grand jury indicts the men of first degree murder charges in connection with the 1963 Sixteenth Street Baptist Church bombing.
April 2, 2000	A judge rejects a request to move Blanton's and Cherry's trial to another county because of pretrial publicity.
May 4, 2000	Bobby Frank Cherry rejected a deal in which he would have received probation if he pleaded guilty to transporting explosives over state lines. Cherry continued to deny that he was involved in the bombing.

Jim Lay and Hosea Hudson, Jr., used the same bullhorns to clear the streets as fire trucks, police cruisers, and ambulances (from black funeral homes) arrived. Medical workers came and began caring for the injured and transporting them to the hospital. Sarah called for her sister and prayed to Jesus while in transport. She complained that she could not see. She had lost one eye and her sister.

OTHER VICTIMS

After throwing rocks at the police, 16-year-old James Robinson fled the scene. A police officer shot him in the back and killed him in an alley near the church. Later in the day, the

driver of a moped decorated with a Confederate flag shot and killed 13-year-old Virgil Ware, who was riding on the handlebars of his brother's bike. Approximately 50 fires were set throughout the day.

TWO FUNERALS

The hospital had set up a makeshift morgue. There Claude Wesley identified his daughter Cynthia by her class ring and black patent leather shoes. Chris McNair also identified his daughter Denise by her shoes. Carole Robertson was wearing her first pair of strapless pumps with medium heels.

Carole Robertson's parents chose to hold her funeral separately on Tuesday, September 17, at St. John's A.M.E. Church rather than with Addie, Denise, and Cynthia's mass funeral held on Wednesday, September 18, at the John Porter's Sixth Avenue Baptist Church. Carole's mother, Alpha Robertson, took offense at a remark Dr. Martin Luther King, Jr., made. When interviewed by reporters, King said, ''What murdered these four girls? The apathy and complacency of many Negroes who will sit down on their stools and do nothing and not engage in creative protest to get rid of this evil'' (McWhorter, 2001, p. 533). Mrs. Robertson countered, ''Carole lost her life because of the movement'' (McWhorter, 2001, p. 533). King delivered the eulogy at the three girls' funeral. More than 8,000 mourners, including 800 clergymen, black and white, attended the service, but no city officials turned out. The funerals marked the first time whites attended a predominantly black event in Birmingham. Nearly $23,000 was donated to rebuild the church and help the bereaved families.



Figure 15.1 The casket with the body of 14-year-old Carole Robertson carried out of the church, 1963. Courtesy of the Library of Congress.

BIOGRAPHICAL DESCRIPTIONS

Baxley, Bill	As Alabama Attorney General, he prosecuted Robert Edward Chambliss for the four murders
Blanton, Thomas, Jr.	A Ku Klux Klan member, who was convicted in May 2001 of the 1963 murder of four girls
Cash, Herman Frank	A suspect in the 1963 bombing, who died in 1994 before charges could be brought against him
Chambliss, Robert Edward	A Ku Klux Klan member nicknamed ''Dynamite Bob,'' he was convicted in 1977 for the murders of the four girls killed in the bombing; he died in prison in 1985
Cherry, Bobby Frank	Convicted in 2002 of the four murders, he died in prison on November 18, 2004
Cobbs, Elizabeth	Star witness for the prosecution; she testified against her uncle Robert Chambliss
Collins, Addie Mae	Bombing victim, 14 years old, one of seven children of Oscar and Alice Collins
Collins, Sarah	Bombing victim Addie Mae Collins's sister, who lost an eye in the bombing
Connor, Theophilus Eugene	Nicknamed ''Bull,'' he served as an Alabama police official during the Civil Rights Movement; he was a staunch racial segregation advocate
Cross, Reverend John	Pastor of the Sixteenth Street Baptist Church at the time of the bombing in 1963
Hoover, J. Edgar	Director of the Federal Bureau of Investigation
Jones, Doug	U.S. Attorney for the northern district of Alabama and prosecutor in the Robert Chambliss trial
McNair, Carol Denise	Bombing victim, 11 years old, the first child of Chris and Maxine McNair
Posey, Robert	Assistant U.S. Attorney and prosecutor in the Robert Chambliss trial
Robbins, John	Defense attorney in the Robert Chambliss trial
Robertson, Carole	Bombing victim, 14 years old, the third child of Alpha and Alvin Robertson
Rowe, Gary T.	FBI informant within the Ku Klux Klan
Wallace, George	Governor of Alabama in 1963
Wesley, Cynthia	Bombing victim, 14 years old, the first adopted daughter of Claude and Gertrude Wesley

Thirty-five years later, a new headstone on the grave of Addie Mae Collins prompted her sister Janie Gaines to visit the Greenwood Cemetery. She was distressed at the neglected condition of the cemetery and decided to move the body. When a crew excavated the grave they found no body there.

THE INVESTIGATION OF THE CASE

The Federal Bureau of Investigation (FBI) Director J. Edgar Hoover opened the investigation—codename BAPBOP—of the Sixteenth Street Baptist Church bombing with a

team of 11 agents, an addition to those already on staff to investigate previous bombings in Birmingham (McWhorter, 2001). Special Agents followed leads, gossip, suspects, and alibis; planted informants in the Ku Klux Klan (KKK); and conducted interviews with individuals in the church's neighborhood, in the church congregation, KKK members, and members of the States Rights party. When U.S. Attorney General Robert Kennedy learned of the bombing, he informed President John F. Kennedy that he was sending his civil rights negotiator Burke Marshall to Birmingham and ordered 25 additional FBI agents including bomb experts to work with Hoover's team.

The Birmingham City police combined their efforts with the Birmingham State police. Experienced homicide detective Maurice House served as the lead detective for the local police department. Conversable in the black community, House had earlier been assigned to the city's civil rights detail created a week before the 1963 Easter protests. To prevent a reprisal from the black community, police restricted blacks to their neighborhoods, and Governor George Wallace ordered 300 state troopers to the city. Local police armed with shotguns guarded the crime scene. By Sunday evening, the Alabama National Guard joined them. Birmingham initially offered a reward of $52,000 to find the suspects, and Governor Wallace contributed $5,000; the city's fund quickly grew to $75,000 and subsequently topped at $80,000.

Witnesses and Suspects

Civil rights activists blamed Alabama Governor George Wallace for the killings. One week prior to the bombing, Wallace, in an interview for *The New York Times,* stated that Alabama needed a "few first-class funerals" (McWhorter, 2001, p. 503) to stop integration in his state. Locals blamed "outsiders" and professional bombers from Georgia, Tennessee, and Virginia. On Monday, September 16, local police took the Sixteenth Street church's janitor Willie Green in custody. He had been seen walking down the church's side steps moments before the explosion. Rumors had also circulated that the girls were smoking in the bathroom. Early suspicion, however, soon centered on the Cahaba Boys —Robert Edward Chambliss, Bobby Frank Cherry, Herman Frank Cash, and Thomas Blanton, Jr.—who were members of the KKK's Eastview 13 Klavern. Several sources identified Tommy Blanton as the driver of his turquoise-and-white Chevrolet in the neighborhood of the church around 2:00 a.m. on Sunday, September 15. Neighborhood witnesses agreed that a white man emerged from that car and had planted the bomb. Another neighbor, however, identified Cherry as the man who placed a package of dynamite in a window well or under the steps outside the church; another identified Chambliss. Others stated that two of the four men in the car wore police uniforms.

Given his nickname "Dynamite Bob" and his participation in terrorizing black neighborhoods, Chambliss, 59 years old, was a likely suspect. He had learned to use dynamite as a quarryman for the Lone Star Cement Company and in the mines during the Depression. He had been active in the KKK since the 1940s, and served as Exalted Cyclops until 1951. When police discovered that Chambliss purchased a case of dynamite on September 4, 1963, they arrested him and two other Klansmen, Charles Cagle and John Wesley Hall, on charges of possession of dynamite without a permit. They were fined $1,000 each and received a six-month jail term that was suspended. Hall later failed a polygraph test, indicating that he knew something about the case, but it was not enough to get an indictment.



Figure 15.2 The four girls killed in the Sixteenth Street Baptist Church bombing (from left to right): Denise McNair, Carole Robertson, Addie Mae Collins, and Cynthia Wesley. © AP Photo.

Bobby Frank Cherry, age 32, drove a truck for Baggett Transportation—a local company that hauled dynamite and dynamite caps for local coal companies and that transported munitions for commercial shippers. Cherry gained demolition expertise in the Marine Corps and the nickname "Cherry Bomb."

The extremism of the States' Rights Party (SRP) had attracted 38-year-old Thomas Blanton, Jr., away from the Eastview 13 Kavern. When he and his 85-year-old father "Pops" Blanton had begun picketing with the neo-Nazis, and when they would not sever their ties with the SRP, the Klan formerly expelled them. Tommy's conversations were filled with racial prejudice and hatred of Catholics (Hansen & Archibald, 1997). Although a high school graduate, his associates described him as motivated by alcohol, not intelligent enough to make a bomb, but dumb enough to place it.

The fourth suspect, Herman Frank Cash, was a 45-year-old truck driver for the Dixie-Ohio Truck Company described by his associates as a hard-drinking segregationist and so easily frightened that they nicknamed him "Fearless" and "Old Blood and Guts" (Archibald & Hansen, 1997).

Hoover Closes the Case

On May 13, 1965, local agents in Birmingham wrote a memorandum to FBI Director J. Edgar Hoover: "The bombing was the handiwork of former Klansmen Robert R. Chambliss, Bobby Frank Cherry, Herman Frank Cash and Thomas F. Blanton, Jr." (McWhorter, 2001). Hoover, however, did not approve an arrest; he stated that "the chance of a prosecution in state or federal court is very remote" (Gado, 2007) and closed the case in 1968. Almost four decades would pass before three of the men were convicted for the murders of the four girls: Robert E. Chambliss in 1977; Thomas Blanton, Jr., in 2001; and Bobby Frank Cherry in 2002. Herman Frank Cash died in 1997 without being charged in the case.

The Media

Both the press and television coverage of the Civil Rights Movement broadened the nation's increasing awareness of racial tension. Initially, the media outside Alabama covered Birmingham's racial conflicts before the state and local media did. Publicly, *The*

Birmingham News advised photographers from other states that, as an institution, the *News* refrained from publishing photos and stories that would further exacerbate racial tension. White management of the press in Birmingham, however, operated under the belief that if you do not print photographs and stories about desegregation, it will go away. In response, news agents sent reporters to Birmingham by the hundreds.

The New York Times detailed Birmingham's racial problems throughout the 1950s and early 1960s with increasing frequency, giving Birmingham a reputation that angered its citizens. Harrison Salisbury, a reporter with *The New York Times,* wrote an inflammatory article on segregation in Birmingham entitled "Fear and Hatred Grip Birmingham" (published April 12, 1960, in *The Times*). The article resulted in a $6 million libel suit against *The Times* by Birmingham's Commissioner of Public Safety T. Eugene "Bull" Connor and others as a deliberate plan to keep reporters from the *Times* from covering the state until the Alabama Supreme Court reached a decision in the lawsuit. The strategy cost the *Times* coverage of some of the most important events in the Civil Rights Movement, e.g., the Freedom Rides and sit-ins. The Supreme Court ruled in favor of the *Times* in 1964.

Another embarrassment to the city occurred when a photograph of a burning Freedom Riders' bus appeared in a Japanese newspaper when the President of the Birmingham Chamber of Commerce was visiting Japan in 1961.

The Most Segregated City in the South

As more and more mainstream newspapers carried stories about the Civil Rights Movement, the opportunity to shape the media was not lost on American Civil Rights Movement leader the Reverend Martin Luther King, Jr. King chose Birmingham—the largest industrial city in the South—and dubbed it "the most segregated city in the south" to dramatize that racial hatred was no longer manageable there; federal intervention would be required (King, 1990). King hoped to goad Bull Connor, an infamous segregationist, into his usual outrageous reactions to the nonviolent demonstrations that King and his associates planned. Connor was a man who stated in 1948: "Damn the law, we don't give a damn about the law. Down here we make our own law" (McWhorter, 2001, p. 138). Connor did not disappoint. His use of fire hoses and police attack dogs against children participating in protests produced remarkable photographs that captured an international audience by summer 1963. Connor came to represent the fight against integration in Birmingham. When the four girls died in the Sixteenth Street Baptist Church bombing, their faces portrayed the immorality of America's social structure.

Newspapers around the world carried the story of the Sixteenth Street Baptist Church bombing: "Six Dead After Church Bombing Blast Kills Four Children"; "Riots Follow"; "Two Youths Slain"; "State Reinforces Birmingham Police" (United Press International, September 16, 1963); "Angry Police Sift Blast Clues"; "Judge Decries Mockery of Law" (*The Birmingham News,* September 16, 1963); "Racial Tension Mounts in Birmingham After Four Killed in Church Bombing" (Osgood, September 16, 1963). "This really was the seminal moment, it changed the course of the civil rights movement largely because people just did not care that much what was happening to Southern blacks," said Mark Potok, spokesman for the Southern Poverty Law Center, a civil rights organization based in Montgomery, Alabama (Chebium, 2000, paragraph 10). "But they could not stomach the image of these four little girls in white dresses being blown to pieces on a Sunday

morning in church. It awoke the conscience of white America, which until that point had been in a long sleep'' (Chebium, 2000, paragraph 10).

Black Press

The power of the black press had been diminishing since the 1940s and 1950s, even though black activism pushed for desegregation in society after Truman desegregated the military in 1948. Conservative advertisers pressured black newspaper owners to limit coverage on race issues. Fears of McCarthyism and the integration of black and white reporters in the mainstream press brought closure or decline to the smaller black newspapers. White communities barely knew that black newspapers existed and, if they did, would not have read them. But, newspapers like the *Baltimore Afro-American* and the *Amsterdam News* provided powerful editorials about racial injustice.

Television

In 1962, the CBS television affiliate in Atlanta, Georgia—Martin Luther King, Jr.'s hometown—did not even broadcast the CBS evening news. Two NBC affiliates, offended by John Chancellor's accurate, but described aggressive, reporting of school desegregation in Little Rock, Arkansas, dropped their broadcast of the ''Huntley-Brinkley Report,'' the station's flagship program. At the beginning of the Civil Rights Movement, newscasters focused on the sensational events, but with an indifferent affectation. Television coverage in 1963, however, was revolutionary and compelling. Now, important local news stories could be carried across networks beyond the station's broadcast territory. Riots and violence often shaped the coverage, and both civil rights activists and television news directors took advantage of the expanding networks' news hour. Dr. King's powerful preaching style and presence made him a symbolic prophet for the Civil Rights Movement, and television was his perfect medium.

Racial tension increased during the spring and summer of 1963, as King and activist Fred Shuttlesworth organized sit-in protests and Freedom Rides. The Sixteenth Street Baptist Church was their meeting place. The bomb that took the lives of Denise McNair, Addie Mae Collins, Carole Robertson, and Cynthia Wesley was intended to be a warning —retaliation for the role the church played in the Civil Rights Movement thus far. The Klan's hoped-for response of fear became public outrage instead. Within days, details of the bombing and the bombing victims, and the numerous accounts of violence that followed the bombing, the four girls' funerals, and criticisms of American leadership appeared in national and international newspapers and on television.

The Media's Impact on the Trials

During the 37 years that separated the bombings and justice, the media stressed the importance of the murders of the four girls each time the FBI or the State of Alabama reopened its investigations in 1971, 1977, 1980, 1988, and 1997, and whenever the state obtained an indictment or conviction against the three suspects, Chambliss, Blanton, and Cherry. The deaths of Cash, Chambliss, and Cherry also generated press coverage. The media that became the tool of Civil Rights activists and Southern segregationists became a tool to discuss the role of the FBI, the Federal Government, and the State of Alabama in bringing those responsible for the bombings to justice. The *Birmingham Post-Herald* won several awards for its coverage of Blanton's trial. In 1998, in a centennial edition, the *Birmingham News* commented on its coverage of the Civil Rights Movement:

"The story of the *Birmingham News*' coverage of race relations in the 1960s is one marked at times by mistakes and embarrassment, but, in its larger outlines, by growing sensitivity and change" (Wright, 2006, paragraph 15).

Cameras in the Courtroom

In Alabama, any party to a legal case may veto camera coverage of a trial. In the Thomas Blanton trial, County District Attorney David Barber objected to audiovisual coverage. In response, the Radio-Television News Directors Association (RTNDA) cited the importance of the public's "right to know" and the *Katzman v. Victoria's Secret Catalogue* (923 F. Supp 580, S. D. N. Y.) that states that cameras in the courtroom do not impede justice—they demonstrate the importance of public trials.

Radio

Radio was the most effective communication within the black community (Julian, 2005). Most blacks then could not afford a television and many were illiterate. Gospel songs and coded messages alerted listeners to gather at certain churches to organize a sit-in or demonstration. The stations also provided clues to police roadblocks and other obstacles, as well as ways to avoid discrimination or confront it. Researchers are now realizing the importance of the radio for blacks in the Civil Rights Movement.

THREE TRIALS

In 1971, Alabama Attorney General Bill Baxley reopened the case against the four suspects. Without the cooperation of the FBI, however, he made little progress. In 1976, the *Birmingham Post Herald* reported that the FBI informant Gary Thomas Rowe provided Baxley with a list of suspects (Africanonline, 1976). Baxley reopened the case in 1980 and again in 1988, after Gary A. Tucker confessed that he helped set the bomb. Jefferson County obtained no convictions or filed any new charges, however. In 1993, FBI agents met with black leaders of Birmingham to review the case again. Thomas Blanton, Jr., was still living in Birmingham, but Bobby Cherry had moved to Texas in the 1970s. Reportedly, he had married five times and had fathered 15 children (Sack, 2000). Herman Cash died from cancer in 1994.

The Trial of Robert Edward Chambliss

On September 24, 1997, a grand jury indicted 73-year-old Robert Chambliss to stand trial in Birmingham's Jefferson County Courthouse for the murders of the four girls. On September 26, Judge Wallace Gibson ordered four separate bonds—one for each girl—to total $200,000. Chambliss, unable to meet bail, remained in prison. The judge set the case to begin on Monday, November 14, and Chambliss to be tried for the murder of Denise McNair. Defense Attorneys included Art Hanes, Sr., and Art Hanes, Jr., who argued that the number of years between the murder and the trial denied their client "due process" and a "speedy trial." They also asked that the indictments be quashed because they contained Chambliss's nickname "Dynamite Bob." Hanes, Jr., protested that the nickname would prejudice the jury. Prosecutor George Beck countered that Chambliss was well known in the community by his nickname. The judge overruled to quash the indictments, but deleted the alias as prejudicial.

Witnesses placed Chambliss in his car at the scene of the bombing on Saturday night, September 14, and following the explosion on Sunday, September 15. Several witnesses testified that he had dynamite in his possession. The judge sealed the courtroom for the testimony of Chambliss's niece Elizabeth Cobbs. She entered the courtroom through a gantlet of armed sheriff deputies. Cobbs provided insight into her uncle's state of mind, before and after the bombing. She testified that he said before the bombing, ''Just wait until after Sunday morning and they'll beg us to let them segregate!'' (McWharton, 2001, p. 559). After the bombing, she overheard him say, ''It wasn't meant to hurt anybody; it didn't go off when it was supposed to'' (Gado, 2005, ''Dynamite Bob'' paragraph 4). He also stated that ''. . .he had enough stuff to flatten half of Birmingham'' (Gado, 2005, ''Dynamite Bob,'' paragraph 4). In his closing argument, Prosecuting Attorney Baxley asked the jury to ''give Denise McNair a birthday present'' (McWhorter, 2001, p. 574)—she would have been 26 years old that day. The jury found Chambliss guilty of one count of murder in the death of Denise McNair. And once again, the case went cold.

New Evidence

In spite of the deaths of 130 possible witnesses, the FBI reopened its investigation in 1996, focusing on suspects Thomas Blanton, Jr., and Bobby Frank Cherry. Assigned to the case were William Fleming and Ben Herren. Fleming discovered tape recordings of Blanton's conversations with the initial investigators in the 1960s—enough to convene a grand jury on October 27, 1998. The Grand Jury did not hear the testimony of Chambliss's niece Elizabeth Cobbs because she died in 1998 from cancer. Bobby Cherry's family members, however, testified that he bragged about the murders and was proud of his participation. He bragged about lighting the fuse and about being a Ku Klux Klan leader. The Grand Jury indicted both men on eight counts of first-degree murder.

Blanton and Cherry Arrested

After 37 years, 61-year-old Thomas Blanton, Jr., and 69-year-old Bobby Frank Cherry surrendered to Jefferson County authorities in Alabama on May 17, 2000. Alabama extradited Cherry from Texas where he was serving a prison sentence since 1971 for molestation charges. Cherry's lawyer requested a hearing with Judge James Garrett declaring that his client suffered from dementia and would not be fit to stand trial. The judge declared Cherry incompetent and committed him to the state's mental hospital for a 90-day inpatient evaluation (McWhorter, 2001).

The Thomas Blanton, Jr., Trial

Circuit Court Judge James Garrett rejected a request from Blanton's attorney, David Luker, to have the trial moved from Birmingham. Jury selection began on April 16, 2000. For the jurors' safety, the judge closed the selection process and withheld their names. Jurors, instead, filled out a questionnaire that was not released to the public. Judge Garrett sequestered the jury panel—eight white women, three black women, and one black man; four alternates included two white men and two black men.

The prosecution team—U.S. Attorney Doug Jones, Assistant U.S. Attorney Robert Posey, and Jefferson County Deputy District Attorney Jeff Wallace—called 22 witnesses to testify against Thomas Blanton, Jr. Posey introduced into evidence taped conversations from Blanton's apartment where the FBI had hidden microphones in 1964. One transcript quotes Blanton telling FBI informant Mitchell Burns, ''I like to go shooting. I like to go

CHAMBLISS TRIAL PARTICIPANTS

STATE OF ALABAMA VS. ROBERT EDWARD CHAMBLISS

Jefferson County Courthouse, Birmingham
November 14–November 18, 1977
Transcript available at http://www.bplonline.org/Archives/collections/alabamatenthjudicialcircuitcourtstatevschambliss.asp#Contents

Presiding:
Circuit Court Judge Wallace E. Gibson

Defense Team:
Art Hanes, Sr., and Art Hanes, Jr.

Prosecution Team:
Alabama Attorney General Bill Baxley
Assistant Attorney General George Beck

Jury:
9 whites and 3 blacks

Prosecution Witnesses:
Reverend John Cross, Elizabeth Cobbs, Kirthus Glenn, Timothy M. Casey, Yvonne Young, E.H. Cantrell, William Jackson, Glenn Norman Collins, Sr., Edward K. Alley, Jack E. LeGrand, Sarah Collins Riley, William E. Berry, Joe Donald, J.O. Butler, Sr., W.L. Allen, Jewel Christopher (Chris) McNair, Thomas H. Cook, Jack Shows, Timothy Michael Casey, Jr., Yvonne Young, Aaron Rosenfeld, John McCormick

Defense Witnesses:
Billy D. Webb, Paul Hurst, Floyd C. Garrett, Raymond Wells, Juanita Winston, Chris E. Poe, Lucian Troulias, Robert Louis Gifford, John W. Lowery, E.L. Caswell, F.J. Feltman, James E. Sparks, Bennie Mae Brown, Edward Thilt Walker, Maurice H. House

fishing. I like to go bombing'' (Court TV Online, 2001, ''Judgement Day,'' paragraph 3). Also: ''I am going to stick to bombing churches'' (McWhorter, 2001, p. 594). Jones pointed to Blanton and stated, ''That is a confession out of this man's mouth'' (CNN.com, 2001, paragraph 25); Defense Attorney John Robbins countered: ''You can't judge a conversation in a vacuum'' (Court TV Online, 2001, paragraph 26), arguing that the prosecutors failed to play the 26 minutes of previous conversation—the ramblings of drunken Klansmen. He stressed that a man should be convicted for his actions, not for his beliefs. Posey called only two witnesses and argued that the FBI tapes were illegal (Sack, 2001). While he spoke, several large TV screens displayed family photographs of the victims. After six days of testimony, the jurors deliberated just less than two-and-one-half hours, finding Blanton guilty of all counts of murder in the first degree. He was sentenced to life imprisonment.

The Bobby Frank Cherry Trial

When both the court and the defense team's psychiatric evaluation of Bobby Frank Cherry declared him fit for trial, the last of the four suspects went on trail on May 13, 2002, in a drab basement courtroom in Birmingham with Judge James Garrett again

BLANTON TRIAL PARTICIPANTS

STATE OF ALABAMA VS. THOMAS E. BLANTON, JR.

Jefferson County Courthouse, Birmingham
Presiding:
Circuit Court Judge James Garrett
Prosecution Team:
U.S. Attorney for the Northern District of Alabama Doug Jones
Assistant U.S. Attorney Robert Posey
Jefferson County Deputy District Attorney Jeff Wallace
Defense Team:
John C. Robbins
David Luker
Jurors:
Eight white women, three black women, and one black man
Four alternates: two white men and two black men
Prosecution Witnesses:
Waylene Vaughn, Bill Jackson, Reverend John H. Cross, Alpha Robertson, Maxine McNair, Jean Casey Blanton Barnes, Mitchell Burns
Defense Witness:
Mary Cunningham, Eddie Mauldin

presiding (McWhorter, 2001). U.S. Attorney Doug Jones once again led the prosecution team and Attorney Mickey Johnson the defense. The lawyers chose six white women, three white men, and three black men to serve as jurors with three whites and one black alternates. Cherry was charged with four counts of murder and four counts of arson.

U.S. Assistant Attorney General Robert Posey opened for the prosecution declaring that Cherry boasted that he was involved in the bombing and wore his crime like "a badge of honor" (*ABC News Online,* 2002, paragraph 1). The prosecution team took four days to recreate the bombing in the context of the Civil Rights Movement and to present its 11 witnesses: family members of the girls, retired FBI agents, a civil rights leader, an ex-wife, and Cherry's granddaughter. They disproved Cherry's alibi that he was at home with his wife, who was stricken with cancer, at the time of the bombing—his wife was not diagnosed until several years after the church bombing.

During the one-and-a-half days of the defense team's case, defense attorney Mickey Johnson repeatedly stated that the state had produced no credible witnesses and provided no forensic evidence linking his client to the bombing. Defense witnesses testified that the defendant was no longer a racist. Despite being a Klansman in 1963, Johnson beseeched the jury to not convict on guilt by association. The jury returned a guilty verdict on the four counts of murder and arson in less than seven hours.

AFTER THE TRIALS

The alleged suspect Herman Frank Cash died in 1994 without going to trial. Robert Edward Chambliss served eight years for his role in the Sixteenth Street Baptist Church

CHERRY TRIAL PARTICIPANTS

STATE OF ALABAMA VS. BOBBY FRANK CHERRY

Presiding:
Circuit Court Judge James Garrett
Prosecution Team:
Lead Attorney Don Cochran
Special Assistant Attorney General Doug Jones
Federal prosecutors Robert Posey and Jeff Wallace
Defense Team:
Cherry's Attorney Mickey Johnson
Prosecution Witnesses:
Alpha Robertson, Maxine McNair, Bobby Birdwell, Jimmy Parker, Reverend John Cross, Teresa Francesca Stacy, Willadean Brogdon, Bob Herron
Defense Witnesses:
Glen Belcher, Mary Cunningham
Jurors:
Six white women, three white males, 3 black males
Alternate Jurors: 3 whites, 1 black

bombing. He died in prison at age 81 of natural causes on October 29, 1985. He never admitted guilt publicly. Bobby Frank Cherry died from cancer in the Kirby Correctional Facility in Montgomery, Alabama, at age 74. He had served only two years of his sentence. Cherry's lawyers had appealed his conviction arguing that he was not given a ''speedy trial'' and, therefore, after 37 years, favorable witnesses were dead or could not be located, and the considerable media coverage impaired him from getting an objective trial. The Alabama Court of Criminal Appeals denied the appeal stating that the pretrial news coverage was factual and did not prejudice the jury. Cherry's lawyers also explored the possibility of parole based on 1940 laws that were operative in 1963 when the crime was committed. Thomas E. Blanton, Jr., also lost his appeal to the Alabama Court of Criminal Appeals because the court ruled that the delay was not intentional. Cherry is currently serving his prison sentence. His lawyer plans to take his case to the Supreme Court.

A Remaining Question

When Jerry Jazz Musician interviewed author Diane McWhorter, he asked if she thought that the bomb went off on schedule. McWhorter believes that it did not because the bombers were not sophisticated enough to build a bomb with a timing device. Most bombs were thrown out of a car window at a house or a church. Mabel Shorter—the woman filling in for the church secretary on the day of the bombing—reported that the telephone rang often that Sunday morning and the caller hung up when she answered (McWhorter, 2001). After the bombing, she reflected that someone might have been checking to determine if anyone was there, an oddity on a Sunday morning when people would naturally be there for services and religion classes. The higher-ranking Klansmen met after the bombing, and their discussion indicated that the bomb was supposed to

detonate when the building was unoccupied. Once placed, however, the outcome the bombers allowed was the possibility of death and violence. The Reverend Abraham Woods, who urged the FBI to reopen their case against Chambliss, Blanton, and Cherry, considered their guilty verdicts as a ''. . .statement on how far we've come'' (Court TV Online, 2001, paragraph 8).

LEGAL AND SOCIAL ISSUES OF THE CASE

Birmingham, Alabama, was a city built on social injustice. The founding of Birmingham as an industrial hub in 1871 attracted blacks with an opportunity to escape sharecropping on white-owned farms. Harsh conditions in Birmingham factories and mines, however, continued the blacks' social, political, and economic discrimination. Segregation and Jim Crow laws limited blacks' access to education, respectable living conditions, medical care, and public transportation. After World War II, black veterans began pressing the city government for permission to establish middle class neighborhoods for blacks. These neighborhoods created business opportunities for blacks: funeral homes, ambulance services, barbershops and beauty salons, movie theaters, and insurance agencies. Despite economic gains, however, political and social gains were nil. One transitional neighborhood was bombed so often that it earned the nickname ''Dynamite Hill'' (McWhorter, 2001).

Full equality was not the plan of Governor George Wallace, who stated in his 1963 inaugural address that ''. . .I say segregation now, segregation tomorrow, and segregation forever.'' In June 1963, Wallace appointed himself the temporary university registrar and stood in the doorway at the University of Alabama to block the admission of two black students, who were legally enrolled there; national television stations aired the event. In response, President John F. Kennedy federalized the Alabama National Guard to escort the students to the campus.

THE CHURCH AND ITS ROLE IN THE AMERICAN CIVIL RIGHTS MOVEMENT

The Cahaba River insurgents targeted the elegant, socially elite, yet conservative Sixteenth Street Baptist Church for its role in Martin Luther King, Jr.'s civil rights activities in Birmingham in 1963 (Wilson, 2003). The bombing became the galvanizing event for the American Civil Rights Movement and exposed the depths of racial hatred. Ultimately, the bombing encouraged moderates to speak out against racial violence and broadened the support for the American Civil Rights Movement.

MARTIN LUTHER KING, JR.'S EULOGY FOR THE BOMBING VICTIMS

In his eulogy for the three bombing victims, Collins, McNair, and Wesley, King challenged the consciences of ministers, politicians, political parties, the government, racists, blacks, and whites to no longer remain silent or cautious about the system in America that produces hatred and racism. He highlighted that the passive silence of moderates was a bigger tragedy than the bombings and murders that took place in Birmingham.

TERRORISM

In his closing arguments in the trial of Bobby Frank Cherry, prosecuting attorney Doug Jones called Cherry, Chambliss, Cash, and Blanton ''the forefathers of terrorism.'' Author McWhorter (2002) compares the Birmingham Civil Rights District to the Ground Zero

FACTOIDS

- BAPBOMB was the FBI code name for the Sixteenth Street Baptist Church bombing. ''BAPBOMB'' is also the title of a play by Hubert Grissom to honor Dr. Martin Luther King, Jr. The play advances the idea that inaction in the face of injustice is the worst enemy.
- ''Birmingham Sunday'': A song, composed by Richard Farina and recorded by Joan Baez, chronicled the events and the aftermath of the bombing.
- Sonya Jones renamed her youth center the *Addie Mae Collins Youth Center* as a memorial to an aunt she never knew.
- Chicago residents established the *Carole Robertson Center* for Learning in 1976. Named after Carole, the social service agency is dedicated to the memory of all four girls.
- *The Alabama National Guard* that protected the Sixteenth Street Baptist Church crime scene was also the air strategists for the Bay of Pigs invasion.

area of New York, the site of the September 11, 2001 terrorists' attack. Bobby Frank Cherry earned a new nickname: Osama Bin Cherry. Birmingham's Civil Rights District was established in 1992 as a symbol of the struggle for human rights. The district includes the Sixteenth Street Baptist Church, Kelly Ingram Park—where police unleashed dogs on protestors and fireman attacked them with fire hoses, the Birmingham Civil Rights Institute, the Fourth Street Business District (the city's black retail center), and other black cultural and social institutions.

GOVERNOR GEORGE WALLACE'S LEGACY

Despite the 1964 Civil Rights Act, there was no easy solution to racial tension. In the Wallace years, Alabama lost important economic ground. While Atlanta was peacefully desegregating and beginning three decades of vibrant white-collar growth, Birmingham was violently resisting the Civil Rights Movement, only to see the shrinkage of its once substantial blue-collar base—the steel industry—and an outflow of talented people of all races. The state's economy, regarded as progressive when manufacturing was the leading edge of growth, seemed backward at the end of the Wallace era.

THE LEGACY OF THE SIXTEENTH STREET BAPTIST CHURCH BOMBING

On June 11, 1963, President Kennedy recognized and stated the need for civil rights. He was the first president to do so. The Birmingham protests of 1963 led to the Civil Rights Act of 1964, the most important antidiscrimination law since the 14th Amendment, legislation that would shape America's social and political development.

Black businessmen, professionals, and religious leaders had slowly pushed forward their economic success in Birmingham. But, the demonstrations in the summer of 1963 inspired poorer blacks to demand equality, not only in Birmingham, but nationally. They wanted access to better jobs, better housing, education, and legal rights. The bombing of the Sixteenth Street Baptist Church acknowledged that racism was out of control in Birmingham. The chaos induced President Kennedy to propose a sweeping civil rights bill. He was unable to advance the bill before he was assassinated on November 22, 1963, but his successor Lyndon B. Johnson championed the cause as reflected in his vision of ''A

Great Society.'' A Southerner by birth, he knew that his efforts might cost him his Democratic party's support from the Southern states. He reportedly commented to an aid after he signed the 1964 Civil Rights Act that ''We have lost the south for a generation'' (Wikiquote, Attributed, item 11). Johnson addressed the nation and urged the passage of the civil rights bill as a monument to Kennedy's ideals.

The 1964 Civil Rights Act

The House of Representatives passed the measure (with a 290–130 vote) on February 10, 1964. After the Senate passed the measure, President Johnson signed it into law on July 2, 1964. Although the Supreme Court had declared civil rights measures beyond the scope of congressional power in 1883, the Court unanimously upheld the Congress' capacity under the 14th Amendment to protect black Americans' civil rights. The act requires that employers provide equal employment opportunities and secures uniform voting standards. Racial discrimination is illegal, and federal funding will be eliminated if evidence of discrimination based on color, race, or national origin is found. Discrimination in public places is also illegal. Statutes enacted prevent discrimination based on a person's sex, age, religion, previous condition of servitude, physical limitations, and in some cases sexual preference.

Popular Culture

Literature, film, and song celebrate the success of the civil rights struggle in Birmingham and commemorate the lives of the four girls who died in the church bombing on September 15, 1963. Toni Morrison's character Guitar in the *Song of Solomon* reflects on the bombing of the church and portrays how racism can alienate and isolate human beings. Nina Simone responded to the bombing by writing ''Mississippi Goddam,'' as did Richard Farina with ''Birmingham Sunday,'' recorded by Joan Baez. Spike Lee's film *4 Little Girls* focuses on the political and personal ramifications of the bombing and earned him an Academy Award nomination. Historians agree that the four girls put ''the face'' on the American Civil Rights Movement, and Lee, by foregoing voice-over, allowed the parents of Denise McNair and the mother of Carole Robertson, as well as various aunts, uncles, neighbors, and teachers, to help the audience to know these girls.

Pulitzer Prize winner Diane McWhorter's book *Carry Me Home* details Birmingham's history and its role in the civil rights era that includes the church bombing. The same age as the girls, she does not remember the event. She relates that in her mother's diary that day's entry mentions that their community theater production was canceled: the *trouble downtown* might rile up the *outside agitators* to riot. *Until Justice Rolls Down* by Frank Sikora, a longtime journalist with the *Birmingham News,* takes the reader through the events of the tragedy, examines the social and psychological effects of racial hatred, and, finally, relays the account of the legal efforts to find and convict those responsible for the bombings. Baltimore youth reflect on the girls' lives in *The Children of Birmingham,* an animated film that illustrates the role Birmingham's youth had in changing segregation laws.

Memorials

Parents and community residents formed the Carole Robertson Center in 1976 in memory of all four girls. The center has since evolved into a comprehensive family development agency. Sonya Jones named her center the Addie Mae Collins Youth Center as a

DEFINITIONS

Demonstration

A demonstration is a form of activism that expresses the common opinion of a group of people. Demonstrations against social injustice usually take the form of a physical gathering of people—the more people that participate, the more successful the demonstration. A protest is a similar action that attempts to influence public opinion or government policy.

Due Process

Due process of the law, in the context of the United States, refers to how and why laws are enforced and applies to all persons, citizen or alien, and to corporations. In the Fifth Amendment of the Constitution, the reference applies only to the federal government and its courts and agencies; in the 14th Amendment, the reference extends protection to all state governments, agencies, and courts.

Freedom Riders

Freedom Riders of different ethnicities and backgrounds and trained in nonviolence protesting boarded buses, trains, and planes that were headed to the South to challenge Jim Crow laws and the South's noncompliance with a Supreme Court decision that prohibited segregation in all interstate public transportation facilities.

A Great Society

Lyndon B. Johnson (1963–1969) proposed or enacted a set of domestic programs that included social reforms to eliminate poverty and racial injustice.

Ku Klux Klan

Also called the KKK or the Klan, members of this white secret society wear white robes and hoods and burn crosses at their outdoor meetings in order to frighten nonmembers. (See http://www.spartacus.schoolnet.co.uk/USAkkk.htm) They oppose the advancement of blacks, Jews, Catholics, and other minorities. A *klavern* is a subset of a main or state Ku Klux Klan. The *Eastview Klavern 13* was the most violent subset of the Ku Klux Klan in Alabama. The *Cahaba River Group* or *Cahaba Boys* was a Ku Klux Klan splinter group formed by Bobby Cherry and Tommy Blanton and included Robert Chambliss and Herman Cash. They met beneath the Cahaba River Bridge on U.S. 280 in Birmingham, Alabama. *Exalted Cyclops* is the title of the leader of a local klavern of the Ku Klux Klan; Robert Chambliss served as Exalted Cyclops of the Eastview Klavern 13.

National Association for the Advancement of Colored People (NAACP)

Founded in 1909, the organization, dedicated to full political power and civil rights for African Americans, was the largest and most influential civil rights organization in the United States when Martin Luther King, Jr., was born. His father headed the Atlanta NAACP. King was a lifelong member, but chose nonviolent, direct-action tactics rather than litigation and lobbying tactics of the NAACP.

Race Riot

A race riot or racial riot is an outbreak of violent civil unrest with race as the key factor. Before the Civil Rights Act of 1964, blacks resisted oppression in the South by three basic means: retaliatory violence, organized nonviolent protest, and northward migration.

Southern Christian Leadership Conference

This is a civil rights initiative founded by Dr. Martin Luther King, Jr., and his Birmingham colleague and Baptist Preacher Fred Lee Shuttlesworth. Invited to Birmingham by Shuttlesworth to boost the faltering initiative, King violated a court injunction against marching and was subsequently jailed in the Birmingham jail, where he wrote his famous ''Letter from Birmingham Jail''; see http://coursesa.matrix.msu.edu/%7Ehst306/documents/letter.html

This organization was an umbrella organization of affiliates and coordinated the activities of local organizations.

Sit-in

A sit-in is a form of civil disobedience in which demonstrators occupy seats and refuse to move.

Speedy Trial

The Sixth Amendment of the United States Constitution ensures that defendants are not subjected to lengthy incarceration prior to a trial. Violations may be a cause for dismissal of a criminal case; state statutes determine the length of time.

States' Rights Party

A far right group founded in Tennessee in 1958, it expanded to Birmingham in 1960. Based on anti-Semitism and segregation, an FBI investigation deemed them harmless. This is not to be confused with the National States' Rights Party (NSRP, also known as the Dixiecrat Party; this group split from the Democratic Party and sponsored its own presidential candidates in the 1948 election).

memorial to the aunt she never knew. The children in her center learn how to deal with tragedy and overcome adversity. Artist John H. Waddel created four, life-size bronze sculptures entitled, *That Which Might Have Been, Birmingham 1963.* They are displayed in the Sculpture Garden of the George Washington Carver Museum and Cultural Center in Phoenix, Arizona. A number of Internet sites, some interactive, have also been created to memorialize the girls. Another memorial to the girls, four broken columns, stands in nearby Kelly Ingram Park, where marchers gathered to protest and held sit-in demonstrations. In 1996, the Jack and Jill of America Foundation honored Carole Robertson (once a member) with the Carole Robertson Memorial Award (Davis, 1993).

The Sixteenth Street Baptist Church as a Memorial

The Sixteenth Street Baptist Church still has an active congregation of about 200 members, yet about 200,000 visitors tour the church annually as it is part of Birmingham's Civil Rights District. The National Register of Historic Buildings included the church in 1980 and on February 20, 2006, the United States Department of the Interior officially dedicated the church as a National Historic Landmark. A prominent plaque inside honors the four girls: ''Denise McNair, Cynthia Wesley, Addie Mae Collins, Carole Robertson. Their lives were taken by unknown parties on September 15, 1963, when the Sixteenth Street Baptist Church was bombed. May men learn to replace bitterness and violence with love and understanding.'' A small nook in the basement marks the spot where the girls died. ''When the bomb went off the clock stopped and time for Birmingham stood still'' (Sack, *The New York Times,* April 25, 2001, paragraph 21).

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16

Charles Manson and the Tate-LaBianca Murders: A Family Portrait

MARIE BALFOUR

The summer of 1969 was a remarkable period in American history that defined a generation and rocked the nation. Over the span of a month and a half, the nation was riveted to the news, beginning with the coverage of Senator Edward Kennedy and the Chappaquiddick incident and ending with the Woodstock music festival. The summer of 1969 has become famous for other reasons as well. On July 20, Buzz Aldrin and Neil Armstrong became the first men to walk on the moon. Yet, it was the disturbing events of August 9 and 10 that would remain in the headlines for years to come.

The Manson Murders

Late in the evening on August 8, 1969, four members of the Manson Family arrived at 10050 Cielo Drive in Los Angeles County, California. After parking the car and cutting the telephone wires, Manson Family members Charles Watson, Susan Atkins, Patricia Krenwinkel, and Linda Kasabian entered the property armed with some rope, three knives, and a gun. After ordering the girls to hide, Watson murdered 18-year-old Steven Parent, who was in his car getting ready to leave. Leaving Kasabian to stand watch, Watson, Atkins, and Krenwinkel entered the house where they proceeded to attack and brutally murder the people inside. Sharon Marie Tate-Polanski, the 26-year-old wife of movie producer Roman Polanski, was found on the floor of the living room tied by a rope around her neck to international hair stylist, 35-year-old Jay Sebring. Tate was eight months pregnant. The body of Roman Polanski's friend, 32-year-old Voytek (Wojciech) Frykowski, was found near the porch; and the body of Abigail Anne Folger, the 25-year-old heiress to the Folger coffee fortune, was found in the grass. Before leaving, one of the killers printed the word "PIG" on the porch door in Sharon Tate's blood. The killers returned to the rest of the Manson Family at Spahn Ranch in the Simi Hills; they learned the names of their victims the following day during a television broadcast.

ROMAN POLANSKI

Roman Polanski, husband of murdered actress Sharon Tate, has not been back to the United States since 1978, when he fled the country while awaiting sentencing for his conviction of drugging and raping a 13-year-old girl at the Los Angeles home of actor Jack Nicholson. Polanski has been living in France since his escape, but has continued to direct a number of films, including the 2002 Oscar-winning movie *The Pianist.*

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On the morning of August 9, 1969, when housekeeper Winifred Chapman arrived for work, she discovered the house in disarray and the living room spattered in blood. The first body Chapman saw was Parent, who was lying in his car; she ran down the driveway to alert the neighbors and call the police. When the Los Angeles Police Department (LAPD) arrived soon after, they found the bodies of five victims. The murder scene was gruesome: Tate had been stabbed 16 times, and the coroner would later determine from the autopsy that she had been hanged for a short period of time; Sebring had been stabbed seven times and shot once; Folger had been stabbed 28 times; Frykowski had been stabbed 51 times, bludgeoned 13 times, and shot twice; and Parent, who was on the premises visiting the caretaker, had been shot four times and had a defensive slash wound on his wrist. Despite the horrific brutality of the crimes, there was little time for the Los Angeles community to absorb the shock, for a similar murder occurred on the following evening.

Frustrated by the ''messy'' way in which the Tate murders had happened, Charles Manson decided to join his Family on the evening of August 9, 1969. According to Kasabian's testimony at the trial, Manson ordered her to drive through Los Angeles, and he repeatedly ordered her to stop so that he could scout out a house with occupants to murder. On this particular night, Manson was accompanied by Watson, Krenwinkel, Leslie van Houten, Susan Atkins, Linda Kasabian, and Steve Grogan. After selecting a house on Waverly Drive, Manson entered the house first, tying up Leno and Rosemary LaBianca. When Manson returned to the car, he told Watson, van Houten, and Krenwinkel to hitchhike back to Spahn Ranch. Atkins would later add that Manson had told the three to ''paint a picture more gruesome than anybody had ever seen'' (Bugliosi and Gentry, 1974, p. 247). When Leno and Rosemary LaBianca's bodies were discovered the next day, Leno was found with his hands tied behind his back with a leather thong, a pillowcase over his head, and the electrical cord of a large lamp around his neck. When the pillowcase was removed, a small kitchen knife was found lodged in Leno's throat. A two-tined carving fork was sticking out of his stomach, and the word ''WAR'' had been carved into his skin. He had been stabbed 12 times, and there were 14 additional wounds from the carving fork. Rosemary LaBianca was found on the floor of the bedroom, also with a pillowcase and electrical cord around her neck. She had been stabbed 41 times. Again, words had been written in the victims' blood: ''Death to Pigs'' was found on the living room wall, ''Rise'' was near the front door, and ''Healter Skelter'' was found on the refrigerator door.

Within hours after beginning the search at the Tate residence, the LAPD had what they thought was a plausible motive: drugs. Friends of both Folger and Frykowski admitted to police that they had been steady users, along with Sebring. Frykowski was known for using cocaine, mescaline, marijuana, and LSD; Folger, along with Frykowski, were both found to have had methylenedioxyamphetamine (MDA), today commonly known as ecstasy, in their bloodstreams at the time of their death. In searching the premises, police found cocaine and marijuana in Sebring's car. Expecting to find a drug deal gone wrong as the motive, police began checking all known drug connections generated from Frykowski and Sebring's habits. Police also interrogated William Garretson, the caretaker at the Tate residence, and they had Garretson take a polygraph. Garretson repeatedly stated that he had heard nothing throughout the night; he was released from custody after passing the polygraph test.

Another team of LAPD officers worked on the LaBianca murders. Cooperation between the two groups was limited despite the similarities of the two cases. For their part, the LaBianca detectives were also attempting to find some motive for the killings. With the exception of Rosemary's wallet and wristwatch, nothing was found to be missing from the house. The LaBianca detectives attempted to find leads; they looked into neighborhood activities and investigated Leno's financial records. Although they uncovered information relating to a huge debt run up over racehorse betting, nothing relating to Mafia connections could be established. The LaBianca detectives concentrated their efforts on a former neighbor with previous arrests, including one for attempted murder.

At the time of the first progress reports, the Tate detectives were still concentrating on the possibility of a drug motive. In the LaBianca report, there was a mention of the Beatles album *SWBO 101,* better known as the *White Album,* on which there were songs entitled ''Helter Skelter,'' ''Piggies,'' and ''Blackbird,'' which included the lyrics ''arise, arise'' (Bugliosi and Gentry, 1974, p. 101). Unbeknownst to them, the LaBianca detectives had hit upon an important piece of information that would later become useful in explaining Manson's conspiracy theory. However, pursuing numerous leads, neither the Tate nor LaBianca detectives were any closer to finding the murderers than they had been at the beginning of their respective investigations.

THE MAN BEHIND THE MURDERS

Born ''no-name Maddox'' on November 12, 1934, Manson spent the majority of his youth being shuffled between relatives, neighbors, and juvenile detention centers. His mother, Kathleen Maddox, a teenage prostitute, was both incapable of caring for a child and unwilling to do so. She was married for a short time to William Manson, who gave her son his name. ''No-name Maddox'' was now Charles Milles Manson. After Kathleen finished serving a sentence for armed robbery, Manson lived with his mother until he was 12, when she had him sent to the Gibault School for Boys. Manson spent his teenage years in a number of institutions, and he committed his first federal offense in 1951 after escaping from a boys' school in Indiana. Arrested for driving a stolen car across a state line, Manson was remanded to a federal training school for boys in Washington, DC, until he came of age. Because of his numerous disciplinary infractions while in detention, Manson's sentence was extended. He was 19 years old when he was eventually paroled on May 8, 1954.

On the outside again and now an adult, Manson met and married a waitress named Rosalie. Less than a year later, Manson was back in federal court in California, this time with his pregnant wife in tow. The presence of a pregnant wife must have been reassuring to the court. In part because of Rosalie's condition, and combined with a court-appointed psychiatrist's favorable recommendation, Manson was given five years probation. However, unable to stay in one place for long, Manson skipped town and headed east. He was eventually caught in Indianapolis and returned to Los Angeles in March 1956. Initially sentenced to three years, Manson attempted to escape one month before his parole hearing after learning that his wife was living with another man. Manson's escape attempt was unsuccessful, and he was ultimately sentenced to another five years' time; his wife filed for divorce and retained custody of their son.

Manson spent the majority of his twenties either breaking the law or residing in jail. Pimping, check forgery, and grand theft auto had Manson back in prison for ten years. While awaiting federal prosecution on the forgery charges, Manson married a woman named Leona who had told his parole officer she was carrying Manson's child. The parole officer had initially managed to get Manson a suspended prison term, but after Manson returned to pimping and violated his probation, he was sent to the U.S. Penitentiary in Washington State during July 1961. Divorce came soon after, but not before Charles Luther Manson was born.

While incarcerated in Washington, Manson became interested in Scientology, which he would later combine with his own ideas into the philosophy that became the Manson Family. Prison records state that besides his interest in Scientology, Manson's only other permanent interest was music. Manson taught himself to play the guitar and drums, and he wrote some 80 or 90 songs while in prison. Manson's obsession with the Beatles was sparked while incarcerated in Washington. ''It didn't necessarily follow that he was a fan . . . .He told numerous people that, given the chance, he could be much bigger than the Beatles'' (Bugliosi and Gentry, 1974, p. 202). Manson also learned how to play the steel guitar from fellow inmate Alvin Karpis, a former member of the Ma Barker gang. Paroled on March 21, 1967, Manson is reported to have asked to stay in prison; he seemed to prefer institutional life to that on the outside.

Following his parole, Manson was granted permission to go to San Francisco, and during the coming months in the Haight-Ashbury section of San Francisco, Manson began collecting his Family members.

MANSON'S CONTROL

Manson wandered through San Francisco following his 1967 release from prison; he used music, drugs, and love to gain a following among the hippies who lived there. Describing her first encounter with Manson, Lynette (Squeaky) Fromme said of Manson, '''Up in the Haight . . .I'm called the gardener,' he said. 'I tend to all the flower children' . . .He had the most delicate, quick motion, like magic as if glided along by air, and a smile that went from warm daddy to twinkely devil'' (''The girl,'' 1975). During his time in Haight, Manson received a grand piano from an ''admirer.'' He traded the piano for a beaten up bus, which would eventually serve to take Manson and his followers out of Haight. By the time he left, Manson had an entourage that comprised the core of the Family, including Susan Atkins and Patricia Krenwinkel. Surviving on what they could scrounge from ''garbage runs'' and credit cards donated by Krenwinkel, the Family

eventually settled at Spahn Ranch outside Los Angeles, where their numbers continued to grow.

Spahn Ranch was run-down, but was frequently used as a movie set. Given permission to stay on the property by the elderly and blind owner, George Spahn, the Family helped with ranch chores. While cooking and cleaning for Spahn, the Manson girls also served as his eyes and ears. Lynette Fromme grew especially close to Spahn. Although not a direct participant in the Manson murders of 1969, Fromme would eventually attempt to assassinate President Gerald Ford in Sacramento in 1975. ''One of Manson's shrewdest, toughest, and most slavishly obedient followers,'' Fromme was assigned to tend to Spahn in the hope that she would eventually inherit the ranch upon his death (''The girl,'' 1975). It was from Spahn Ranch that Manson sent his Family out to commit the Tate-LaBianca murders of 1969.

Manson's control over the Family stemmed from a combination of charisma, intelligence, and an ability to ''work the system.'' Manson was able to see and understand what his Family needed: security, faith, a father figure, and a leader. Dr. David Smith, who worked in a free clinic in San Francisco's Haight-Ashbury district, had the following to say about Manson and the Family:

> A new girl in Charlie's Family would bring with her a certain middle-class morality. The first thing that Charlie did was to see that all this was torn down. The major way he broke through was sex. . . If they had hang-ups about it, then they should feel guilty. That way he was able to eliminate the controls that normally govern our lives. (O'Neil, 1969, p. 26)

The way in which Manson exerted his control was evasive and difficult to pinpoint. Rarely giving directions, Manson would ''suggest'' something, and it would be done. Some of the Family members believed Manson could read their thoughts, and others thought he was the second coming of Jesus Christ. Arrested during the Barker Ranch raid, Manson listed his aliases as ''Jesus Christ'' and ''God'' (Bugliosi and Gentry, 1974, p. 180). During her grand jury testimony, Atkins said of Manson, ''Charles Manson changes from second to second. He can be anybody he wants to be. He can put on any face he wants to put on at any given moment'' (Bugliosi and Gentry, 1974, p. 246). Manson's adaptability and his ability to proselytize his sermons and philosophies to the Family gave him immense power over their actions. The heavy use of LSD among the Family members, a drug that is known to lower inhibitions and make the user more susceptible to suggestion, also indicates another manner in which Manson reached his target audience. Manson attempted to break down the existing moral conscience of his Family by encouraging ''creepy-crawls.'' Manson would send out Family members dressed in dark clothing to enter occupied houses at night with the instructions to rearrange items, steal small trinkets, and play mind games on ''the establishment.''

THE MANSON FAMILY

Invariably, the young men and women who composed the Manson Family were searching for something. Mostly middle-class youth, who had run away from home or broken with the establishment, they found alternately a father figure, a brother, a leader, and a Christ-like quality in Charles Manson. Manson's prison records have noted that he could get something from everyone, and that he had a remarkable talent for adapting himself to all situations. Using these talents along with his music, drugs, and sex,

Manson's Family grew. Safe in the knowledge that Manson was, indeed, a "Christ-like figure," his Family members became capable of murder.

Before falling in with the Manson crowd, Charles Denton Watson had been an academically talented high-school athlete. Although active in his Methodist church, Watson became involved in drugs after moving away to college. Dropping out of North Texas State University while in his third year, Watson fell in with the Manson Family while they were living with Dennis Wilson. Although he initially moved away from the Family to sell dope with a girlfriend, Watson rejoined the Family in time to participate in the Tate-LaBianca murders. After participating in the murder of a worker at Spahn Ranch, Watson fled back to Texas in October 1969, and it was from there that Watson fought extradition to California.

Patricia Krenwinkel's change from a quiet, normal girl to one of a member of the Manson Family was quite abrupt. Originally from the Los Angeles area, Krenwinkel's parents separated during her teens. After half a year of college in Alabama, she moved to Los Angeles and got a job at an insurance agency. "She abandoned her car in a Manhattan Beach parking lot in September 1967, quit her job without picking up her paycheck, and went off with Charlie Manson" (O'Neil, 1969, p. 26). Put in charge of the Manson Family's garbage runs, Krenwinkel would go through grocery store trash bins to find food for the Family. Although Krenwinkel never provided a handwriting sample before the trial, scribbles on her legal pad showed the words "Healter Skelter," misspelled in the same way as had been found at the scene of the LaBianca murders.

Susan Atkins, who had a strained relationship with her family, was a particularly important piece of the puzzle surrounding the initial inquiry into the Tate-LaBianca murders. Her father had left home to look for work, and her mother had died when she was 15 years old. When Atkins was getting into trouble with the police, "her father complained that the courts were 'too lenient' because they let her out of jail" in the first place (Roberts, 1970, p. 40). Dropping out of school, Atkins sold magazine subscriptions and waited tables. After serving a short jail sentence and probation for armed robbery, Atkins moved back to San Francisco where she began working as a topless dancer. One of Manson's most loyal devotees, Atkins would become the driving source of information that would return a grand jury indictment on the Manson Family members for the Tate-LaBianca murders.

Linda Drouin Kasabian was born and raised in Biddeford, Maine. She dropped out of high school in her sophomore year and was married and divorced within a year. Marrying again, this time to Bob Kasabian, Linda had her first child in 1968. Trouble in the marriage sent Linda back to the East Coast, but Bob convinced her to join him in Los Angeles. Moving to be with Bob Kasabian, Linda met a Manson Family member through a friend, and she left her husband to join the Family. At the Family's urging, she returned the next day to steal money from her friend, which she then turned over to Manson. Kasabian's participation in the Tate-LaBianca murders was limited, having been chosen to come along because she was the only Manson Family member with a valid driver's license.

Leslie van Houten, although charged only with the LaBianca murders, was tried with Manson, Krenwinkel, and Atkins. Although she was initially convicted with the other Manson Family members, van Houten was granted a second trial because her defense lawyer disappeared during the main trial. When the second trial ended in a deadlocked jury, she was given a third trial, which ended in a conviction, and she was sentenced to life imprisonment.

Van Houten came from the same broken family atmosphere as the other Manson girls. Her parents divorced when she was in her early teens, and she grew up in the Los Angeles area where she eventually discovered the drug scene. She met Manson Family members Catherine Share and Robert Beausoleil in 1968; she was introduced to Manson and the Family soon after, and she never left.

Beausoleil was born in Santa Barbara, California, in 1947. Originally a musician, Beausoleil was also called "Cupid" for his good looks and the ease with which he attracted women. Before meeting Manson, Beausoleil had starred in a Kenneth Anger film called *Lucifer Rising* (1973), also writing the music for the short cult film. Beausoleil also sang backup on Frank Zappa's first album *Freak Out* (1966). Beausoleil met Manson while he was living with Gary Hinman—the same man Beausoleil would later be convicted of killing.

The Investigation

While the autopsies were being done on the Tate murder victims, LAPD detective Sergeant Jess Buckles was approached by two detectives from the Los Angeles Sheriff's Office (LASO), Sergeant Paul Whiteley and Sergeant Charles Guenther. They were investigating the homicide of 34-year-old music teacher Gary Hinman in Topanga Canyon. Whiteley and Guenther thought the LAPD would be interested in their investigation for several reasons. First, Hinman had been violently stabbed to death, and the words "political piggy" had been written on the wall in his blood. Although the body had been discovered on July 31, the LASO officers believed the victim had been murdered several days earlier. LASO had arrested a young hippie by the name of Robert Beausoleil driving Hinman's car, and a knife was found in the wheel well. Although Beausoleil had been in custody at the time of the Tate murders, it was possible he was not the only one responsible for the Hinman murder. "Beausoleil had been living at Spahn's Ranch, an old movie ranch near the Los Angeles suburb of Chatsworth, with a bunch of other hippies. It was an odd group, their leader, a guy named Charlie, apparently having convinced them that he was Jesus Christ" (Bugliosi and Gentry, 1974, p. 62). However, LAPD Detective Buckles, firmly convinced that the Tate murders had a drug connection, disregarded the information from the LASO detectives.

As part of their investigation into the Hinman murder and a string of car thefts, the LASO raided Spahn Ranch in the middle of August and arrested close to 40 members of the Manson Family. However, problems with the warrant resulted in their release. When another raid in mid-October netted the same individuals in Inyo County at the Barker Ranch, this time for car thefts and arson, LASO officers finally got a break. During the three-day search of the Barker Ranch, Inyo County officers found two girls who were fleeing the Family. One was a young woman, Kitty Lutesinger, who was pregnant with Robert Beausoleil's child. Knowing she was connected to Beausoleil, the LASO officers drove to interview her in Inyo County, where she provided information that connected Susan Atkins and the Manson Family not only to the Hinman murder but also to the Tate murders (Bugliosi and Gentry, 1974, p. 114). Lutesinger also provided the names of other Family associates who had been involved with the Family during the recent months.

Working from information provided in Lutesinger's interview, the LaBianca detectives began looking for a Straight Satan motorcycle gang member. According to Lutesinger, Manson had tried to recruit members of the Straight Satan gang to join the Family to be

personal bodyguards for Manson. Only one had taken the bait, and the rest of the Straight Satan members had not been impressed by the idea. Danny DeCarlo had lived with the Family on and off for several months. DeCarlo was able to link Manson, Beausoleil, Atkins, and several other Family members to the Hinman murder. He also provided information about the supposed murder of a Black Panther Party member named Bernard Crowe, who had been shot by Manson after threatening retaliation against the Family. Manson had shot Crowe, and his friends dumped the body in Griffith Park near the LaBianca residence. Although DeCarlo and Family members were convinced that Manson had killed Crowe, what they did not know was that Crowe had lived. Crowe, who did not even belong to the Black Panther Party, later testified during the guilt phase of Manson's trial.

Once Atkins had been implicated in the Hinman murder through Lutesinger's interview, she was moved to the Sybil Brand Institute where she told fellow inmates about her participation in the Hinman and Tate murders. Atkins provided enough detail to her dormitory mates Virginia Graham and Ronnie Howard to convince them that she was truly involved. As the LAPD was gathering the story behind the Tate-LaBianca murders from DeCarlo, Graham, who had been transferred to another jail, and Howard, were both attempting to tell the authorities what they knew about Atkins's involvement. By the time Howard was able to get her message to the LAPD, they already knew what she wanted to tell them, having learned of the connection between the Family and the Tate-LaBianca killings through Lutesinger and DeCarlo.

The information provided by Atkins and Lutesinger was enough for the police to begin putting together a sketch of the events surrounding the Tate-LaBianca murders. Arrest



Figure 16.1 Susan Atkins, Patricia Krenwinkel, and Leslie van Houten, left to right, are shown en route to court, 1970. The three women, displaying the symbol "X" on their foreheads as followers of the Manson cult family, are on trial for killings that included actress Sharon Tate. © AP Photo.

warrants were issued for Charles Watson, Patricia Krenwinkel, and Linda Kasabian. Manson and Atkins were already in custody. Watson fought extradition from Texas, and although Kasabian waived extradition proceedings and was immediately returned to California from where she surrendered in New Hampshire, Krenwinkel also fought extradition from Alabama (Bugliosi and Gentry, 1974, p. 220). As part of a deal to spare her from a death sentence, Atkins testified before the grand jury. Convinced by her first defense lawyer that it was in her best interest to cooperate, the grand jury indictment was, to a large extent, the direct result of Atkins's testimony. With the combination of information garnered from Lutesinger, DeCarlo, and Atkins's first-person narratives, indictments were returned on Manson, Watson, Krenwinkel, Kasabian, and Atkins on seven counts of first-degree murder and one count of conspiracy. Leslie van Houten was also indicted on two counts of first-degree murder and one count of conspiracy. However, the prosecution suffered a serious setback when, following a meeting with Manson, Atkins recanted her grand jury testimony, fired her lawyer, and refused all further cooperation with the authorities.

Having lost Atkins's cooperation, the prosecution's star witness became Linda Kasabian. Kasabian had professed her desire to testify since the beginning, and she was considered a better witness than Atkins since she had not physically killed anyone, although she had been present at the Tate murders and had driven the car on the evening of the LaBianca murders. In return for her testimony, Kasabian was granted full immunity and was not charged in any of the Manson murders.

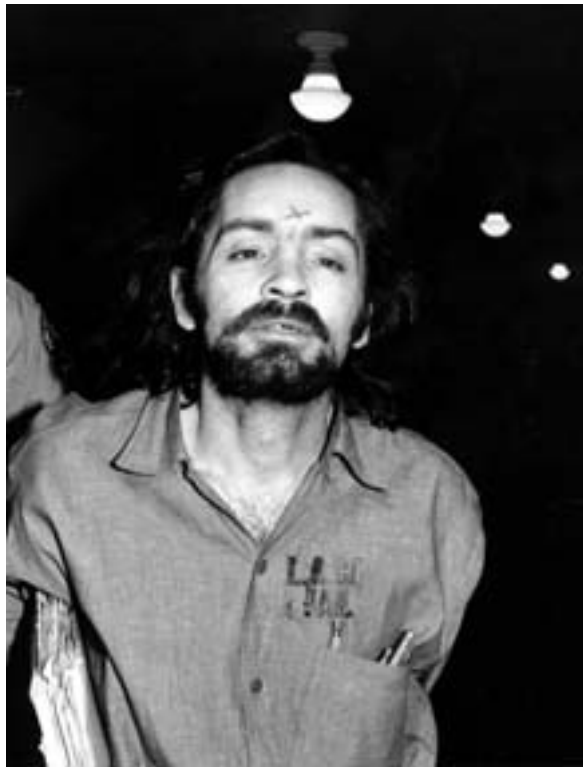


Figure 16.2 Unsuccessful in his attempts to obtain a mistrial, Charles Manson heads for court to listen to further cross-examination of the state's star witness, Linda Kasabian, in his trial for murder in the slayings of actress Sharon Tate and six others, 1970. © AP Photo.

"The Defense Rests"

By the time the Manson trial was over, the jury had been sequestered for almost nine months, and the defense team for Manson, Atkins, Krenwinkel, and van Houten had changed composition numerous times. Throughout the trial, Manson kept demanding that he be allowed to represent himself, and although each time his request was denied, Manson was undoubtedly the driving force behind the defense strategy.

Out of a multitude of lawyers willing and eager to represent him, Manson finally chose Irving Kanarek, "whom he regarded as the most obstructionist and time-consuming lawyer in Los Angeles, in hopes of badgering the judge into allowing him to defend himself" ("Manson's shattered defense," 1970, p. 45). The Manson girls went through a multitude of lawyers during

the trial. Whenever a lawyer would try to separate his client from the rest of the Family, by way of requesting a psychiatric examination or by utilizing a defense tactic not approved by Manson, within days the Family member would request a new lawyer.

After the prosecution rested in the case, the defense immediately rested without attempting to call any witnesses or present any evidence. Their failure to present a case was due to the fact that the lawyers of the three Manson girls had heard that their clients intended to take the stand, to "confess" to the murders, and to absolve Manson of all responsibility. When the girls were given a chance to take the stand out of the presence of the jury, they refused. Only Manson took the stand to "rap" about his philosophies, but he ultimately refused to repeat his testimony in front of the jury.

During the trial, van Houten's lawyer disappeared. Ronald Hughes, who had been one of the first lawyers to visit Manson in jail, had been van Houten's counsel since the start of proceedings. Hughes had the dubious distinction of having never tried a case before being selected as part of the Manson defense. When Hughes failed to show up in court after a weekend break at the beginning of December 1970, new counsel was appointed for van Houten. Hughes's body was found months later in a creek bed near where he was known to go camping. Although the body was too badly decomposed to determine the cause of death, there is significant speculation regarding the nature of Hughes's death and the possibility of the Family's involvement. Because of Hughes's disappearance, van Houten would eventually be granted a retrial.

The Manson case was prosecuted by Vincent Bugliosi of the Los Angeles District Attorney's office. Bugliosi wrote the most comprehensive narrative regarding the Manson murders, *Helter Skelter: The True Story of the Manson Murders* (1974). Although preliminary hearings were done before a separate judge, the trial itself was heard before Judge Charles H. Older. Older, in refusing Manson's repeated requests to represent himself, became Manson's target inside the courtroom on several occasions. The defendants were repeatedly removed from the courtroom for causing disturbances, and, on one occasion, Manson leaped over the defense table toward Older with a pencil in hand, screaming, "In the name of Christian justice, someone should cut your head off!" (Bugliosi and Gentry, 1974, p. 286).

The Final Tally

The Tate murders were committed by Charles Watson, Patricia Krenwinkel, Susan Atkins, and Linda Kasabian on Manson's orders. For the LaBianca murders, Watson and Krenwinkel were accompanied by Leslie van Houten for the actual killings, while Manson participated long enough to tie up the LaBiancas. Also along in the car that night were Atkins, Kasabian, and Steve Grogan. Of the participants, Manson, Krenwinkel, Atkins, and van Houten had a joint trial, which resulted in their convictions on seven counts of first-degree murder and one count of conspiracy to commit murder for Manson, Krenwinkel, and Atkins. van Houten was convicted of one count of conspiracy to commit murder and two counts of first-degree murder in the deaths of Leno and Rosemary LaBianca. During the Manson trial, Watson was fighting extradition from Texas, which, in effect, guaranteed that he would have a separate trial from Manson and the girls. Although his ploy worked and Watson arrived in California too late to be tried with Manson and the girls, he was convicted during a separate trial of seven counts of first-degree murder and one count of conspiracy. Kasabian was granted immunity in return for her testimony at the Manson trial.

Although the Manson Family members were all given death sentences for their 1971 convictions, they have not been executed. Under California law, death sentence cases must be automatically appealed. If no technical errors are found at the end of the appeal process, the conviction and death sentences are allowed to stand. However, in early 1972, the California State Supreme Court ruled that the death penalty was unconstitutional under the state's constitution, which prohibits "cruel and unusual punishment." This ruling, which predated the federal case *Furman v. Georgia* (1972) by only a few months, automatically invalidated the death sentences given to the Manson Family members, and replaced their sentences with life imprisonment with the possibility of parole. Although California has since reinstated the death penalty, it is not a retroactive statute. The Manson Family members remain in prison, even though they have each come up for parole multiple times.

MANSON'S MUSIC AND MOTIVE

One of Manson's goals after leaving prison in 1967 was to produce an album of his songs and guitar music. Believing he could be bigger than the Beatles, Manson used his connections in San Francisco to mingle with people in the movie and music industries. One man he befriended was talent scout Gregg Jakobson, whom Manson met through Dennis Wilson of the Beach Boys. After twice picking up the same two women hitchhiking in the spring of 1968, Dennis Wilson returned home one evening to find the girls, Manson, and other Family members in his house. Wilson was intrigued by Manson for a few months, but eventually severed the relationship. Before he did, however, he introduced Manson to Gregg Jakobson. Jakobson was intrigued by Manson's Family but not enough to join. In an effort to promote what he saw as Manson's musical talent, Jakobson introduced Manson to Terry Melcher who was in the music production business. At the time, Melcher was living at 10050 Cielo Drive, the house that would eventually gain infamy as the site of the Tate murders.

Although Jakobson encouraged Melcher to record Manson's songs, Melcher was not interested. It was discovered during the pretrial investigation that during Manson's time with Dennis Wilson, Manson had actually gone with Wilson to drop Melcher at his house on at least one occasion. This was particularly important information because it showed that Manson had previously been to the scene of the Tate murders. Melcher, unimpressed, had this to say about Manson's music:

> There were forty or fifty of them;. . . they were everywhere, mostly young women, and they all seemed to be part of the same group, they all sang together with Charlie Manson. He played a guitar, and it seems to me some of the girls were playing tambourines. . . .The type of music they were doing and the whole setting itself was rather peculiar to the pop music business, to say the least. (Gilmore and Kenner, 2000, p. 78)

Melcher decided not to pursue things, and Manson's music career never got off the ground. Manson's obsession with music did not fade, however. Throughout the course of the trial, numerous witnesses would testify to Manson's obsession with the Beatles and his peculiar interpretation of the Bible chapter Revelation 9. To Manson, the release of the 1968 *White Album* by the Beatles was proof that Manson and the Beatles were connected. Reinterpreting the lyrics of songs, Manson felt that the Beatles were calling to him

MANSON FAMILY PAROLE HEARINGS

If their current history of parole denials is any indication of future events, the Manson Family members currently behind bars will most likely never see the outside of a prison again. Charles Manson was denied parole for the 10th time in 2002; Leslie van Houten was denied parole in 2006 for the 16th time; Susan Atkins was denied parole in 2005 for the 11th time; Patricia Krenwinkel was denied parole in 2004 for the 11th time. Bruce Davis, who was convicted of Gary Hinman's murder, is awaiting the results of his 23rd parole hearing at the present time. Although Manson Family member Lynette Fromme did not participate in the Tate-LaBianca murders, she did attempt to assassinate President Gerald Ford in 1975. Sentenced to life in prison, Fromme had her first parole hearing in July 2005, but is still serving time in a federal penitentiary in Fort Worth, Texas.

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across the Atlantic Ocean, telling him to get ready for the revolution. Manson's reply was to be in the form of an album: the album that Terry Melcher would not produce.

Chapter 9 from the book of Revelation was an integral part of Manson's interpretation of the Beatles' *White Album* and their call to him.

> Then the fifth angel blew his trumpet, and I saw a star that had fallen from the sky to the earth. It was given the key for the passage to the abyss. It opened the passage to the abyss, and smoke came up out of the passage like smoke from a huge furnace. The sun and the air were darkened by the smoke from the passage. Locusts came out of the smoke onto the land, and they were given the same power as scorpions of the earth. They were told not to harm the grass of the earth or any plant or any tree, but only those people who did not have the seal of God on their foreheads. (*The New American Bible*, 1987, 9:1–4)

In Manson's interpretation, the locusts were ''beetles,'' and the abyss was a hole in the desert where Manson would lead his Family when the war came upon them. The passage continues on to describe the locusts, which were said to have ''chests like iron breastplates,'' which Manson took to be the Beatles' guitars. According to various witnesses,

Manson believed that he was the fifth member of the Beatles and that they were calling to him through the *White Album* to tell him to make ready for the war that was coming.

In a twisted explanation of the Beatles' music, Manson believed that the *White Album* foretold the coming of a race war. Whereas the police initially believed the Tate murders to be drug related, the motive presented at trial was completely different. The Manson trial motive was one of "Helter Skelter." Not only were the words "Helter Skelter" found written on a door at the Spahn Ranch, they were also written and misspelled as "Healter Skelter" in Leno LaBianca's blood on the wall of the LaBianca home.

> Among the circumstances implicating Manson in the Tate-LaBianca murders are his frequently proclaimed prophesies of Helter Skelter. Predicting a war started by blacks "ripping off" white families in their homes, Manson stated that "Blackie" (the blacks) would revolt against and kill the "Pigs" (the white establishment). From 1968 through the summer of 1969 Manson told various people about Helter Skelter. . . . He said Helter Skelter "was coming down fast" and that he "would like to show the Blacks how to do it." (*People v. Manson,* 1976)

Believing that blacks were taking too long in starting the race war, Manson believed that he could initiate the war that he thought was coming. Manson spoke of a cave beneath Death Valley, to which only he knew the entrance. There, the Manson Family would hide while "Helter Skelter" came down. The following excerpt from the trial testimony of former Family member Paul Watkins describes Manson's ideas:

> As we are making the music and it is drawing all the young love to the desert, the Family increases in ranks, and at the same time this sets off Helter Skelter. So then the Family finds the hole in the meantime and gets down in the hole and lives there until the whole thing comes down. (Testimony of Paul Watkins, 2003)

To facilitate the start of these race wars, after Manson tied up the LaBiancas and took Rosemary LaBianca's wallet, he had Kasabian hide the wallet in a bathroom at a gas station in a black neighborhood. Manson had hoped that a black person would find the wallet, use the credit cards, and thus the murders would be pinned on the black community. Unfortunately for Manson, when Kasabian hid the wallet in the bathroom on the evening of August 10, 1969, it went unnoticed and undiscovered for months until being recovered on December 10, 1969, by an attendant cleaning the toilet. However, the particular gas station where the wallet was hidden was not even in a black neighborhood, as pointed out by one of the defense attorneys at the trial. Yet, the prosecution was able to prove that the gas station was in the vicinity of Pacoima, which is a black ghetto in the San Fernando Valley (Bugliosi and Gentry, 1974, p. 494).

Although other motives have been offered, "Helter Skelter" was the motive used in court to prove the link between Manson, his Family, and the murders. Prosecutor Bugliosi's cocounsel at the beginning of the trial, Aaron Stovitz, encouraged the use of another motive during the trial, before he was pulled off the case due to time constraints. In Stovitz's opinion, "Manson ordered the killings to convince police the Hinman's murderer was still loose on the streets and that it was not Beausoleil. That's why it was important for Susan Atkins to write 'pig' in blood at the Tate home" (Keys, 1976, p. A14). At the Hinman murder scene, "political piggy" had been written on the wall. The connection had to be clearly visible if the police were to realize that the killer was still on the loose.

LAPD did tie the Hinman murder to the Tate-LaBianca murders but not in a manner that exonerated Beausoleil.

MEDIA COVERAGE OF THE MURDERS AND TRIAL

The Tate-LaBianca murders sparked immediate and intense media coverage. From the discovery of the bodies through the end of the trial, the media played a large part in what has since become known as one of the most convoluted and mystifying trials in American history. On August 10, 1969, the *Los Angeles Times* headlines read, "'Ritualistic Slayings' Sharon Tate, Four Others Murdered"; and the *New York Times* headlines read, "Actress Is Among 5 Slain at Home in Beverly Hills." The following day, as Tate's husband Polanski returned to the United States from London, new headlines reported the discovery of the LaBiancas. The *Los Angeles Times* connected the Tate and LaBianca murders at a time when even the LAPD was disavowing any connection with "2 Ritual Slayings Follow Killing of 5," "New Murders in Silverlake; Fresh Tate Clue."

Throughout the investigation, the media, with even less evidence than the police, misrepresented details of the crime and reported satanic overtones. The towel used to write "Pig" on the door at the Tate residence, when thrown back into the living room by Atkins, landed on Sebring's head. The towel became a "hood" in the media, leading *Newsweek* magazine to report dealings with black magic and voodoo. Speculation by friends indicated "that the murders resulted from a ritual mock execution that got out of hand in the glare of hallucinogens" ("Crime: The Tate Set," 1969). In the LaBianca case, the *Los Angeles Times* stated that "XXX" had also been carved into Leno's skin, when in reality only the word "WAR" was found (Torgerson and Thackrey, Jr., 1969). However, because of the amount of evidence released to the media, the police had difficulty retaining even a minimum of information to use during polygraph examinations. Eventually the police were forbidden to discuss the cases outside of work.

Whereas Sharon Tate had achieved only minor stardom during her lifetime, she was critically acclaimed in death. Studios rereleased some of her earlier movies, including *Valley of the Dolls* (1967) and *The Fearless Vampire Killers* (1967). The Hollywood jet set worried about the murders due to the proximity and the identity of the victims. The presence of drugs at the scene led to mass disposal of paraphernalia throughout the area. Quoted in *Life,* a film figure stated, "Toilets are flushing all over Beverly Hills; the entire Los Angeles sewer system is stoned" (Bugliosi and Gentry, 1974, p. 45).

As time went on and the trial began, the media coverage picked up again. The media played off of the American public's view of the trial and the defendants. Three young women and an older man were on trial for these brutal murders. As the information behind the identities of the defendants grew, the public recoiled at the truth: drugs, sex, violence, and the mind control of an older charismatic ex-convict. Articles were written about a band of hippies, known as the "Manson Family," living in Death Valley. Police were first told about the Family's possible connection to the Tate-LaBianca murders while interviewing a Family member involved in yet another murder case from Topanga Canyon, California.

Once all of the suspects were in custody, the state began building its case. Jury selection began on June 15, 1970, approximately ten months after the murders. Immediately sequestered following selection, the jury members were allowed only limited access to media sources in an attempt to guarantee the Manson Family members a fair and

impartial trial. Jury members were allowed to read newspapers only after all articles and headlines pertaining to the Manson Family and the trial had been removed. When the trial finally began, the defendant's antics in the courtroom, as well as the actions of the Family members holding their vigil outside the court building, attracted continuous media attention. After Manson's lawyer initially requested and was denied a change of venue for the trial, the judge issued a ''gag order'' to limit the amount of press that would be associated with the trial. With the gag order in place, no one associated with the trial was allowed to discuss it. This occurred too late to stop the publication of Susan Atkins's tell-all ''confession'' interview. First a newspaper exclusive and eventually a book, the deal went through the evening before the ''gag order'' was issued (Bugliosi and Gentry, 1974, p. 262). For the general population, however, all they had to do was turn on the television or the radio to hear about the trial.

With the publication of Atkins's story, the media actually made a significant contribution to the prosecution's case. Atkins provided details about leaving the scene of the Tate murders after which the murderers changed clothes in the car and then stopped and tossed the bloody clothing over the side of a canyon road. Using the Atkins's story as a guide, a Los Angeles television crew from KABC-TV retraced the killers' route. ''They found three sets of clothing: one pair of black trousers, two pairs of blue denim pants, two black T-shirts, one dark velour turtleneck, and one white T-shirt which was spotted with some substance that looked like dried blood'' (Bugliosi and Gentry, 1974, p. 267). The clothing would later be identified as having come out of the Family's communal clothing pile in Manson's bus.

Even President Richard Nixon commented on the Manson trial. Standing in the federal building in Denver, Colorado, and complaining that the press had made Manson a glamorous hero, Nixon said, ''Here was a man who was guilty, directly or indirectly, of eight murders without reason'' (''Justice: A bad week,'' 1970, p. 7). Although he immediately issued a retraction, the damage was done. Newspaper headlines claiming, ''Manson

CHARLES MANSON IN PRISON

Charles Manson is one of the most frequently communicated with prisoners in the entire Federal Bureau of Prisons. His past communiqués have not only helped university professors lead classes, but have also landed him interviews with CNN, BBC, and NBC's *Today Show* (Bugliosi, 1994, p. 651). Manson's current address is listed here (verified with Corcoran Prison's Mailroom, in November 2006):

Charles Manson
B – 33920
4A 4R-52L
PO Box 3476
Corcoran, CA 93212-3476

SOURCE

Charles Manson offers his help in teaching political science course. (1999, March 16). *Kansas News.* Retrieved February 25, 2004, from http://cjonline.com/stories/030299/kan_manson.shtml

Guilty, Nixon Declares,'' appeared across the country. Manson himself managed to gain access to a newspaper in the courtroom and displayed it to the jury before a bailiff pulled it away. The motion for a mistrial was denied, and the trial continued.

Outside the courthouse, the circus continued. Clustered on the street corner outside the courthouse were some of the Manson Family girls. Following the lead of the defendants inside, they carved Xs into their foreheads, and shaved their heads, yet again demonstrating the hold of Manson over his Family. The girls even vowed to set themselves on fire if Manson was sentenced to death (''Jury votes death,'' 1971).

MANSON IN THE MEDIA TODAY

More than 30 years have passed since the Tate-LaBianca murders and the sentencing of their killers. But Manson and the Family have stayed in the headlines. An Internet search will yield millions of Web sites listing Manson, his music, and the Family. Manson admirers can order T-shirts with his face on them, join his fan club, and even correspond with him. Incarcerated in California's Corcoran Prison, Manson still receives a great deal of fan mail from people wanting to join the Family. In 1999, Manson was contacted by Kansas political science professor Robert Beattie to help in his Newman University class. Manson provided Beattie with a 45 minute interview that the students used to hold a mock trial (''Charles Manson offers,'' 1999).

Numerous tell-all books by the defendants, other Family members, jurors, and the prosecutor, Vincent Bugliosi, have set out varying renditions of the motives, the facts, and the teachings of Manson. A CBS television movie *Helter Skelter,* which was initially released in 1976 and starred Steve Railsback as Charles Manson, has been authorized for a remake. ''CBS's first adaptation of *Helter Skelter* was the highest-rated telecast of the 1975–1976 television season'' (de Moraes, 2003). The 2004 version stars Jeremy Davies as Manson, and is described by the executive producer as focusing ''on who Manson is, why he did what he did, and how he got people to kill for him'' (Andreeva, 2003). Manson's music, drawings, and writings are also highly sought after. Music groups, including Guns 'N' Roses and the Beach Boys, have recorded Manson's lyrics. The group Nine Inch Nails purchased the infamous Tate mansion and turned it into a recording studio called ''Le Pig.'' Marilyn Manson recorded parts of the album *Portrait of an American Family* (1994) at the Nine Inch Nails's studio.

Though he dislikes being labeled a ''hippie,'' Manson's image throughout the trial was exactly that. During the age of American free love, the notions of peace, flower power, and a flourishing drug culture were permanently warped by the actions of Manson's Family. Particularly disturbing to the American psyche was the realization that one charismatic individual could warp the minds of average middle-class youth, and murder without guilt became possible. The strength of the American collective revulsion is evenly balanced by the allure of what Manson preached against and by the twisted meaning that free love came to embody. The Tate-LaBianca murders instilled fear into the establishment. Yet, the fear that remains etched on the American consciousness even today is not so much a result of the murders themselves, but rather revulsion at the nature of Charles Manson and the seemingly carefree manner in which the Manson Family murdered.

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17

The Ageless Anguish of Kent State

KATHY WARNES

One of the tragic legacies of the May 4, 1970, events at Kent State University is that the acrimonious debate and painful perspectives are still as fresh and real as if the confrontation had happened yesterday instead of nearly four decades ago. Historians, writers, and people from all walks of life discuss Kent State in different languages. Some history textbooks call the Kent State incident ''the Kent State riot,'' while others, especially the survivors and their families, consider it ''murder.'' Some Kent, Ohio, natives still feel that the students ''got what they deserved,'' while others, like Dean Kahler who was wounded and paralyzed for life at Kent State, struggle daily with its impact. Elaine Holstein, the mother of Jeffrey Miller, one of the students killed, notes that she thinks about her son and Kent State daily and that the tragedy transformed her into a different person (Kelner and Munves, 1980, p. 26) People, both privately and publicly, have dispensed blame across a wide spectrum including the administration of Kent State University at the time, the Kent State professors, the Nixon Administration, Kent townspeople, parents, and the victims themselves. The Kent State confrontation between Americans can be considered one of the unhealed wounds of the Vietnam War era. Perhaps the fact that the events at Kent State are still being hotly debated is a positive indicator that free speech still exists in America in the midst of another controversial, divisive war.

The facts of the Kent State tragedy are that on Monday, May 4, 1970, Ohio National Guardsmen fired a 13 second fusillade of at least 67 shots into a crowd of Kent State University demonstrators, killing four and wounding nine Kent State students.

The circumstances leading up to the clash between the Ohio National Guardsmen and the students, many of them of the same generation, are reflections of the bitterness and divisiveness that the Vietnam War and the cultural conflicts of the 1960s had caused in America. American involvement in the Vietnam War continually escalated during the 1960s and in late April 1970, President Richard M. Nixon expanded the war by launching the invasion of Cambodia. He announced his decision on national television and radio on April 30, 1970, and stated that the invasion of Cambodia would enable the United States to attack Viet Cong headquarters, which used Cambodian territory as a sanctuary. College



Figure 17.1 A Kent State University student lies on the ground after National Guardsmen fired into a crowd of demonstrators in Ohio, 1970. © AP Photo.

students across the country angrily protested these actions, while many of their parents, many of the World War II generation that had sacrificed much, were torn between honest questioning and dismay at the behavior of the younger generation, which they felt was unpatriotic and did not know the meaning of sacrifice.

Kent State University students were among those who had strong feelings about the Vietnam War. The events leading up to the Kent State tragedy began on *Friday, May 1, 1970,* when students met to organize a protest demonstration against the Nixon Administration's invasion of Cambodia. They buried a copy of the American Constitution to emphasize that they felt that it had been ''murdered,'' and called a second meeting for Monday, May 4, 1970, at noon. May had brought warm weather to Kent, and student indignation over the invasion of Cambodia rose with the temperatures. On Friday evening, drinking and excited debates produced a crowd that moved toward the center of Kent. Students broke some windows, and police were called and scattered the crowd at the intersection of Main and Water Streets. Leroy Satrom, the mayor of Kent, appraised the situation and, spurred on by rumors of a radical plot, declared a state of emergency and called Ohio Governor James Rhodes for help. The governor sent out a National Guard officer, and local authorities immediately closed the bars. Police in riot gear herded



Figure 17.2 Ohio National Guardsmen throw tear gas at students during an anti–Vietnam War demonstration at Kent State University, 1970. The Guard killed four students and wounded nine. © AP Photo.

the hundreds of people in the streets toward campus with tear gas. By 2:30 a.m., a deceptive peace settled over the town of Kent, Ohio.

The next day, *Saturday, May 2, 1970,* Kent students came back to help with the downtown cleanup. Kent merchants received them nervously because they had heard widespread rumors of radical activities and threats to their businesses. University officials increased tensions by securing a court injunction prohibiting the students from damaging buildings on campus. The Office of Student Affairs publicized the injunction by distributing leaflets. The National Guard entered the campus for the first time and set up camp directly on the university grounds.

Shortly after 8:00 that Saturday evening, 1,000 or more people surrounded the barracks that housed the Army Reserve Officer Training Corps on campus. A few people set the building on fire. Firemen tried to extinguish the blaze, but had to give up after someone punctured and cut open the fire hoses. Mayor Satrom requested Governor Rhodes to send the Ohio National Guard to Kent, because he feared that local forces were inadequate to stop disturbances. The Ohio National Guard, already on duty in Northeast Ohio, mobilized quickly and arrived in Kent about 10:00 p.m. Confrontations between Guardsmen and demonstrators, tear gas, and arrests punctured the night. The Guardsmen cleared the campus, herding students and nonstudents alike into dormitories. Many of them spent the night there.

KENT STATE AND KENT CITY

Kent State University had been founded as a normal school (a school that trains teachers) in 1910, and by the 1950s enrollment stood at 5,500 students. By 1970 it had grown to 21,000, and the population of the adjacent city of Kent kept the pace by expanding from a population of 4,500 in 1910 to 27,600 by 1970.

Even though Kent State and the city of Kent grew together, the university had not gained national renown. It attracted about 85 percent of its students from Ohio, and the typical Kent State student lived within driving distance of the University. For the most part, Kent State students were the sons and daughters of middle class people who had worked hard to give their children the college education that they never had experienced themselves.

As both the city and the college grew, their relationship changed. Once the university and municipal community had enjoyed mutual respect and admiration for each other, but time and a changing political climate in America turned the relationship suspicious and adversarial. Once Kent citizens had rented rooms and apartments to Kent State students, but eventually high rise dormitories replaced the housing provided by Kent residents. Families who lived in Kent were economically dependent on the industries located in the Kent-Akron area, and Kent residents expected students to fit in with the local economical and cultural expectations. Many of them did, but some students became radicalized and involved in the Students for a Democratic Society (SDS) and student antiwar demonstrations. Many Kent citizens believed that all students were radicals, refused to listen to their parents, dressed like ''hippies,'' and did not appreciate America or the educational opportunities they were enjoying.

The makeup of the average college student had changed at Kent State and throughout the country. The evidence indicates that radical students did not make up a majority of the student population at Kent State. During the 1950s, panty raids had been the most radical events on campus along with the traditional mud fights that accompanied the yearly coming of spring.

The political and social upheavals of the 1960s brought unrest to the campus but did not radicalize it. In the fall of 1968, the SDS held its initial meeting at Kent State and both Bernadine Dohrn, the national SDS interorganizational secretary, and Mark Rudd, Columbia University SDS chairman, visited the campus. When Rudd concluded his speech in the University Auditorium, only 20 people applauded him. Even at the height of its popularity, the SDS membership figures totaled only one percent of the student body and many Kent State students opposed the organization and its goals.

In November 1968, the SDS again appeared on the campus calendar. The SDS and the Black United Students (BUS) sponsored a sit-in to protest the Oakland, California, Police Department's ''vendetta'' against the Black Panther party and what they saw as university administration oppressing radical groups and disrupting the recruiting of possible candidates by the Oakland Department. The Kent State administration threatened to bring charges of disorderly conduct against the sit-in participants. Six hundred Black students walked off the campus to protest the university action, and the administration admitted that it did not have enough evidence to press charges. The SDS interpreted the university admission as a weakening of its power and a student victory, but the BUS leaders dissolved their pact with SDS, because they saw the SDS

leadership as being caught up in a fantasy revolution with victory and publicity attaining equal status.

In the spring of 1969, the Students for a Democratic Society again confronted the Kent State administration. Approximately 250 SDS members presented a list of their demands, including the abolition of the campus ROTC, and attempted to introduce the list at a meeting of the Kent State University's Board of Trustees held on campus in April.

The university police and a large crowd of about 700 anti-SDS students met the SDS members, and the two groups battled each other. The university suspended two SDS leaders and revoked the SDS charter as an official campus organization.

In April 1969, the university administration held a suspension hearing for an SDS member charged for his involvement in the clash between the SDS and the non-SDS students. SDS leaders slipped into the Music and Speech building during the hearing, and hundreds of anti-SDS students and university police confronted them in a demonstration. Eventually, the university called the Ohio State Patrol and 58 people were arrested and two SDS leaders were charged with inciting to riot and assault and battery.

Students revealed conflicting opinions in a referendum about the Music and Speech building demonstration. By nearly two to one margins, the students favored the suspensions, did not favor reinstating the SDS charter, but voted against the university bringing criminal charges against the people involved. Obviously, Kent State students did not support the SDS and its actions, and equally revealing was the fact that fewer than half of the student body cast ballots in the referendum. Even at the height of its popularity, the SDS membership figures totaled only one percent of the student body.

By the fall of 1969, Kent State University administrators were still on edge about the possibilities of further violence on campus, but the student body remained calm. Many Kent State students took part in the National Moratorium Day against the war in Vietnam, while others focused their attention away from politics and to the World Series and its outcome. Another ''radical'' sector of students had sponsored a ''No Bra Day.''

Relative calm still prevailed on campus for the spring quarter of 1970. Students did not turn out in droves for Earth Day, and fewer than one percent of the student body participated in an antiwar march. In April, Jerry Rubin, associated with the radical movement, visited Kent State and drew a crowd of about 1,000 students. The most controversial statements that Rubin made included a part where he advised students to buy guns and kill their parents. This frightened many citizens of Kent, but according to the editor of the campus newspaper, *The Kent Stater,* most of the students did not take Rubin seriously. Later in the month, nearly 300 Kent State students participated in the annual mud fight.

A survey taken in the spring of 1970 revealed these Kent State student body opinions:

78% favored retaining ROTC

63% opposed President Nixon's Cambodia decision

47% favored immediate and complete withdrawal from Vietnam

54% supported increased Vietnamization and gradual withdrawal

(The Ohio Council for Social Studies Review, 1998)

These statistics indicate that Kent State did not have a radical student body advocating total revolution against the government in 1970. Many students believed in working within the system to bring about change, and some were more concerned about a poor grade than the events in Southeast Asia. Other Kent State students were becoming increasingly dissatisfied with social and political conditions in America. Some students vigorously opposed the Vietnam War and others considered the citizens of Kent as part of the ''silent majority'' that Richard Nixon touted.

Then on April 30, 1970, in a televised address, President Richard Nixon told Americans of his decision to send American troops into Cambodia. On May 4, 1970, Ohio National Guard Troops fired into a crowd of students on the campus of Kent State University.

By *Sunday, May 3, 1970,* the Ohio National Guard, nearly 1,000 strong, occupied the campus of Kent State University and the town of Kent. Meetings between various factions produced conflicting perceptions and misunderstandings between state, local, and university officials. Governor Rhodes held a press conference that day, and his remarks underscored the ''get tough'' policy against demonstrators that the Federal Government sometimes expressed. He said that dissident groups using violence were going to be countered with:

> every part of the law enforcement agency of Ohio to drive them out of Kent. We are going to eradicate the problem. We're not going to treat the symptoms. And these people just move from one campus to the other and terrorize the community. They're worse than the Brown Shirts in the communist element and also the Night Riders and the vigilantes. They're the worst type of people that we harbor in America. . . .And I want to say that they're not going to take over a campus. (Gordon, 1990, p. 53)

Governor Rhodes vowed that he would keep the National Guard at Kent State University until he got rid of the dissenters. He implied that he would seek a court order declaring a state of emergency, something unprecedented. Both National Guard and university officials assumed that he was, in effect, declaring a state of martial law, which meant that the Guard controlled the campus instead of university leaders.

Curiosity seekers swelling the ranks of the crowd added to the confusion. As dusk fell, a crowd gathered on the Commons, a large, grassy area in the middle of campus, at the Victory Bell, which in calmer times was rung after winning games. The crowd would not disperse and at 9:00 p.m., the Ohio Riot Act[1] was read and tear gas fired.

The crowd scattered and demonstrators reassembled at the intersection of East Main and Lincoln Streets in Kent, blocking traffic. They anticipated that officials would appear and address their concerns, but no one came. This caused the crowd to turn hostile, and at 11:00 p.m. the Riot Act was read again and more tear gas fired. In the melee, both Guardsmen and demonstrators were injured, and on both sides there was bitter resentment.

Classes resumed on the Kent State Campus on *Monday, May 4, 1970,* but demonstrators were determined to hold the rally at noon, even if they were forbidden to do so. For its part, the National Guard vowed to disperse any illegal assembly. Throughout that

May morning, people continued to gather, and by noon, 2,000 people filled the commons and vicinity. Many of them knew that they were not supposed to be there. Others, especially the commuters, did not know about the ban on gathering. The National Guard ordered the crowd to disperse. Some of the crowd chanted, cursed, and threw rocks in answer. Shortly after noon, the Guard fired tear gas canisters, but the wind blew strongly so the gas had little effect. Next, the approximately 70 National Guardsmen moved forward with fixed bayonets, forcing the demonstrators to retreat. The Guard reached the crest of the hill by Taylor Hall, and forced the demonstrators over to a nearby athletic practice field, which was fenced in on three sides. The crowd had not scattered and the Guardsmen and the demonstrators traded more rocks, tear gas, and taunts. Witnesses reported that they saw the National Guardsmen go into a ''huddle'' on the practice football field.

Then the Guardsmen turned and retracted their steps, some demonstrators following as close as 20 yards but most between 60 and 75 yards behind the Guardsmen. Suddenly, the Guardsmen turned near the crest of Blanket Hill. In 13 seconds, 28 of the Guardsmen fired between 61 and 67 shots toward the parking lot.

Ironically, the scene resembled a Civil War battlefield. Four people were dying and nine were wounded. Jeffrey Miller, Allison Krause, William Schroeder, and Sandra Scheuer were killed. Jeffrey Miller was shot in the mouth while he stood in an access road leading into the Prentice Hall parking lot, approximately 270 feet from the Guardsmen. Allison Krause, shot in the left side of her body, stood in the Prentice Hall parking lot about 330 feet from the Guardsmen. William Schroeder stood about 390 feet from the Guardsmen in the Prentice Hall parking lot when a bullet struck him in the left side of his back. Sandra Scheuer stood about 390 feet from the Guardsmen in the Prentice Hall parking lot when a bullet pierced the left front side of her neck. Joseph Lewis, John Cleary, Thomas Grace, Alan Canfora, Dean Kahler, Douglas Wrentmore, James Russell, Robert Stamps, and Donald MacKenzie were wounded. All 13 were Kent State University students.

Among the demonstrators, stunned disbelief, fear, and fumbling attempts at first aid turned to flaming anger. Quickly, a group of 200 to 300 demonstrators gathered on a nearby slope. The National Guard ordered them to move. The situation teetered on the brink of additional carnage, but Kent State faculty members convinced the group to disperse. The Guardsmen, many who later said that they shot because they were fearful for their lives, were indeed in danger at this point in the confrontation. Many demonstrators in the large and intensely angry crowd were willing to risk their lives if the nervous and terrified Guardsmen again opened fire.

When the demonstrations had flared up days earlier, a group of Kent State University faculty had appointed marshals to monitor the situation. Professor Glenn Frank led other faculty members in imploring the National Guard leaders to allow them to talk to the demonstrators. The Kent State faculty begged the students not to risk their lives in another confrontation with the Guardsmen. After pleading with the students for about 20 minutes, the faculty marshals convinced them to leave the Commons.

A Kent State University ambulance rolled slowly through the campus announcing over the public address system that ''By order of President White, the University is closed. Students should pack their things and leave the campus as quickly as possible'' (Taylor et al., 1971, p. 10). Later that afternoon, the county prosecutor, Ronald Kane, secured an injunction from Common Pleas Judge Albert Caris that closed Kent State University. The Kent State campus stayed closed for six weeks. Classes did not resume until the summer of

1970, but faculty members worked through mail and off campus meetings to enable Kent State students to finish the semester.

RESPONSES TO THE SHOOTINGS

Combined with the nationwide student anger about the Vietnam War and general student unrest and rebellion against what many considered oppressive authority, the shootings ignited protests on college campuses across the United States, and many colleges closed because of violent and nonviolent demonstrations. Five days after the shootings, 100,000 people demonstrated against the Vietnam War in Washington, DC.

Commissions were created immediately after the killings. Kent State President Robert White created the first commission, which he titled ''Commission on KSU Violence.'' The FBI made an 8,000 page long report on the shootings. The Ohio Bureau of Criminal Investigation made a report. The Knight newspaper chain made a 30,000 word report on the Kent State shootings. The most cited report is the Report of the President's Commission on Campus Unrest, which contains an investigation into what happened at Kent State, a report on the killings of two black students two weeks later at Jackson State College, and a report on campus unrest in general.

The President's Commission on Campus Unrest and the 1970 FBI report underscored and perpetuated the controversy surrounding the shootings at Kent State. The FBI report contains some troubling statements, including the assertion that some Guardsmen had to be physically restrained from continuing to fire their weapons, and that of the 13 students shot, none, ''so far as we know, were associated with either the disruption in Kent on May 1, 1970, or the burning of the ROTC building on Saturday, May 2, 1970.'' Among the conclusions and statements of the Scranton Commission was the opinion that ''the indiscriminate firing of rifles into a crowd of students and the deaths that followed were unnecessary, unwarranted, and inexcusable'' (The Report of the President's Commission on Campus Unrest, 1970). Most of the reports concluded that the students were disorderly and destructive, but the Ohio National Guardsmen had no rationale to fire upon the students (Hensley, 1981, p. 24)

There are conspiracy theories about Kent State, and there are some indications that the Nixon White House could have been involved to some extent. A government memo dated October 9, 1973, reveals that ''undercover federal narcotics agents were present on the Kent State Campus on May 4, 1970. The government's infamous Counter Intelligence Program (COINTELPRO), created within the Federal Bureau of Investigation (FBI) with the purpose of investigating, disrupting, and ultimately crushing antiwar dissent, flourished on May 4. During 1956–1971 the COINTELPRO operations targeted contemporary organizations that the FBI considered to be politically radical such as the Weathermen, the Black Panthers, Ku Klux Klan, American Nazi Party, and even Dr. Martin Luther King, Jr.'s Southern Christian Leadership Conference.

The legal aftermath of the Kent State shootings dragged on through the decade of the 1970s. The legal questions that the court cases addressed focused on the Guardsmen and their answer to the fundamental question: Why did they fire into a crowd of unarmed students? They did so, the Guardsmen said, because they feared for their lives. They felt that the demonstrators were threatening enough to justify firing their weapons in self-defense. If, on the other hand, the demonstrators did not present an immediate threat to the safety of the Guardsmen, the shootings were not justified. Federal, criminal, and civil trials

KEY INDIVIDUALS

The Casualties

The Dead

William Knox Schroeder and Sandra Scheuer were not protesting the Vietnam War on the day they were killed. Instead, they were trying to get to class despite the demonstrators protesting the War on their campus at Kent State University...

Ironically, William Knox Schroeder had won an ROTC scholarship to attend Kent State University, and had avoided all demonstrations and campus unrest. Most accounts say that he was walking away from the demonstrations when a bullet hit him in the back of the head, killing him.

Born on July 20, 1950, William Schroeder was raised in Lorain, Ohio. He applied for and received the Army Reserve Officer Training Corps Scholarship at age 17. A psychology major at Kent State, Schroeder also received the Academic Achievement award from the Colorado School of Mines and from Kent State. He earned the Association of the United States Army award for excellence in history.

William Schroeder's college roommate, Lou Cusella, is now a communications professor at the University of Dayton. Although Lou is a year older, he and Bill Schroeder grew up a block apart in Lorain, Ohio, and were good friends. He went to the morgue to identify his friend and remembered feeling sick at the sight of the orange corduroy bell-bottoms that Bill had bought during a shopping trip the two young men had taken together. ''He was shot with a textbook in his hand. Along with being a great personal tragedy, it was a great national tragedy,'' Lou said.

Sandra Scheuer, was born August 11, 1949. She was an honors student in speech therapy and did not take part in any of the demonstrations, but had been walking to her class, 400 feet away from the Guardsmen. Her mother, Sarah Scheuer, said, ''My daughter was a special person who was not involved in any of the demonstrations, yet in the press she was called a communist. We left Germany to guarantee that our daughters could live in a country with freedom'' (Taylor et al., 1971, p. 11).

Mary Vecchio, a Florida runaway, saw a girl being carried into the yard at Prentice Hall, and she ran over with a rag thinking she could help. She realized that the girl was her friend Sandy. ''She was so blue and gray. She had been shot in the jugular vein, and I didn't even recognize her'' (Taylor et al., 1971, p. 12).

Allison Krause and Jeffrey Miller were more politically active and participated in some of the campus protests. Jeffrey Miller, a 20-year-old junior at Kent State, had graduated from Plainview High School in Long Island, New York, and entered Kent State as a psychology major. Again, Mary Vecchio, the runaway who should not have been at Kent State, but was there making friends, appeared in the center of the action. This time she knelt over the body of Jeffery Miller on the tarmac of the Prentice Hall parking lot, screaming. She told people that she was calling for help because she did not think she could do anything for Jeff Miller. John Filo, a Kent State photography major, stood near the Prentice Hall parking lot when the Guard fired. He saw the bullets hitting the ground, but did not take cover because he thought they were blanks. He stayed to take the picture of Mary Vecchio screaming over the body of Jeff Miller, he submitted it to a local newspaper, and the photograph took on a life of its own. It appeared in newspapers and magazines all over the country and eventually won John Filo the Pulitzer Prize.

The father of Jeffrey Miller said a few days after his son was killed, ''This was not a violent kid. He was brilliant. He loved music. Why the devil did the guys have to have bullets in their guns, right in the chamber? It was one set of kids against another'' (*New York Times,* May 7, 1970, p. 19).

Allison Beth Krause and her boyfriend Barry Levine also participated in the demonstrations. Allison said to him, ''Barry, I'm hit.'' Levine said that he couldn't believe that she really had been hit. He stroked her cheek and saw a smudge of blood on her cheek. ''And it had come from my hand, which was underneath her. I realized at that point she had been shot in the back and she was bleeding. And as it turns out, she was dying'' (Taylor et al., 1971, p. 10).

The Wounded

Nine students were wounded in the Kent State shootings. Alan Canfora, age 21, from Barberton, Ohio, was shot in the wrist. John Cleary, age 19, from Scotia, New York, was hit in the upper left chest, and Thomas Mark Grace, age 20, from Syracuse, New York, was wounded in the left ankle. Dean Kahler, age 20, from Canton, Ohio, was shot in the spine and paralyzed for life. Joseph Lewis from Massillon, Ohio, was standing still with his middle finger extended at the Guard when bullets hit him in the right abdomen and left lower leg. Donald MacKenzie, from Summit Station, Pennsylvania, was hit in the neck, and James Dennis Russell, of Teaneck, New York, was struck in the right thigh and the right forehead. Robert Stamps, 19, from South Euclid, Ohio, was wounded in the right buttock, and Douglas Wrentmore, 20, from Northfield, Ohio, was wounded in the right knee.

Alan Canfora was the most active of the survivors of the Kent State shootings. Following the events at Kent State, he spoke throughout the country about the Kent State shootings and fought for other causes that he believed championed the common person. He stated that he believed that there was an extensive conspiracy of local, state, and federal officials to cover up the facts of what happened at Kent State University on May 4, 1970. He said that the criminals who committed murder did not spend one day in jail,

> but our efforts to expose the truth will serve as an example to others who are victims of such injustice. It is clear now that the cover-up went all the way up to the highest office. The secret memo indicates Nixon said to stall the Federal Grand Jury. (Casale and Paskoff, 1971)

Joe Lewis shared Alan Canfora's feeling that the responsibility for the Kent State shootings traveled up the chain of command beyond the National Guard to the state and federal governments. He stated that he believed that the significance of the 1970 Kent State incident to all Americans is that it was

> an enormous violation of Civil rights and the problem has never been answered. The trial in 1979 set a precedent. I don't think law enforcement officers will be as apt to shoot in situations similar to Kent State. (Taylor et al., 1971, p. 44)

THE GUARDSMEN

On May 4, 1980, John Dunphy of the *Akron Beacon-Journal* interviewed Larry Shafer, who had been one of the Guardsmen at Kent State on May 4, 1970. In the interview

Shafer said that he felt that the former General Robert Canterbury who was in charge of the troops did not have control of the situation and that the shootings could have been prevented. At the time of the interview, Shafer was a 34-year-old Ravenna fireman, and he said that city and campus police, the Ohio Highway Patrol, and the Portage County sheriff's office could have handled the situation. He also charged that Ohio Governor James A. Rhodes's decision to send the National Guard to Kent was calculated to aid his unsuccessful 1970 candidacy for the United States Senate.

Shafer contended that a sudden surge of rock throwing, screaming demonstrators convinced him and his fellow Guardsmen that they were in danger. The 1970 FBI investigation countered that the Guardsmen were not surrounded at the time of the shooting and there was not a sudden surge of students. The FBI also said that the Guardsmen fabricated the story that their lives were in danger after the shooting. Shafer argues that there was no conspiracy among the Guardsmen to fire into the crowd of demonstrators. Eventually, the FBI investigation precipitated the convening of a federal grand jury in December 1973. Shafer and eight other Guardsmen were indicted on criminal charges of violating the civil rights of demonstrators, but they were later acquitted. He was also one of the defendants in the civil suit that was settled in 1979, including the statement that the plaintiffs claimed as an apology. Shafer said that the statement was not an apology, but a statement of regret. ''The whole thing was totally regrettable,'' he said (*Akron Beacon-Journal,* May 4, 1980).

Ohio National Guard Chaplain John Simons was also present at Kent State on May 4, 1970. He does not think that any one person is to blame for the 1970 shootings and does not think that his life was in danger. As for the historical significance of Kent State, he says that ''it was the first time that middle class white students were shot by middle class young people'' (*Akron Beacon-Journal,* May 4, 1980).

Seven members of Ohio National Guard Company G admitted firing their weapons, but claimed that they did not fire at the students. Five interviewed in Company G, the group of Guardsmen closest to Taylor Hall, admitted firing a total of eight shots, ''but none of them at a specific student.'' Sergeant Richard Love of Company C said that he could not believe that the others were shooting in the air and he lowered his weapon (*Akron Beacon-Journal,* May 4, 1980).

The Faculty

The role that the faculty played in the events at Kent State on May 4, 1970, is often overlooked. After the faculty marshals talked the demonstrators into dispersing after the shootings on campus, they continued to advocate for the students. After the administration closed the university, the professors contacted the students with plans for them to finish their courses. One professor said that the university was ''in fact never closed'' (The Ohio Council, 1998).

Linda Lyke, now an Assistant Professor of Art at Occidental College, taught at Kent State in May 1970. Many students wanted to talk with the townspeople in the weeks after the killings. The students said they wanted to talk, so that it would not happen again. Meetings were held, but few Kent residents participated. She feels that ''most of the townspeople have not changed. I don't think there's lots of sympathy in Kent'' (*Akron Beacon-Journal,* May 4, 1980).

Glenn Frank, a Professor of Geology at Kent State, played a pivotal role in preventing additional violence. He wrote a letter to an eighth grade student in Ohio ten years after

the May 4, 1970, tragedy in which he summed up the essence of the Kent State tragedy. He said,

> It is not at all curious that both extremes in this event firmly, and almost religiously, believe that they have moral justice and righteous power supporting their particular perceptions. Both extremes appear to delight in confrontation, providing that ''their side'' wins in court or in the ''minds of Man.'' The extreme will possibly not change their perceptions, and many of us are too emotionally involved to differentiate between fact and perception, but this event is part of history and probably only time and the writers of history will sort out the good and evil. We cannot change the past, but we can affect the future. (*Akron Beacon-Journal,* May 4, 1980)

accepted the position of the Guardsmen that the shootings were justified. In 1974, District Judge Frank Battisti dismissed a case against eight Guardsmen who had been indicted by a federal grand jury. He ruled at mid trial that the government's case against the Guardsmen was so weak that the defense did not have to present its case. In 1975, a longer and more complex federal civil trial resulted in a jury vote of 9-3 that none of the Guardsmen were legally responsible for the shootings. The last trial of the decade in 1979 ended with an out of court settlement for $675,000, and the Guardsmen who fired the shots signed a statement of regret. The State of Ohio, instead of the Guardsmen, paid the money, and the Ohio National Guard viewed their statement as a declaration of regret instead of an apology or admission of wrongdoing.

THE CASE IN AMERICAN CULTURE

The story of Kent State has been compiled, analyzed, chronicled, dissected, and interpreted by countless writers and historians with many of the analyses focusing on the guilt or innocence of the Ohio National Guardsmen. In 1971, James Michener, a Pulitzer Prize winning author who had written best sellers such as *Tales of the South Pacific* and *Hawaii,* wrote what is probably the best known book about the shootings, *Kent State: What Happened and Why.* He took the position that the National Guardsmen fired in self-defense. In 1973, Peter Davies, in *The Truth About Kent State: A Challenge to the American Conscience,* argued that the National Guard conspired to fire upon the students. In 1974, Edward J. Grant and Michael Hill wrote *''I Was There'': What Really Went on at Kent State.* This is the only book written by members of the Ohio National Guard members. The two Guardsmen give a retrospective of the hostile environment they were thrust into.

The vast body of literature written about Kent State still does not address some basic questions about what happened on the campus on that fateful first week in May 1970. These questions include:

1. Who was responsible for the violence that happened three days before the May 4 shootings? Were there really ''outside agitators'' as Governor Rhodes charged? Who really did set fire to the ROTC building?
2. Did officials including Ohio Governor James Rhodes and Kent State University President Robert White overreact? Was it really necessary to call in the National Guard?

JACKSON STATE COLLEGE: TRAGEDY TEN DAYS AFTER KENT STATE

College campuses seethed with unrest in the spring of 1970, a twisted, contorted stream of conflict and change continued from the 1960s. The issues in contention included Vietnam and its escalation, the Nixon Administration's sending of troops to Cambodia, the environment, civil rights, and women's rights. College campuses across America resounded with riots, confrontations, and calls for change.

Students at Jackson State College, a 3,500 student campus, heard about and protested the deaths of four Kent State College students ten days earlier on May 4, 1970. Jackson state students had spent the week before May 14, 1970, demonstrating and clashing with motorists harassing them along Lynch Street. Many of the students were upset because the Jackson Police Department refused to shut down the street.

Jackson State students also dealt with and protested against entrenched racism. Founded as a teacher's college in the late 1800s, Jackson State soon moved from its original location close to an all white area and established a new campus in a black neighborhood. A street called Lynch Street after Mississippi's first black congressman, cut across the Jackson State campus and linked west Jackson, a white suburb to downtown. Jackson State students did not participate in many protests because, as a state school, Jackson could not afford to alienate the all white board of education. Instead, students sometimes threw rocks and bottles at white drivers who shouted racial slurs at them as they drove downtown and back on Lynch Street. Earlier that spring a white motorist struck a female student who was crossing Lynch Street, but students gathered at Lynch Street had not rioted. On May 13, 1970, Mississippi Governor John Bell Williams ordered the Highway Patrol to keep order on the Jackson State campus, and the students did not resist. Governor Williams insisted that the 360 uniformed troopers of the Mississippi highway safety patrol were professional law officers, ''not hotheads.''

Then on May 14, about 9:30 p.m. Jackson State students heard a devastating rumor. Word had it that Charles Evers, brother of slain Civil Rights activist Medgar Evers, and his wife had been shot and killed in Fayette, Mississippi, where Charles Evers was the mayor. Again students gathered on Lynch Street, and this time they rioted. They set the ROTC building on fire, broke a street light, and built a small bonfire. They overturned a dump truck that had been left on campus at a sewer line construction site. Students threw rocks at passing cars, and the white motorists that they hit called the police. Firemen came to put out the fires, but they had to request police protection because students attacked them as they fought the fires. Police came and blocked off Lynch Street and an area of about 30 blocks surrounding Jackson College.

Mississippi National Guardsmen who were still on duty from rioting the night before massed on the west end of Lynch Street. They carried weapons without ammunition, and some weapons were mounted on armored personnel carriers. At least 75 Jackson City policemen and Mississippi State Highway Patrol officers armed with carbines, submachine guns, shotguns, service revolvers, and other weapons arrived at the Lynch Street side of Stewart Hall, a men's dormitory. Founded in 1939, the Mississippi State

Highway Patrol existed mainly to patrol highways, but then, in 1964, the Civil Rights movement focused on Mississippi. At this point, the state legislature gave patrolmen full power to enforce ''all the laws of the state,'' including the ones supporting segregation. Local police and the state troopers held back the rioting students long enough for firemen to put out the fire and leave. After the firemen left, the police and state troopers, weapons at the ready, marched along Lynch Street toward Alexander Center, a women's dormitory. About 75–100 students stood shoulder to shoulder in front of the officers at a distance of about 100 feet, shouting obscenities at officers and throwing bricks. Someone broke a bottle on the pavement and the noise reverberated like gunfire.

Accounts differ about what happened next. Some students say that police advanced in a line, warned them, and opened fire. Others thought that a campus security officer had controlled the students. At 12:05 a.m. on May 15, Jackson police began shooting and fired for approximately 30 seconds. Students ran for cover, struggling to get inside the Alexander West dormitory. They stampeded at the west end of the door, frantic to get in. Some were trampled and others fell from buckshot pellets and bullets. Others were left on the grass or dragged inside.

When the order to cease fire rang out and the shooting stopped, Phillip Lafayette Gibbs, 21, lay dead 50 feet from the west end entrance to Alexander Hall. He had four gunshot wounds, two in his head, one under his left eye, and one in his left armpit. Gibbs had a wife, an 18-month-old son, and another child on the way. Across the street behind the police line, James Earl Green, 17, lay dead in front of the B.F. Roberts Dining Hall. A senior at Jim Hill High School, Green had been on his way home from work at a grocery store when he stopped to watch the riot. A single buckshot blast had killed him.

Besides the two dead men, casualties included 15 wounded students. One of the wounded had been sitting inside the dormitory lobby. Fonzie Coleman, Redd Wilson, Jr., Leroy Kenter, Vernon Steve Weakley, Gloria Mayhorn, Patricia Ann Sanders, Willie Woodard, Andrea Reese, Stella Spinks, Climmie Johnson, Tuwaine Davis, and Lonzie Thompson were taken to University Hospital for treatment for gunshot wounds, and several others were treated for hysteria and injuries from shattered glass. Gunfire riddled the five-story Alexander West dormitory. Later FBI investigators estimated that over 460 rounds had hit the building, shattering every window facing the street on each floor. There were over 160 bullet holes in the outer walls of the stairwell, and some of them can still be seen.

Shortly after the shooting the police and state troopers left the Jackson State College campus and National Guardsmen replaced them. John Peoples, who was the university president at the time, heard about the shooting from the National Guardsmen who arrived at his house located on campus carrying fixed bayonets. Jackson authorities denied that city police had taken part in the shooting, but never disputed that the highway patrolmen had fired. Later investigations revealed that the troopers did not bring tear gas, but instead, they loaded their shotguns with 00 shot, the largest available.

Police later insisted that someone inside the Alexander West dormitory had fired upon them and that they had spotted a powder flare in the third floor stairwell window. They also said that they had been fired on from the dining hall. Two television news reporters agreed that a student had fired first, but were unsure as to where. A radio

reporter believed that a hand holding a pistol had extended from a window in the women's dormitory.

A U.S. Senate probe by Senators Walter Mondale and Birch Bayh later revealed that police did not call ambulances to take the wounded to University Hospital, which was only 20 minutes away, until the officers had picked up their shell casings.

According to other accounts, police also began to remove the shattered glass, but students and some sympathetic whites stood vigil on the lawn to keep them from doing this until investigators arrived.

On June 13, 1970, President Richard Nixon created the Commission on Campus Unrest, and it held public hearings at Jackson, Mississippi; Kent State, Ohio; Washington, DC; and Los Angeles, California. Despite the testimony of Jackson State administration, faculty, staff, and students, no arrests or convictions were made.

A civil trial was held, but none of the officers involved in the shootings were indicted. In 1974, a United States Court of Appeals ruled that the officers had overreacted, but they could not be held liable for the two deaths.

The Jackson City Council voted to close Lynch Street permanently to through traffic, and the Gibbs-Green Plaza, a multilevel brick and concrete structure that lies between Alexander Hall and the University Green, was constructed.

3. Did the Governor's banning of the rally violate the First Amendment rights of the demonstrators? Was this ban the flash point of no return for the demonstrators?
4. Why did the National Guardsmen fire on the unarmed students? Were they justified, and did they conspire to shoot students?
5. Was there one person or group of people ultimately responsible for the Kent State shootings?

The name of Kent State University will always be linked with the events of Monday, May 4, 1970, the only time in American history that federal troops shot United States students. Many people, including historians and the families of the victims, believe that more than any other historical event the shootings at Kent State helped turn public opinion against the Vietnam War. They believe that the United States withdrawal from the Vietnam War saved lives and to them that is the important legacy of Kent State. Writer Erich Segal expressed a sadder view in the *Ladies' Home Journal* when he said, "The meaning of the deaths of Allison, Sandy, Jeffrey and Bill is that they had no meaning. And yet even this is not the real tragedy of Kent State. The real tragedy is that some people thought they deserved to die."

The anguish of Kent State is that it happened in America, between Americans, and could have been avoided. As the Ohio National Guardsmen in their statement of regret said, "Some of the Guardsmen on Blanket Hill, fearful and anxious from prior events, may have believed in their own minds that their lives were in danger. Hindsight suggests that another method would have resolved the confrontation. Better ways must be found to deal with such a confrontation."

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NOTE

1. The Kent State University Web site about the tragedy questions the existence of an Ohio Riot Act. It reproduces a page of the General Laws of the One Hundred Eighty General Assembly of the State of Ohio, which gives generalized instructions about dealing with civic disturbances, but does not specifically refer to an ''Ohio Riot Act.'' *Source:* http://speccoll.library.kent.edu/4May70/exhibit/chronology/riotact.html

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18

The Attica Trials: A Thirty-Year Pursuit of Justice

SIDNEY L. HARRING AND GEORGE W. DOWDALL

The uprising at Attica Prison in 1971 and the political trials that followed represented an era of increasing politicization of the American prison. The civil rights movement, the Vietnam War, the student movement, and the law and order politics of the 1960s all had an impact on the men and women in prisons. Not only were politically astute leaders of the black and student movements in and out of prison themselves, but much of the prison population was increasingly politically aware. Eldridge Cleaver's book *Soul on Ice,* Alex Hailey's the *Autobiography of Malcolm X,* and other books had a profound impact on politics both inside and outside of prisons. Recurring political trials such as the trial of the Chicago Seven were on the evening news. Black, Hispanic, Native American, and white political organizations such as the Black Panther Party, the Weathermen, and the American Indian Movement had members both inside and outside of prison, as radical political action came to routinely result in prison time.

The election of President Richard Nixon in 1968 was a victory for the forces of ''law and order'' that had promised a ''crackdown'' on crime and led to a ''war on drugs'' and a ''war on crime''—the domestic versions of the Vietnam War. Police tactics became increasingly militarized; legislatures passed new laws such as New York's Rockefeller Drug Laws that provided much longer prison sentences—up to life for possession of drugs. Prisons then, as they are now, were almost entirely filled by minorities, which made prisons a fertile ground for political organizing.

By the end of the 1960s, there was unrest in prisons all over the United States. In California, San Quentin Prison had a major strike in 1970. Also in 1970, three inmates at Soledad Prison in California were shot dead by a guard, an event widely believed by inmates to have been planned in advance.

The Attica Uprising and the Retaking of the Prison

These political and racial tensions came together in September 1971 in an explosive mix at Attica Correctional Facility in New York; Attica is a maximum security prison about 40 miles east of Buffalo, New York.[1] Attica appeared to observers at the time as a fairly typical maximum security prison that was similar to the other five prisons operating in New York State. Inmates lived in cells that were six feet wide by nine feet long, with all the buildings enclosed by a 30-feet-high wall. Attica held 2,243 inmates; about 20 percent had been convicted of homicide, manslaughter, or murder; and 10 percent were serving life sentences or awaiting execution. Unlike prisoners of the previous generation, many of Attica's inmates grew up on the streets of inner city ghettos, and the inmates often thought of themselves as political prisoners rather than common criminals. Although rehabilitation of these inmates composed part of the official rhetoric of Attica, the reality of everyday life centered on confinement within an institution devoted literally to maximum security. Education or training programs were rarely available for those who wanted them.

''Security'' has continued to be the dominant theme: the fantasy of reform legitimatized prisons but the functionalism of custody has perpetuated them. . . .For inmates, ''correction'' meant daily degradation and humiliation: being locked in a cell for 14 to 16 hours a day; working for wages that averaged 30 cents a day in jobs with little or no vocational value; having to abide by hundreds of petty rules for which they could see no justification. It meant that all their activities were regulated, standardized, and monitored for them by prison authorities and that their opportunity to exercise free choice was practically nonexistent: their incoming and outgoing mail was read, their radio programs were screened in advance, their reading material was restricted, their movements outside their cells were regulated, they were told when to turn lights out and when to wake up, and even essential toilet needs had to be taken care of in view of patrolling officers (New York State Special Commission on Attica, 1972, p. 2).

Medical care was poor. Sick call was held behind a screen but in the cellblock with little privacy. While doctors dispensed pills for simple ailments, long-term care and care for serious illnesses was either inadequate or nonexistent.

Built into daily life was a series of deprivations and humiliations that ranged from inadequate health care, an absence of recreation, bad food, and shabby clothing to the threat of violence, unwelcome sexual advances, menial work paid for at a fraction of regular wages, and despair at ever being paroled. In many ways, Attica approached the perfect definition of a ''total institution,'' providing 24-hour-a-day and seven-day-a-week conformity to an absolute authority and an unwavering mass routine of life (Goffman, 1961). Incarceration in a total institution for years at a time must have had a great impact on a person's sense of self. Any inmate of such an institution might experience daily life as enormously frustrating, but one factor made it almost unendurable: the perception and reality of racism.

Race shaped every facet of daily life. Black inmates came to increasingly resent the degrading racism of white guards. Black prisoners could be routinely ''written up'' for minor disciplinary infractions and be locked up for weeks in the ''hole.'' As social relations deteriorated, inmates became increasingly organized. A prison, in the best of times, is a difficult social organization and one in which inmates have many forms of organization and control that are invisible to their guards.

Black and Hispanic inmates did not have access to the best prison jobs, and jobs were important sources of power and social gratification in prison. Whites worked the good jobs as clerks, as runners, and in the officers' kitchen. Blacks and Hispanics worked in the shops and factories and cleaned the floors.

There were religious grievances as well. Black Muslims, in particular, were denied the right to practice Islam. The food being prepared in the prison kitchen was beyond their control, and conditions made it impossible to observe dietary requirements. Prison cooks were rumored to secretly put pork in many dishes, forcing devout Muslims to not eat any form of food that they could not clearly identify. Muslims were denied access to members of the clergy; however, these privileges were long granted to Catholic, Protestant, and Jewish prisoners. Muslims were denied leave from their work assignments on Friday afternoon to attend religious services. These adversities forged a strong Muslim culture within the prison: Muslim prisoners were highly disciplined and organized to protest these injustices.

In the fall of 1971 at Attica, the inmates had a sense that they had little to lose. They were serving hopelessly lengthy sentences in a prison with poor and deteriorating conditions. With daily tensions on the rise, the relationships between inmates and guards got worse, as did the interracial tensions among inmates. The heavily black and Hispanic inmate population, many from the New York City area, which was hundreds of miles away, was watched by a staff of 543 white guards from rural or small towns. "In the end, the promise of rehabilitation had become a cruel joke. If anyone was rehabilitated, it was in spite of Attica, not because of it" (New York State Special Commission on Attica, 1972, p. 4).

The Riot

In 1971, there was little evidence of organized planning of a revolt at Attica. Instead, the underlying tension exploded in a series of unplanned events that cumulatively brought about the capture of the prison by its inmates. A police force that was itself poorly organized reacted and took back the prison under circumstances that guaranteed great loss of life.

Events during the late summer of 1971 had led to an atmosphere charged with the threat of violence. Just as in the society outside the prison, organized protests against what were seen as inhumane conditions began to occur more frequently. Increasingly militant prisoners had drawn up a manifesto of demands, many surprisingly moderate, but they found little reason to think that prison authorities would respond to them. Correctional officers thought that their authority was being undermined, and mutual suspicion and fear became widespread.

In such an atmosphere, small events can lead to catastrophic outbursts. A misunderstanding among some inmates had escalated into a confrontation between the inmates and guards, and one guard was struck by a soup can thrown by a prisoner. On the next day, September 9, in A Block, which was one of four major sections of the prison, an altercation led to several prisoners attacking an officer who was trying to get them to return to their cells after breakfast. The prisoners broke free and began running through the cellblock on a violent rampage. Things might have ended there had a locked gate's bad weld not broken under pressure, which had allowed the inmates access to a control area known as "Times Square," which contained keys to other gates. The inmates began opening cellblocks and attacking correctional officers; one officer, William Quinn, was murdered.

TIMELINE

September 9, 1971	Prisoners seize control of Attica Correctional Facility. Corrections officer William Quinn murdered.
September 11, 1971	Prisoners present 28 demands to New York State officials.
September 12, 1971	New York's Governor Nelson Rockefeller refuses to visit Attica.
September 13, 1971	Corrections Commissioner Oswald presents ultimatum to prisoners. Prisoners reject ultimatum. State police forces retake prison; 39 prisoners killed, over 80 wounded.
1972	New York State Special Commission on Attica (McKay Commission) report published.
1973	Trials of Attica Brothers begin in Buffalo, NY. Inmate John Hill convicted of the murder of Officer William Quinn.
1976	The Meyer Commission recommends appointment of new special prosecutor. Governor Hugh Carey ends all Attica criminal prosecutions.
2001	Inmate class action civil suit settled; 502 inmates share $8 million award.

Resistance by the prison's guards was minimal, and within a few hours 1,281 inmates had seized control of much of the prison and had taken over 40 hostages with most congregating in the yard in D Block.

Prison officials were unable to respond quickly enough to quell the uprising; insufficient manpower, an inadequate communication system, and no plan for dealing with a large uprising contributed to the outcome. A later investigation would reveal that this was not a planned rebellion but more of a spontaneous riot. Apparently there had been some talk among prisoners of a sit-down strike, but there was no prior evidence of anyone taking over the prison. Prison officials and, after a time, New York State Commissioner of Corrections Russell Oswald began negotiating with those prisoners who emerged in the yard as leaders. A hastily assembled force of state police, correction officers, and county sheriffs kept watch outside of the prison walls. The media also began to gather outside with press and film crews from all over the world eventually reaching the site.

After a period of disorganization and anarchy, the emerging leaders of the rebellion began to negotiate in earnest. A 50-yard buffer, or no-man's-land (termed the ''DMZ,'' or demilitarized zone), separated inmate spokesmen and state authorities; communication between the two sides initially involved shouting across that space. Commissioner Oswald rushed from Albany to take charge of the scene. Several notable journalists, lawyers, and politicians joined the negotiations as observers. Herman Schwartz, a professor of law, and Arthur O. Eve, an assemblyman, had come from Buffalo, and they were allowed by the commissioner to visit the inmates in D yard; Oswald, Schwartz, and Eve returned together for a second visit, and they were accompanied by reporters and television cameras. The leaders in D yard began to discuss demands and talk with observers who continued to visit them. Tom Wicker, associate editor and columnist for the *New York Times,* joined the team of observers and later wrote one of the most important eyewitness accounts of the uprising and retaking of the prison (Wicker, 1975).

By Saturday afternoon on September 11, the observers had formulated a 28-point list of prisoner demands that were deemed acceptable by Commissioner Oswald; the list included reforms that addressed many of the sources of tensions. Some of the demands



Figure 18.1 Inmates of Attica State Prison raise their hands in clenched fists as they voice their demands during a negotiating session with New York's prison boss, Commissioner Russell Oswald, 1971. The Commissioner subsequently agreed to some of the 21 demands listed by prisoners. © AP Photo.

were unchanged from the language used by the prisoners and observers. For example: ''6) Allow all New York State prisoners to be politically active, without intimidation or reprisal''; and ''7) Allow true religious freedom'' appeared as both the observers' proposal and as a proposal acceptable to Commissioner Oswald. Others were different. For example, the observers stated, ''Apply the New York State minimum wage law to all work done by inmates. STOP SLAVE LABOR.'' The proposal acceptable to Commissioner Oswald stated, ''Recommend the application of the New York State minimum wage law standards to all work done by inmates. Every effort will be made to make the records of payments available to inmates.'' Although Oswald held firm on the issue of criminal amnesty, he agreed that there would be no administrative reprisals or criminal charges that dealt with property damage during the rebellion (New York State Special Commission on Attica, 1972, pp. 250–258).

Retaking the Prison

A few hours later, the ''Twenty-Eight Points'' that Commissioner Oswald found acceptable were rejected by the prisoners because the list did not include criminal amnesty. Rumors about reprisals circulated among the inmates that made further negotiation almost impossible. Criminal amnesty became the critical issue; many of the prisoners feared that a wave of mass prosecutions would follow the retaking of the prison. A few of the inmates were also worried about their involvement in the murder of Officer William Quinn on the rebellion's first day and in the murders of several prisoners during the

following days. On Sunday, September 12, as negotiations failed, the outside observers and eventually Commissioner Oswald requested that Governor Nelson Rockefeller come to the prison. By Sunday evening, Rockefeller declined, instead approving the retaking of the prison by force with as little violence as possible.

At 7:40 a.m. on Monday, September 13, the commissioner's ultimatum was read to the prisoners in D yard. The prisoners' response came about an hour later: eight blindfolded hostages with knives to their throats were paraded across the catwalks. If a slim hope of a peaceful resolution had existed, it was now gone. At 9:30 a.m., the prisoners formally rejected the ultimatum, and 16 minutes later, the assault on the prison began with tear gas being dropped on inmates in D yard by a state police helicopter.

What happened next is best described in the often-cited words of the Special Commission that investigated the events at Attica:

> Forty-three citizens of New York State died at Attica Correctional Facility between September 9 and 13, 1971. Thirty-nine of that number were killed and more than 80 others were wounded by gunfire during the 15 minutes it took the State Police to retake the prison on September 13. With the exception of Indian massacres in the 19th century, the State Police assault which ended the four-day prison uprising was the bloodiest one-day encounter between Americans since the Civil War. (New York State Special Commission on Attica, 1972, p. xi)



Figure 18.2 Inmates of Attica state prison, right, negotiate with state prisons Commissioner Russell Oswald, lower left, at the facility in Attica, NY, 1971. © AP Photo.

One correctional officer had been killed on the first day of the uprising, and several prisoners had been murdered by their fellow inmates; the remaining 39 deaths were from police bullets. The conditions under which the prison was retaken virtually guaranteed a very high loss of life, despite specific orders to use minimum force. The police forces that retook the prison used weapons such as shotguns, which were likely to cause numerous casualties. Police and correctional officers had no training in this type of assault, and they did not seek assistance from other forces, including the military, which was trained. Police feared that the inmates were heavily armed, and over 1,400 weapons were confiscated after the retaking of the prison. Correctional officers participated in the takeover, despite orders from the governor to not do so for fear of revenge against prisoners, and these officers were responsible for several deaths. Rumors quickly spread that guards had their throats slit, but no evidence was found to support this charge.

After the resistance ended, the occupying forces secured the prison and forced the prisoners to strip naked before returning to their cells. In the ensuing hours, prisoners were brutally beaten by state employees, and reports of torture were alleged. Medical treatment of the wounded was delayed for four hours by inadequate planning; and although no prisoner died as a result of the delay, many prisoners suffered unnecessarily from excruciating wounds. An inventory of prisoner injuries taken several days after the retaking of the prison found that 45 percent of the prisoners had broken bones as well as other signs of the reprisals against them.

Media Coverage of Attica: An "Explosion of Rhetoric"

A unique aspect of the events at Attica was the extraordinary media coverage. Television cameras were allowed into the prison when the commissioner and several observers began negotiations. The result was characterized by one observer as "an explosion of rhetoric"; prisoners stated their grievances while state officials attempted to justify their actions.

Media from around the world covered the uprising and retaking of the prison, and much of the retaking was photographed by state police using still and video cameras. These images were published in newspaper and television accounts all over the world, and shaped the public perceptions of Attica. Years later, the images found their way into several powerful documentary films such as *Attica* and *Ghosts of Attica.* Tom Wicker's first-person account of his role as an observer provided the basis for the film *Attica.*

Initial coverage of the prison retaking tended to follow the arguments presented by state officials. On the day immediately following the state police assault on Attica, the *New York Times,* one of America's most influential newspapers published the following: "In this worst of recent American prison riots, several of the hostages—prison guards and civilian workers—died when convicts slashed their throats with knives. Others were stabbed and beaten with clubs and lengths of pipes." The following day, the *Times* commented, "The deaths of [the hostages] reflect a barbarism wholly alien to our civilized society. Prisoners slashed the throats of utterly helpless, unarmed guards whom they had held captive through around-the-clock negotiations, in which the inmates held out for an increasingly revolutionary set of demands." The *New York Daily News* ran a story with the headline, "I saw seven throats cut" (New York State Special Commission on Attica, 1972, pp. 455–456).

IMPORTANT INDIVIDUALS AND GROUPS

Attica Brothers Legal Defense: Legal defense team that represented inmates in criminal trials.

Attica Correctional Facility: Maximum security prison 40 miles east of Buffalo, NY, and site of the 1971 uprising.

Carey, Hugh: Governor of New York who dismissed all criminal prosecutions of Attica inmates.

Clark, Ramsay: Former U.S. Attorney General who led criminal defense efforts.

Eve, Arthur O.: New York State Assemblyman, and observer during uprising.

Fair Jury Project: Part of legal defense that used surveys and research to pick fair juries.

Fink, Elizabeth: Lawyer who pursued civil damages on behalf of Attica inmates.

Hill, John: Only Attica inmate convicted of murder of Officer William Quinn.

Kairys, David: Civil rights lawyer who led criminal defense efforts.

Kuntsler, William: Famous radical lawyer who led criminal defense efforts.

McKay, Robert B.: NYU Law Dean who chaired commission that studied the uprising.

Oswald, Russell: New York State Corrections Commissioner who negotiated for surrender of Attica.

Quinn, William: Corrections officer murdered during first day of uprising.

Rockefeller, Nelson: Governor of New York at the time of the uprising; refused to visit the prison.

Schwartz, Herman: Professor of Law at SUNY Buffalo, and observer during uprising.

Shulman, Jay: Social psychologist who aided legal defense efforts.

Wicker, Tom: *New York Times* reporter, and observer during uprising.

Days later, newspapers would run stories that confirmed that all nine dead hostages had died from bullet wounds as part of the massive assault by state police forces. However, the false media images of revolutionary prisoners slitting hostage throats had already been burned into the public consciousness; those persisting images would shape the ensuing trials.

New York State convened a Special Commission on Attica, also known as the McKay Commission, which was named after New York University's law school dean who was named to chair the commission. The commission interviewed 1,600 inmates, 400 correctional officers, and 270 officers of the New York State Police. The commission also had access to autopsy reports and other physical evidence. The commission's report (New York State Special Commission on Attica, 1972) and books by observers such as *New York Times* journalist Tom Wicker (1975) provide a virtually complete account of the events. What happened in the retaking of the prison is not in doubt, but its political meaning remains controversial to this day.

The Political Character of the Prosecutions

Governor Nelson Rockefeller of New York was one of the leading Republican politicians in the United States, and Rockefeller had clear presidential ambitions. His reputation was at stake, and it required vindication. Accordingly, the Attica prosecutions were directed by Assistant Attorney General Anthony Simonetti, who had been appointed special prosecutor along with a large staff of prosecutors handpicked from around New York State and a much larger staff of police investigators. The police investigations were biased from the start. Although state police had fired almost all of the 3,000 shots, state police investigators led the investigation, which was a clear conflict of interest. Moreover, from the start, the investigation was focused on crimes committed by unarmed inmates to the exclusion of the crimes committed by armed state police and prison guards; evidence clearly showed that state police and prison guards had killed dozens of people and tortured hundreds more.

This bias aside, the investigation proceeded in an uneven and incompetent manner. The evidence was in chaos, as thousands of witnesses remembered fluid and complex events in very different ways. The inmates, as well as the officers, were all dressed alike, and individual identifications were uncertain at best. A few inmate ''stooges'' were promised immediate release if they testified against fellow inmates. Evidence was deliberately distorted in a one-sided way to overemphasize inmate actions and exonerate guard actions.

Three years into the trials, Malcolm Bell, an assistant prosecutor, resigned his position in protest of the political nature of the prosecutions and submitted a lengthy report to Governor Hugh Carey—the new governor of New York who was a Democrat. Bell detailed the bias and misconduct in the special prosecutor's office. Carey appointed a commission, the Meyer Commission, which was named after its chairperson. The Meyer Commission reported some months later that the prosecution was riddled with bias and other problems, and the commission recommended that Carey appoint a new special prosecutor to begin investigation into the state's misconduct as well. Carey reacted by ''closing the book'' on the Attica case by ending all the criminal prosecution. The case was over. By this time, former Governor Rockefeller was now Vice President of the United States with no political authority left in New York State.

The Attica Brothers Legal Defense and the Fair Jury Project

A unique aspect of the Attica trials was the organization of the defense efforts—the Attica Brothers Legal Defense (ABLD). The ABLD assembled a legal staff, raised funds to support their efforts, publicized the defense view of the trials and its political agenda, and led demonstrations in support of the defendants in Buffalo and in New York City. The ABLD assumed that the inmates' defense should not be a narrow legal response to the charges against them, but rather a broad effort to promulgate their version of the rebellion and advance their political views about the need for radical change throughout the United States.

The team of lawyers who began to work for ABLD included the famous radical lawyer William Kunstler (defense lawyer for the Chicago Seven and other antiwar radicals of the 1960s), Ramsay Clark (former Attorney General of the United States and a spokesperson for radical social change), and David Kairys (at the beginning of a career as a civil rights and constitutional lawyer). Other attorneys who worked on the trials included Elizabeth

Fink, who for several decades conducted an effort on behalf of civil damages for the inmates of Attica.

ABLD also helped launch an effort that became known as the Fair Jury Project, which was designed to deal with the extraordinary challenges the Attica Brothers faced as criminal defendants. The initial indictments against the defendants were brought in Wyoming County, which is the county in which Attica is located. All the defendants were serving time after convictions for very serious crimes. Most were African Americans and Hispanics from New York City who were about to be tried in a virtually all-white upstate county at a time of high racial tension. Television, radio, and print coverage of the uprising had blanketed western New York with indelible images of violence, and rumors had circulated that the prisoners had tortured hostages and slit their throats. Attica Prison was one of the largest employers in Wyoming County, and many potential jurors had ties to the prison.

The Fair Jury Project conducted a telephone survey of Wyoming County that established empirically that many potential jurors would have a difficult time in providing the defendants with a fair trial. Potential jurors admitted that they could not follow a judge's instructions to ignore the enormous pretrial publicity or presume that the defendants were innocent of the charges until proven guilty. The survey helped support defense arguments for a change of venue, but the court ruled that the trials would be moved to nearby Erie County and not to New York City, as the defense had argued.

A storefront in downtown Buffalo was used as the base of operations for ABLD, and the legal team worked several blocks away out of separate offices. In addition, an office was opened in New York City, both to influence the national media and to provide services for those brothers who came from downstate New York. Other ABLD offices functioned for a time in several other cities, including Detroit, Michigan, and Oakland, California.

The Fair Jury Project studied the jury pool of Erie County and used statistical analysis to show that its composition was skewed toward being disproportionately white, middle-aged men. The composition again posed major difficulties for the defendants' chances of a fair trial by a jury of peers (Levine and Schweber-Koren, 1977). Staff from the jury commissioner's office verified that potential female jurors were being excluded because of improper use of a ''women's exemption'' allowed at that time under New York law. A series of charts made clear that the Erie County jury pool was anything but a reasonable cross-section of the community from which it was drawn. A motion submitted by the defense led to 97 percent of the existing Erie County jury pool to be thrown out; this was perceived as a major victory for the defense.

A telephone survey of 651 registered voters was conducted by the Fair Jury Project to help defense lawyers assess which individuals might be most likely to set aside their prior opinions about prisoners and the uprising and follow the judge's instructions to presume innocence. The survey results provided a snapshot of contemporary opinion about the trials, indicating widespread bias against the defendants. As one press release from the ABLD summarized, ''The results of the study not only show strong and pervasive prejudice against black people, persons who seek change, and persons accused of crime—all leading to the conclusion that most people in Erie County could not function as impartial jurors if called to sit on these cases.'' The survey found that 69 percent of the potential jurors blamed the prisoners for the killing of 43 persons, and 19 percent still believed the rumors that the hostages had been castrated or had their throats slit. Most people viewed strong protest as unjustified, and about a third would imprison black militants

and radicals solely for their beliefs. About 50 percent believed prison conditions to be excellent or satisfactory.

The survey findings were combined with courtroom analysis of potential juror body language and response to voir dire questions in an effort to help select a "fair jury." This part of the project was led by Jay Schulman, a social psychologist who had previously used these techniques in picking a jury for the Harrisburg, Pennsylvania, trial of Catholic anti-war activists (Hunt, 1982; Schulman, Shaver, Colman, Emrich, & Christie, 1973). ABLD staff sat at the defense table during jury selection in an attempt to guide attorneys in their decisions about which potential jurors to challenge "for cause" or which to deselect for other reasons.

The Six Attica Criminal Trials

Sixty-two inmates and one prison guard were indicted by a grand jury in Wyoming County, the rural county where Attica Prison was located, for 1,289 alleged crimes that ranged from assault to murder. Only 8 of the 62 inmates were ultimately convicted. John Hill was the only inmate convicted of murder for the death of Officer William Quinn; Officer Quinn's death occurred during the initial taking of the prison. Joseph Pernasilice, also charged in Quinn's murder, was acquitted, but he was convicted of the lesser crime of attempted assault.

The evidence at this trial reflected the difficulty of these cases. Quinn, a young man, had died tragically with a wife and children left behind. He was the only guard killed, which clearly indicated that the inmates had no plans to kill guards in the uprising. Rather, Quinn had been at the wrong place at the wrong time; he was in a stairwell as hundreds of excited inmates pushed past him. Some of the testimony was that he fell; other testimony was that he was pushed or trampled accidentally. Still, other testimony indicated that Hill and Pernasilice had beaten Quinn with different and inconsistent descriptions of the weapon used. In the end, the jury believed that Hill had beaten Quinn to death.

The special prosecutor's years of investigation and preparation collapsed in poorly presented cases (Light, 1995). One government witness, a prison employee, had positively identified an inmate as holding a flare gun in a tunnel during the riot. A defense lawyer asked the witness if he had ever called inmates "niggers." The prison employee admitted that he had but qualified that he only did so when it was appropriate in the context of their rehabilitation. The lawyer then asked the officer to describe how that word contributed to rehabilitation. The jury acquitted—such testimony could have no credibility.

In one trial, several inmates were charged with the murder of inmate "snitches." The testimony was inconsistent, and inmates had been offered various inducements to testify. The jury did not believe the witnesses and acquitted.

The trials were still proceeding at the time Special Prosecutor Malcolm Bell wrote his memo to Governor Carey. Carey not only ended the trials, but he pardoned the seven Attica Brothers who had been convicted—and commuted the 20-years-to-life sentence of John Hill. If the prison guards and state troopers were not to be punished for firing the 3,000 shots that killed 40 inmates and guards or for torturing Big Black and the hundreds of other inmates, it was not fair to punish John Hill for killing William Quinn. Nothing in these results represented justice from any standpoint.

THE CIVIL CASES

The Attica civil cases, filed by inmates and hostages, are some of the most complex and lengthy civil suits ever filed against New York State (Light, 1995). The most important of the early lawsuits, *Inmates of Attica Correctional Facility v. Rockefeller,* was filed immediately after the retaking of the prison while inmates were being tortured. The United States Court of Appeals for the Second Circuit issued what is still considered a landmark opinion denouncing the use of force by corrections officers:

> The beatings, physical abuse, torture, running of gauntlets, and similar cruelty—was wholly beyond any force needed to maintain order. It far exceeded what our society will tolerate on the part of officers of the law in custody of defenseless prisoners. . . . [T]he mistreatment of inmates in this case amounted to cruel and unusual punishment in violation of their Eighth Amendment rights. (*Inmates of Attica Correctional Facility v. Rockefeller*, 1971)

Inmates of Attica Correctional Facility v. Rockefeller was part of a wide range of lawsuits filed by prisoners in the 1970s that created a new category of human rights law: the law of prisoners' rights. Prisoners today live under improved prison conditions because of this litigation. It is now clear that a prisoner still maintains substantial rights as a citizen while incarcerated. Hundreds of lawsuits about prisoners' rights—to medical care; safe working conditions; improved "housing" conditions; access to lawyers, courts, reading materials, and the media; religious freedom; and due process rights in prison discipline—were all litigated in the wake of the Attica litigation. Attica prisoners had taken a stand that prisoners needed to be respected as U.S. citizens and as human beings.

Other lawsuits seeking to remove indicted inmates held in segregated housing units and to block prison disciplinary hearings against inmates for their role in the uprising were not successful.

Other cases went through the courts for many years. The 28 hostages and/or their families who were killed or injured in the uprising filed many lawsuits. All except one of these lawsuits were dismissed on a technicality: as state employees they were barred from filing lawsuits for damages if they had accepted workmen's compensation. Most of the state employees had taken such checks—they were working people with no money to live on—without realizing that such acceptance would bar filing lawsuits. The widow and daughter of Herbert Jones were the only officer's family members to prevail; they had not accepted their checks and were awarded $550,000 plus interest. This left the families of the officers feeling bitter: the state denied them the right to sue for their injuries on the technicality of workmen's compensation law.

Fourteen inmates sued in the Court of Claims for injuries sustained in the uprising; nine inmates were awarded about $1.5 million in damages. These cases moved at a proverbial snail's pace. Inmate Peter Tarallo complained in 1983 that his life had been shortened by his injuries in the Attica retaking and that he would not live to see any money. His estate was awarded $164,000 in 1989—18 years after the uprising and after Tarallo was, as he had feared, dead.

In 2001, the inmate class action suit was settled almost 30 years after the retaking of the prison. This complex lawsuit sought damages of $2.8 billion from Governor Rockefeller, Corrections Commissioner Oswald, Attica Warden Vincent Mancusi, Deputy Warden Karl Pfiel, and other state officials for violation of prisoner rights, excessive force, unrestricted firepower that caused death, serious injury, and suffering (Light, 1995). The case

had a complicated legal history and was tried in Buffalo in 1991. Ten more years of appeals and negotiations passed before a settlement was agreed to in 2001. The 502 inmates would share $8 million, apportioned by the judge into five categories, depending on the degree of their injuries. More than half fell into the lowest category, receiving what can only be called a token payment of $6,500. The other half received either $10,000, $25,000, or $31,000 for the relatives of inmates who had died. Fifteen inmates received the highest award of $125,000. Elderly men and their families came to court for the settlement. They told stories that many had not told since they left Attica, but all of them agreed that it was important that the case was settled. The world would know that the New York State had committed serious crimes against them at the retaking of Attica prison.

The Legacy of Attica

What impact did the Attica trials have? A year after the uprising, the McKay Commission argued,

> Unless the cry to "Avenge Attica" can be turned to reforms that will make repetition impossible, all effort will have been in vain. Change should not be lightly undertaken, but the status quo can no longer be defended. The only way to salvage meaning out of the otherwise senseless killings at Attica is to learn from this experience that our Atticas are failures. The crucial issues remain unresolved; and they will continue unresolved until an aroused public demands something better. (New York State Special Commission on Attica, 1972, p. xxi)

Now, decades later, prison reform appears to be grappling with remarkably similar issues. Racial inequality remains at the heart of the U.S. criminal justice system, and prisons still incarcerate a far larger proportion of minorities than would be expected from population size alone.

One of the legacies of the Attica trials was the impact of the ABLD. Though not the first trials to use expert social science research techniques to challenge potential jury composition or selecting juries, the Attica trials set a new standard for those efforts. At a minimum, the ABLD led a successful effort to change the venue from Wyoming County to Erie County (Buffalo), which probably enabled the defense to mount a more successful political struggle. Several of the Attica Brothers credited the ABLD with helping them win their trials. The ABLD efforts also delayed several of the criminal trials until a new governor took power in Albany and set in motion the eventual dismissal of indictments. Beyond the Attica trials, these jury techniques would be used in other trials, and expert consultation on jury selection would become a significant new part of American courtroom practice.

The United States in the post-Attica period has five times as many people in prison and most of them are still minorities. New York State currently has 74 prisons; in 1971, there were 16. Sentences now are two or three times longer then they were in 1971. Violence in prison is still prevalent, and guards, still mostly white, mistreat inmates (Butterfield, 2003). The war on crime, going strong since 1968, shows no sign of abatement, except that some politicians have noted its high cost. In New York State, there has been significant discussion of the need to repeal the draconian Rockefeller drug laws that played such a major role in the growth of the prison population. But, thus far, there has been no successful effort to repeal the laws, and the prison population remains large and continues to grow.

Attica reminds us of how high the costs of this mass reliance on imprisonment can be, with up to 3 million Americans imprisoned at any given moment. Prison is a difficult type of institution to administer and is a violent social institution. The goal of rehabilitation, established with the first prisons in the United States, is as elusive as ever.

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NOTE

1. The best account of the events at Attica is the New York State Special Commission on Attica in 1972; much of this chapter is based on the commission's findings.

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Crimes and Trials of the Century

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VOLUME 2

From Pine Ridge to Abu Ghraib

Edited by
Steven Chermak
and
Frankie Y. Bailey



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Preface to the Set

Crimes and Trials of the Century covers a little over one hundred years of American history, from 1900 to the present. The cases in this two volume set appear in roughly chronological order, based on the starting point of the events described. The reader will note that some cases, such as the 1955 Emmett Till case, are revisited by criminal justice authority years later. The Till case, the Columbine High School shootings case, and many of the other cases that appear in this set had an intense impact on public consciousness at the time of occurrence and remain a part of our ''cultural memory.'' These cases are prone to be referenced during current social and political debates.

In the introductions to the two volumes in this set, we discuss the social and historical contexts in which the cases appearing in the volume occurred. We discuss the evolution of the criminal justice system and the legal issues that were dominant during that time period. We also provide an overview of the popular culture and mass media, examining in brief the nexus between news/entertainment and the criminal justice system. In each introduction, we also identify the common threads weaving through the cases in the volume.

As suggested above, the cases featured in these two volumes provide examples of what Robert Hariman (1990) describes as ''popular trials,'' or ''trials that have provided the impetus and the forum for major public debates'' (p. 1). As we note elsewhere, cases generally achieve celebrity status because they somehow encapsulate the tensions and the anxieties present in our society; or, at least, this has been the case until the recent past. In the past half-century, the increasing importance of television (and more recently the Internet) in delivering the news to the public, and the voracious appetite of the media for news stories to feed the twenty-four-hour news cycle, has meant that stories—particularly crime stories—move quickly into, and sometimes as quickly out of, the public eye. The cases we have selected for this two-volume set are those that arguably deserve the title of a ''crime of the century'' because of the social and legal issues that each case embodies.

These cases for one reason or another touched a public nerve at the time when they occurred and continue to resonate with modern readers. We think that readers will agree that the cases included in these two volumes are among the most important of the

twentieth and early twentieth-first centuries. Since space was limited, some famous cases had to be excluded. The chapters about the cases that are included cover the crime, the setting, and the participants; the actions taken by law enforcement and the criminal legal system; the actions of the media covering the case; the trial (if there was one); the final resolution of the case; the relevant social, political, and legal issues; and, finally, the significance of the case and its impact on legal and popular culture.

The reader will notice that each contributor has included ''sidebars'' to accompany his or her case. These sidebars provide additional information that will assist the reader in placing the case in context. The sidebars in the various chapters provide a variety of information, including timelines, additional background on key persons, related cases, key terms and concepts, and ''fun facts.''

Each contributor also provides a short list of books of ''Suggestions for Further Reading'' at the end of his or her chapter. These lists are provided for readers who would like to go beyond the overview and discussion of the case provided in the volume. Although each contributor has been thorough, each case could well be the subject of a book and many of them have been. Readers intrigued by a case may enjoy pursuing their interest with the suggested books.

Finally, at the end of Volume 2 in this set, readers will find a ''General Bibliography'' that provides a longer list of books compiled by the co-editors of this set. These books and articles are provided for readers who have a broader interest in crime history and the media. A comprehensive index completes the set.

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Introduction to Volume 2

STEVEN CHERMAK AND FRANKIE Y. BAILEY

In groups of four or five, 19 hijackers boarded four different transcontinental flights in the early morning hours of September 11, 2001. The coordinated attack plan was for each group to overtake the flight crew, gain access to the cockpit and neutralize the pilots, and then use the fully fueled airplanes as guided missiles (National Commission on Terrorist Attacks Upon the United States, 2004). The first plane to hit its target was American Airlines Flight 11 that departed from Boston's Logan International Airport. At 8:46 a.m., it struck the North Tower of the World Trade Center in New York City, instantly killing all people on board and many people in the tower (p. 7). Another flight that left from Boston, United Airlines Flight 175, struck the World Trade Center's South Tower approximately 15 minutes later. There was mass confusion because the unimaginable had just happened, so it was not expected that the plan had not yet been fully executed. The first two airplanes attacked a great symbol of the economic prosperity of the United States; the third airplane targeted America's military strength. American Airlines Flight 77 left from Dulles International near Washington, DC, and crashed into the Pentagon about one hour after the first airplane had hit the World Trade Center. The final group of hijackers did not fully accomplish their objective. The four hijackers, who boarded United Flight 93 in Newark, New Jersey, were somewhat delayed in their attempts to gain control of the airplane, providing time for passengers to obtain information that indicated that what was transpiring was not a typical hijacking (p. 13). The heroic passengers collectively decided that they would attempt to stop the hijackers from reaching their intended destination, which was probably the Capitol or the White House (p. 14). The hijackers who were piloting the plane, once they realized that they would not reach their planned destination, crashed the airplane into a field in Pennsylvania.

The public was quite familiar with Osama Bin Laden prior to September 11. It was well known that he was a terrorist—the mastermind behind several plots to kill Americans at home and abroad. Most people's immediate reaction, as soon as they saw the first plane

hit, was to assume it was terrorism, and it followed that it had to be the work of Bin Laden's terrorist network. It was his network that had been established to destroy America. Bin Laden's hatred is fueled by many issues, but he particularly despises the role that the United States plays in Middle East affairs. In discussing his background, the 9/11 Commission report concluded this about Bin Laden:

> He inveighed against the presence of U.S. troops in Saudi Arabia, the home of Islam's holiest sites. He spoke of the suffering of the Iraqi people as a result of sanctions imposed after the Gulf War, and he protested U.S. support of Israel. (p. 49)

Although Bin Laden is generally accepted as ''Public Enemy Number One,'' and his capture or death would be a major success in the war on terrorism, scholars conclude that the jihadist movement would remain a significant threat if he was killed. In fact, even with the incredible energy and resources put in place to be better prepared for terrorism and capture terrorists, al Qaeda is probably stronger than it has ever been, it is much more innovative and adaptive, and its number of participants and supporters has grown (Rabasa et al., 2006).

Media coverage of the September 11 attacks dramatically increased the significance of these events. The far reaching technologies of modern media allowed news organizations to cover events as they unfolded, displacing all other programming. There were incredible video images of the airplanes striking the World Trade Center Towers, allowing the world to experience terrorism directly and watch as the buildings crashed into the ground. People relied on the World Wide Web in a unique way as news Web sites disseminated information immediately as it became available. People were angry, sad, afraid, and disbelieving, and it was the media that provided an outlet to experience, express, and deal with these emotions. All types of news media have reported, analyzed, reanalyzed, revisited, and redefined these events. The attacks and aftermath of September 11 may be the most media covered event in the history of the world, although the volume and scope of worldwide media attention is impossible to estimate. Song writers, film directors, poets, playwrights, novelists, and scholars have all attempted to use their craft to understand, interpret, and give meaning to these events. In fact, several of the scholars who were contacted to write this particular chapter declined because they thought that the case could not be covered in the space that was allotted.

The world was immediately impacted by September 11. Most people mourned for what would be a significant loss of human life, but some people cheered. People reacted dramatically, and overall there was an outpouring of sympathy and support for the victims and surviving family members. Church pews were filled following the events, psychologists had to have extended hours to help patients deal with their pain, and many people reevaluated their lives. One of the most dramatic examples of this reevaluation was when Pat Tillman, a successful NFL football player, was so impacted by the events of September 11 that he decided to join the Army Rangers and go to war and die to fight terrorism. Many sectors of society have also changed significantly. For example, the airline industry has still not recovered from the financial impact of the attacks, and air travel is more challenging than ever for passengers because of enhanced security. Politicians have focused primarily on responding to terrorism since the attacks and thus have had to ignore other important social issues. Politicians have passed legislation, financed two wars, and reorganized the government. Two of the most well-known changes were the passage of the United States Patriot Act and the establishment of the Department of

Homeland Security. The attacks have also impacted legal decision-making as the United States Supreme Court and other federal courts have been tasked with helping define the boundaries of this legislation and establish limitations to the tactics that can be used in the fight on terrorism.

Society continues to be impacted by the events of September 11. As you read the chapters in this and the previous volume, one conclusion that you might reach is that many of the cases have no logical endpoint because the social, legal, and cultural ramifications of these cases are long lasting. Moreover, society craves a constant retelling of many of these seminal events. The focus of this particular volume is on the cases that occurred after 1972. There are two reasons why we used 1972 as the breaking point between Volume I and Volume II. First, we believe that celebrated cases happen much more frequently in the modern media environment. Although what is included here are some of the most well-known and dramatic cases that occurred in the past 35 years, the volume actually could have been much longer. We had to exclude cases involving United States Presidents, such as Watergate, attempts to assassinate President Gerald Ford and President Ronald Reagan, and the impeachment trial of President William Clinton. Other cases that do not appear include acts of terrorism, like the September 11 attacks, the Olympic Park Bombing, and the 1993 bombing of the World Trade Center. Other cases excluded are the organized crime exploits of John Gotti, serial murderers like Jeffrey Dahmer and Andrew Cunanen, and cases involving media superstars like Michael Jackson, John Lennon, Tupac Shakur, and ''Biggie'' Smalls. It appears that there is an inverse relationship between the size and scope of the media and its focus on any particular crime and justice case or issue. Since there are so many media outlets now, and a public that is more connected than ever by these new technologies, media and public attention is short and celebrated cases have to be presented more frequently to keep the public's attention. Second, this second volume represents a turning point in criminal justice process. Starting in the early 1970s, crime rates in the United States increased dramatically, bringing about fundamental changes in the response priorities of the criminal justice system. In short, the criminal justice system responded to these crime rates by becoming increasingly punitive with a particular emphasis on sending defendants to prison.

Although many cases had to be excluded, the cases presented in this volume are extraordinarily engaging. They also highlight several reoccurring themes that have helped define why media organizations have chosen specific cases as important enough to be celebrated. Five themes are discussed below to introduce the cases included in this volume.

Protectors of Freedom and Justice

Most of the famous crimes discussed in these two volumes are important because of the individuals involved as the perpetrators and/or the victims, the circumstances surrounding the incident, and the impact that they have on social and legal issues. There are several cases that are not only important for these reasons, but also because an incident or series of incidents provided an opportunity to investigate larger institutional flaws. In general, military personnel and law enforcement officers are held in high regard in American culture, but, when their actions or inactions demonstrate institutional flaws and their acclaimed status is tarnished, the media sensationalize the coverage. Three cases in this volume speak directly to these issues.

First, in Chapter 1, Laura Finley discusses the activities that occurred between 1973 and 1976 on the Pine Ridge Indian Reservation. Laura Finley describes how abuse, neglect, and exploitation provided some of the background for the 71-day standoff between activists involved in the American Indian Movement (AIM) and the Federal Bureau of Investigation. Although this particular standoff ended peacefully, the tensions between AIM activists, the more ''traditional'' tribal government, and the FBI did not end here. In the years that followed the standoff, over 60 AIM members were murdered by ''death squads'' or ''goons'' representing the ''traditional'' tribal government. Most of these cases were never solved. The attacks, protests, and intimidation that occurred on the reservation contributed to a climate of fear. Then, in 1976, after two FBI agents and an Indian were killed in a shootout, a small army of law enforcement agents raided the reservation attempting to find the agents' killer. Homes were raided, citizens were detained and interrogated, and potential witnesses were either killed or intimidated. The investigation of the killings led to the arrest, conviction, and imprisonment of Leonard Peltier. The discussion of this case, like so many other cases discussed in these volumes, illustrates how difficult achieving justice can be when the stakes are so high because of intense media coverage of a case.

Second, in Chapter 7, Holly Welker examines a military scandal referred to popularly as the ''Tailhook Scandal.'' The Tailhook Association is a proud organization that was well known for supporting aircraft carrier aviation activities. It is also an organization that has had direct ties to the United States Navy for much of its history. In 1991, however, the image of the association and United States military was significantly harmed by over 80 sexual assaults and harassment incidents that occurred at its annual meeting. As Welker discusses, this case raised important issues related to government cover-up and denial of access to key personnel or documents to adequately understand the scope and seriousness of an event. Although the scandal did have significant impacts on several military careers, the protection of information seriously undermined the ability of investigators to get at the truth. In addition, the case provided the opportunity to have a long overdue public discussion about the role of women in the military.

The final case that fits into this general theme examines the events and aftermath of the torture that occurred at Abu Ghraib prison in Iraq. In Chapter 17, Michelle Brown skillfully presents the circumstances, response, and implications of this incident. Ghraib prison had a history of torture and prisoner abuse: Saddam Hussein used it to detain and execute dissidents. Thus it was an easy decision for the United State Military to use it as a detention facility once it occupied Iraq. One would not expect, however, that the torture leveled against prisoners post-Saddam would rival the most brutal tactics used by Hussein's regime. It is also certainly one of the cases in this two volume set that illustrates the power of widespread availability and use of technology to document events as they occur. The use of camera phones and other digital devices, and the ability to disseminate such images instantly worldwide, has significantly changed how information and ideas are controlled and shared in modern society. The Army Reserves assigned to Abu Ghraib to guard its prisoners were products of this technology society, and some of its devices were used to document their lives at war in Iraq. They also used them to capture the barbaric torture techniques used on prisoners at Abu Ghraib. Although *60 Minutes* broke the news story for the world, the images that documented the widespread abuses were disseminated widely. The military trials have since all been completed and the perpetrators are serving their sentences, but these images still resonate and influence world and U.S. public opinion about the war in Iraq.

Signifying Events

Media studies discuss the importance of thematic coverage of news stories—media organizations will string together a series of independent events to represent a larger social concern. A single event, which might not have been covered if not for the concern about the larger issue, is dramatically presented. The shelf life of such issues tends to be short: a certain issue will be promoted and covered, and then it will disappear as media interest starts to wane. Two cases presented in this volume speak directly to the importance of thematic coverage of crime and justice issues. Historically, the criminal justice system has markedly devalued the importance of crimes against women. In particular, domestic violence and rape victims often complained about how attempting to report the case only increases the trauma and pain felt by unsympathetic and accusatory professionals working in the criminal justice system. The status of crime victims generally and women victims specifically began to steadily improve in the late 1970s. Of particular emphasis was the development of programs to better support rape and domestic violence victims. Media organizations became interested in the issue of crimes against women, and highlighted their importance by providing the public with illustrative case examples. Consider the media coverage of the "Central Park Jogger" presented in Chapter 4. Trisha Meili was a wealthy, white woman who was brutally attacked and raped while jogging through Central Park. The attack and rape was initially blamed on a group of young, black males. The safety of women, the response of the criminal justice system to rape victims, and the procedural difficulties in getting rape convictions were all issues that were examined during the sensational coverage of this case.

As Laura Finley illustrates, this case was also important because the accused were black and the victim was white. Media coverage of crimes of violence indicates that white victims receive much more coverage compared to blacks, black defendants are demonized by the press especially when charged with rape, and intraracial crimes receive substantially more coverage than interracial crimes (Campbell, 1995; Entman, 1992; 1994). The racial issues that were emphasized in the coverage of this particular case were particularly salient because it was only one of several controversial cases occurring in the mid-1980s to early-1990s, engaging issues of race and justice. This volume discusses two of these explosive cases. First, Vicky Munro analyzes the murder of Yusuf Hawkins in Bensonhurst, New York in Chapter 5. Hawkins and his friends traveled to Bensonhurst to buy a car, but a mob of white youths attacked and killed him because he was black. The senselessness of the attack provided an opportunity for national media to explore the racial divisions in New York City and society in general. The murder also brought together leaders of the African American community to respond in protest, heightening the racial tension that had been observed after several other high profile race cases. Munro's chapter also importantly discusses how this case was linked to the broader discussion that was occurring about hate as a motivation for violence and the role of the criminal justice system in responding to bias crimes. The second case is the Rodney King police beating case discussed in Chapter 8. One of the important aspects of this case was that it was captured on video by a citizen observer. The powerful video captivated the network news viewing audience for many months. When the officers were acquitted in their state case on various charges, a riot ensued that lasted over two days and was captured by an observing media.

"If it bleeds, it leads."

The news media's emphasis on death and serious injury is well documented. In fact, the seriousness of the crime is one of the most consistent predictors of whether a crime event is covered and the amount of space it receives (Chermak, 1995). Each day, reporters in cities across the United States decide which, of the large pool of crime events available to them, should be covered. Most crimes, especially in cities that are plagued by serious and violent crime, are not even considered. Instead, reporters consider only the characteristics of murders, rapes, and serious assaults and then determine what violent crime stories are worthy of presentation. It is not that other crimes do not have tremendous impact on other crime victims and the community, but these events are simply ignored because violent crime meets the minimum criteria for newsworthiness. Statistical data on crime show that the frequency of crime decreases as the seriousness of the crime increases. For example, murders occur less frequently than assaults, and assaults occur less frequently than burglaries. News organizations turn these statistics upside-down: the crimes that occur less frequently are most likely to be presented in the news.

Although murder is a preferred crime event in general, it is important to note that some murders are never presented in the news, others receive a few paragraphs of coverage, others are the top story of the day, and some become the most celebrated cases in the history of the United States. The number of victims killed in a single event, or multiple victims killed by the same perpetrator in independent but related events, is one of the key reasons that increase the likelihood that a homicide is covered or evolves into a case with celebrated status. This volume provides an analysis of several such cases. In Chapter 11, for example, Timothy McVeigh, and several other offenders, committed the most significant act of terrorism in history prior to the September 11 attacks. McVeigh's truck bomb resulted in the deaths of 168 victims, and many more people were injured. Importantly, it ignited a wave of public and political pressure to dissect the status of domestic terrorism threats and implement changes in various sectors of government to be better prepared to respond if other such events occur. Similarly, Chapter 14 provides an analysis of another case that resulted in different but significant policy changes: the Columbine High School Massacre. The attack at this high school, where Dylan Klebod and Eric Harris murdered or injured fellow students and teachers, was captured dramatically by television cameras and photojournalists. This event also created an urgency to develop school and community programs to decrease the likelihood that similar attacks might happen in the future in other schools. Among the changes were increased security measures in high schools, the adoption of new school policies, and local and state legislation related to gun and criminal behavior in schools. In Chapter 6, a different type of death incident is discussed, but one that also significantly influenced social and legal policy. This chapter discusses the crimes and trials of Dr. Jack Kevorkian—responsible for assisting in over 130 deaths between 1990 and 1998. His persistence, despite prosecutorial warnings and actions meant to deter him, ultimately led to his conviction and long-term confinement. The media coverage of his involvement in these deaths, however, also ignited a raging public and legal debate about suicide, a patient's right to die, and the role of the medical professionals in assisting patients.

Two other cases involving multiple victims are also discussed in this volume. First, the crimes of serial murderer Ted Bundy are discussed in Chapter 2. Gary Boynton, the author of this important contribution, describes how Bundy was the ideal murderer: he was well educated, articulate, and handsome. In addition, he was unfortunately successful

in that he killed or injured at least 20 victims in multiple states, he was able to elude investigators for a significant period of time and escaped once caught, and then his case was processed through multiple trials in different jurisdictions. The Bundy case was also important because it increased public interest in the serial murderer phenomenon, and the concomitant result was increased coverage of other serial cases in the news and the frequent portrayal of serial murderers in popular films and television dramas.

Second, the Unabomber is discussed in Chapter 3. Like Bundy, Ted Kaczynski committed many offenses over many years. In fact, his bombing spree lasted 18 years. There were several elements to these crimes that made the Unabomber's crimes particularly newsworthy. First, despite an incredible effort by the FBI and the expenditure of nearly $50 million, they were frustrated in their ability to apprehend the Unabomber. Second, the case was intriguing because Kaczynski's final crime happened soon after the Oklahoma City bombing. In fact, the authors of this important chapter suggest that Kaczynski was starved for the type of media attention that McVeigh and the Oklahoma City bombing were receiving. Finally, the media ended up playing a critical role in his apprehension in that two newspapers agreed to publish the Unabomber's Manifesto. It was this publication that caught the attention of Kaczynski's brother, leading him to report to the FBI his suspicion that the Unabomber was his brother.

Celebrities in the News

Celebrities have a mutually interdependent relationship with the media. Media interest in their careers determines their public marketability. One price that all celebrities pay in exchange for the media attention that increases their public value is that the media are interested in all aspects of their lives: the good, the bad, and the ugly. It is the fall of celebrities like Anna Nicole Smith, Britney Spears, Lindsay Lohan, Mel Gibson, and Kobe Bryant that produces some of the media's most intense coverage. There are two cases in this volume that directly show how celebrity status impacts the salience of a crime story. First, in Chapter 9, Gregg Barak presents the controversial O.J. Simpson case, trial, acquittal, and aftermath. Simpson was a Hall of Fame running back who parlayed his on-the-field success into a career in the entertainment business. When he was charged with the murders of Nicole Brown Simpson and Ronald Goldman, his celebrity status ignited a media circus that would define how the public came to understand this crime and how the criminal justice system responds to such cases. The public was captivated by the trial as it was presented by video in its entirety, and it was stunned, horrified, or elated once the not guilty verdict was announced by the jury. Like all of the cases discussed in these two volumes, the facts, the people involved, and the processing of these cases are often not as important as the impact they have on social, cultural, and legal issues. As Barak concludes, the criminal and civil trials of O.J. Simpson dramatically engaged important discussions of the intersections between justice and race, class, and gender.

In Chapter 15, Melissa Jarrell and Isabel Araiza discuss the criminal behavior of another well known celebrity. Martha Stewart, like O.J. Simpson, was a cultural icon, but their paths to celebrity were quite different. Stewart's name had become synonymous with a successful style—a style she relentlessly marketed in every media environment. Her success was awarded financially, but it was perhaps her status as America's homemaker that made her criminal case so appealing to the media and the public, and it was her attempt to protect her public persona that actually resulted in Stewart being tried and

convicted of federal criminal charges. Stewart lied to investigators and obstructed justice when her involvement in an insider trade case was uncovered, and the result was a short stay in a federal minimum security prison facility. Once most perpetrators are convicted, the media loses interest until he or she is scheduled to be released, but life in prison for America's hostess was an important news story. The public has a strong imagination about what life in prison entails, which contrasted dramatically with Stewart's penchant for style. The authors also demonstrate that criminal trials and negative media coverage do not necessarily destroy all careers. Since leaving prison, Stewart's business ventures appear again to be thriving, and she has done much to recapture her title of the great American homemaker.

The Innocence of Children

Children receive special protections from society and the criminal justice system. When these protections fail and children are victimized, the media pay special attention to these cases and provide intense coverage. Many cases involving children are difficult to promote in the media because there are strict limitations on the identification of surviving child victims. If a child is murdered, this policy does not apply. The Susan Smith murder case, discussed in Chapter 10, provides an illustration of how both the importance of children to the construction of news stories and the pressures to satisfy the public's appetite for a celebrated case limit the ability to fully investigate the facts. Smith pushed her car into a lake with her two young boys still strapped in their car seats, and was eventually tried and convicted of these murders. Smith initially claimed that her children were abducted by an African American male in a carjacking incident. The media did not question these claims and televised her pleading for information about her missing children. The police were very skeptical about this story because her account was inconsistent. Once the police confronted her directly with alternate facts, she confessed to the killings and was eventually convicted of the murders.

The JonBenet Ramsey murder case, discussed in Chapter 12, remains an unsolved homicide. Police and family members initially thought that JonBenet was abducted because they had not yet found her body and there was a ransom note. The focus of the investigation changed significantly when her body was found in the basement wrapped in a blanket. The JonBenet Ramsey case was a significant media event for many reasons. First, JonBenet was an ideal child victim with affluent parents. Second, her participation in children's beauty pageants, and their incredible popularity, was explored by reporters. Third, the parents were the primary suspects in the case, but the police were not able to provide enough evidence that would result in their indictment. Finally, the case exposed some of the difficulties that the criminal justice system faces when processing such high profile cases: standard operating procedures do not apply because every step of the investigation is examined under the media's microscope. The fact that law enforcement officers made mistakes and did not follow protocol in the case was emphasized in the coverage of the case. The public was hopeful in 2006 that the case had finally been solved when John Karr confessed to JonBenet's murder, and the media again revisited the tragic case only to again be disappointed when it was discovered he could not have been the killer.

Tim Lauger's analysis of the Scott Peterson murder trial presented in Chapter 16 adds an interesting twist to the coverage of children by the news media. Scott Peterson was charged and convicted of the murder of his wife who was 8-months pregnant. The case

would have been an important news story even if Laci was not pregnant. Lauger describes her as an ideal victim because she was a white, young female from a neighborhood of considerable wealth. Scott was depicted by the media as a calculating, lying monster who murdered an innocent victim because he was having an extramarital affair. The news value was also increased because the prosecutor pursued and won a death sentence in the case. The Peterson murder case received celebrated attention, however, because it engaged important issues related to domestic abuse of pregnant woman, fetus homicide, and abortion rights. In fact, conservative politicians attempted to use this case to pass federal fetal homicide laws. Legislation was introduced quickly after the bodies of Laci and her unborn child were found, attempting to grant legal standing to fetuses. Although there was considerable resistance by pro-choice advocates, the law was eventually passed and became law in April 2004.

The Mary Kay LeTourneau case, discussed in Chapter 13, provides another confounding element to the important status of children in the coverage of crime stories. The victim in this case was a 13-year-old boy who had an ongoing sexual relationship with his teacher. The key element to this case was the status of the defendant. Women are generally ignored by the media as criminal defendants, and rarely do they commit the type of crime that results in the case receiving national news coverage. In fact, only three chapters in this two volume set present cases with only female defendants (i.e., Susan Smith, Martha Stewart, and Mary Kay LeTourneau). Sean Baker, the author of the LeTourneau chapter, discusses that these cases are important because of the type of crime committed by female defendants, but that they contradict expectations about the role of women in society LeTourneau had three children when she seduced the young boy into a long-term relationship. One of the interesting aspects of the case is that the relationship continued after she was released from prison and eventually the two were married. Over time, Baker demonstrates how media coverage of the case and the demonization of the defendant changed.

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1

Pine Ridge Reservation and the American Indian Movement

LAURA L. FINLEY

Pine Ridge, home to the Oglala Lakota, is the second largest Indian reservation in the United States at approximately 1.7 million acres. It is home to approximately 30,000 people. It is also located in Shannon County, the poorest county in the nation. Poverty rates are high—69 percent of Pine Ridge residents live under the federal poverty line—and the unemployment rate is a shocking 80 percent (''Life on the reservation,'' n.d.). The average annual family income is $3,700 (trailsandgrasslands.org).

Certainly there are multiple reasons for the extent of poverty on Pine Ridge, but one of them can be traced to the historical relationship between Indians and White people in the area. This relationship can be described as deceptive, at best. Some have called the White treatment of Native Americans in the area genocidal (Weyler, 1984). Home to the sacred Black Hills, the area around Pine Ridge was taken from the Indians, both by deception and by force. In 1890, the Seventh Cavalry annihilated most of Chief Big Foot's band of Minneconjou Teton Lakota at Wounded Knee. Close to a century later, more Indians were killed at the same site during the armed occupation of Wounded Knee in 1973. The almost constant warfare and lack of governmental supports has left the reservation in dire straights. Although throughout history the Lakota have resisted the White man's invasion of their sacred ground and their way of life, in the 1960s a unique group of Indians formed to do so (Brown, 2001).

The American Indian Movement (AIM) grew out of the same tensions as other civil rights movements. Like Blacks, women, Chicanos, and gays and lesbians, Native Americans were tired of the mistreatment they received in the United States. From the start, the government feared AIM and, as they did with other so-called subversive groups, they attempted to quash the group in a number of ways. The Federal Bureau of Investigation's Counterintelligence Programs (COINTELPRO) included introducing disinformation campaigns, sending in infiltrators, tying up leaders in court, and forming other

THE LAKOTA TRIBE

Others refer to the Lakota as Sioux. This name, however, is a corruption of the French word *nadowesioux,* which means ''little snakes'' in Chippewa. The Chippewa were allies with the French and enemies of the Lakota. Lakota means ''allies,'' and there were three kinds of Lakota in the United States: the Assiniboine, who lived in the north; the Santee, who lived in present-day Minnesota; the Yankton, who lived near Missouri; and the Teton, who lived in the great plains. Oglala Lakota are part of the Tetons (Frazier, 2000).

strategies. Some critics of the programs argue that a mainstay of COINTELPRO efforts was the assassination of leaders.

Some maintain that COINTELPRO efforts made Leonard Peltier, an Oglala Lakota, a political prisoner. Peltier is currently serving two life sentences for the killing of two FBI agents during the armed invasion of Pine Ridge in the early 1970s. Despite a lack of evidence linking Peltier directly to the killings, and despite the tremendous evidence of misconduct during his trial and even during appeals, Peltier remains incarcerated to this day (*Incident at Oglala,* 1991).

The following tells the story of Pine Ridge, AIM, and Leonard Peltier. First, it offers a brief history of the relationship between Indians and White Men on and around Pine Ridge. Next, it details the origin of COINTELPRO and documents some of the major types of programs used by the FBI under its auspices. This is followed by a more detailed discussion of the creation of AIM and the FBI's efforts to quash the group, including events leading up to what has been called the ''Incident at Oglala.'' Those efforts are critical in understanding the shootings that resulted in Peltier's conviction and incarceration, as well as making sense of his trial and appeals. The final section discusses Peltier and AIM today. It is important to note that the chapter utilizes several pieces of literature by Ward Churchill and Jim Vander Wall. These authors have maintained that the FBI's surveillance of and actions against AIM are state crimes. It is important to note, however, that other authors do not take such an extreme position.

PINE RIDGE: A BRIEF HISTORY

In 1868, the U.S. government violated the Fort Laramie Treaty of 1851 by attempting to establish a direct travel route between the fort and Virginia City. This route cut through the land of the Lakota, or western Sioux, in what is now Montana and Wyoming. The army established posts along the way to ''defend'' their efforts from Indians. Red Cloud, leader of the Oglala Lakotas, established alliances with the Arapaho and Northern Cheyenne, two other nations whose treaties had been violated. After multiple engagements in 1866 and 1867 in which the Indians seemed to prevail, the U.S. government initiated peace efforts. Red Cloud refused to consider these until all troops had been removed from the Indians' legally recognized land (Deloria & Lytle, 1983). In 1869, a new treaty was ratified by Congress that acknowledged the Lakota's right to exclusive occupancy and use of the area, including the sacred Black Hills, or *Paha Sapa.* The land described in this treaty covered what is approximately three percent of the continental United States today (Churchill & Vander Wall, 2002a).

It did not take the U.S. government long to discover that perhaps they still wanted the Indians' land. In 1872, Jesuit missionary Jean De Smet told the South Dakota *Sioux Falls* editor that he believed there to be significant mineral deposits in the Black Hills. Shortly thereafter, the media called for development of the area, and Congressman Moses K.

Armstrong introduced a bill to purchase the Black Hills. Included in the proposition was the plan to send in Lt. Colonel George Armstrong Custer and his 7th Cavalry to assist in acquiring the land, should there be resistance from the Lakotas. In 1874, one of Custer's scouts announced he had found gold near present-day Rapid City, South Dakota. This prompted swarms of miners in search of riches, as well as another government expedition. Both sides began preparing for war, and Secretary of War W.W. Belknap announced it was imminent unless the Lakota gave up possession of the Black Hills (Brown, 2001). Only months later, the U.S. War Department authorized General Philip Sheridan, commander of the Military District of Missouri, to begin operations against the Lakotas, especially targeting Sitting Bull of the Hunkpapa and Crazy Horse of the Oglala. Three different military groups were dispatched to the territory, with the plan being to crush the Indians. The Indians again resisted (Churchill & Vander Wall, 2002a).

On August 15, 1876, Congress directed that all assistance to the Sioux be ended unless they relinquished the Black Hills and areas surrounding the reservation. In September, Red Cloud and other Lakotas signed the papers relinquishing the 22.5 million acres, although Red Cloud later said he did not understand what he was signing, and only 10 percent of the signatures required for cession of any portion of the reservation were attained (Sayer, 1997). Eventually, Sitting Bull and another Indian leader, Gall, led their people north to Canada, but Crazy Horse refused to leave. The government then offered a deal, asserting they would guarantee a permanent reservation in the area and renegotiate the 1868 treaty in exchange for a cease-fire. Crazy Horse and his people agreed to the deal, and turned in their weapons and horses on May 6, 1877 (Brown, 2001). According to Churchill and Vander Wall (2002a), there is no evidence the government ever intended to do as they had promised. Rather, they arranged for the assassination of Crazy Horse.

The Indians had been immobilized by years of warfare and the loss of leaders. More was added to their burdens when, in 1883, Congress outlawed most major spiritual ceremonies, including the Sun Dance. Further, Indian young people were routinely forced to attend white boarding schools. In 1885 Congress enacted the Major Crimes Act, which usurped the Indians' sovereignty by ending their control over most crimes occurring on native lands, and in 1887, the General Allotment Act, or Dawes Act, dissolved the Indian concept of communal land ownership by allotting specific parcels to each member (and selling the remainder). This dramatically reduced Indian landholding, from 138 million acres in 1887 to 48 million in 1934, with almost half of the remaining land desert or semiarid (Deloria & Lytle, 1983). In desperation, Indians followed the lead of returned leader Sitting Bull and took up the Ghost Dance, a spiritual effort to assist them in fending off the white man's attacks. Because it caught on with such fervency, the government viewed it as an ''uprising'' and responded by sending almost 1,000 armed troops to Pine Ridge (Churchill & Vander Wall, 2002a). On December 15, the government mobilized the same Indian police force that had assassinated Crazy Horse and killed Sitting Bull. Indians fled, and the armed forced intercepted a group of 350 or so at Wounded Knee Creek. The soldiers opened fire on their captives the next morning. About two-thirds of the estimated 300 killed were women and children, and the line of bodies was said to extend two miles from the camp in which they had been trapped (Churchill & Vander Wall, 2002a).

While the Wounded Knee Massacre did not end all forms of Lakota resistance, it did drive them underground for some 20 years. The government continued to usurp Indian land and sovereignty through various forms of legislation (Churchill & Vander Wall, 2002a). Starting in the early 1900s, Sioux leaders sought compensation for the Black Hills.



Figure 1.1 Poster showing Bobby Onco, a Kiowa, and member of the American Indian Movement (AIM). This photograph was taken after a cease-fire between AIM forces and federal marshals at Wounded Knee, Pine Ridge Reservation, South Dakota. Courtesy of the Library of Congress.

In 1980, the Supreme Court ruled that the Sioux were entitled to $106 million for the loss of their sacred land, but by that time the Sioux had determined their entire identity was connected to the sacred land and they refused to accept the money. They wanted the land back (Frazier, 2000).

THE ORIGIN OF THE AMERICAN INDIAN MOVEMENT

It was not until the 1970s that the conflict between Indians and the government again became so overt. Beginning in the mid-1960s, Cherokee Clyde Warrior, a college student, called for pan-Indian movement akin to Stokely Carmichael and H. Rap Brown's Black Power. Warrior, through his newspaper, *ABC: Americans Before Columbus,* called for direct confrontation with the federal government. Inspired by Warrior's work, Anishinabes (Chippewas) Dennis Banks and George Mitchell founded the American Indian Movement (AIM) in 1968 to protest police brutality (AIM-GGC Profile, n.d.). The group initially took the name Concerned Indian American, or CIA (Rich, 2004). At the time, Native Americans were 10 percent of the population in Minneapolis but 70 percent of the inmate population (Sayer, 1997). Modeled after the Black Panther movement founded two years prior, AIM spread quickly, with chapters across the country. Although many of the early leaders were urban Indians, AIM took up many reservation issues, especially the government's abrogation of treaty rights (Churchill & Vander Wall, 2002a). AIM's mission reads,

> Pledged to fight White Man's injustice to Indians, his oppression, persecution, discrimination and malfeasance in the handling of Indian Affairs. No area in North America is too remote when trouble impends for Indians. AIM shall be there to help the Native People regain human rights and achieve restitutions and restorations. (AIM-GGC Profile, n.d., para. 2)

AIM saw themselves as warriors with the mission to protect and preserve the traditional values, not to invoke violence. They had a readiness to put their bodies on the line, because that was all they had. Leonard Peltier says AIM's responsibility, a warrior's responsibility, is to take care of the people. A warrior does not just carry guns, but organizes gardens, builds homes, and strengthens the community (*Incident at Oglala,* 1991). The group was inspired by the spirit of Crazy Horse and his resistance to mistreatment by Whites (Matthiessen, 1992). Additionally, AIM advocated sobriety (*Incident at Oglala,* 1991).

AIM immediately became active in a number of protests. In November 1969, a group of Indians calling themselves Indians of All Tribes (IAT) occupied Alcatraz Island. The leaders of this group demanded that the government follow an Act passed in 1882 that required unused federal facilities to be utilized for Indian schools. The group wanted the San Francisco Bay prison to be used for a Center for Native American Studies, a spiritual center, a center for ecology, a training school, and a museum. The group offered to purchase the land at a rate greater than the government paid to purchase Indian land. Although not an AIM initiative, the occupation of Alcatraz helped build attention to and support for Native issues. The Nixon administration attempted to negotiate with the IAT, but they responded by occupying a second site, an unused portion of a Seattle area military reservation. The Department of Interior offered that Alcatraz be made into a national park, still under the supervision of the Interior Secretary, but in which Indians would be allowed to help plan and work. The IAT rejected this proposal. In May 1970, the White House ordered denial of electricity to the Indians, as well as a denial of supplies arriving by water barge. IAT efforts on the island gradually reduced, and on June 14, 1971, U.S. Marshals arrested and removed from Alcatraz the remaining members (Churchill & Vander Wall, 2002a).

The IAT occupations prompted a spate of other occupations. Pine Ridge–based AIM leader Russell Means was especially creative at organizing demonstrations that garnered press coverage, such as a brief occupation of Mount Rushmore in 1971 and an effort to seize the Bureau of Indian Affairs (BIA) office later in the year. Pine Ridge soon became the base for AIM activities (Frazier, 2000).

AIM was also involved in assisting Native Americans seeking justice in the courts. In January 1972, two white brothers, Melvin and Leslie Hare, picked up drunken Oglala Raymond Yellow Thunder, tortured him, and left his naked body at an American Legion hall. Yellow Thunder died a week later. When his relatives received no help from the BIA, the FBI, and the local police, they asked AIM to get involved. Leader Means and Dennis Banks led a group of 1,300 Indians to occupy the town of Gordon for three days, demanding justice. The Hare brothers were eventually jailed, a policeman was suspended, and AIM's reputation grew as a group that made things happen (Churchill & Vander Wall, 2002a).

Later in 1972, AIM organized ''The Trail of Broken Treaties,'' a caravan of Indians who would travel across the country to the BIA building in Washington, DC, arriving just prior to the November elections. The group was to air their grievances, articulated in what they called the ''Twenty Points.'' The Twenty Points included requests for the federal government to restore treaty making with Indians (this had been ended by Congress in 1871); allow Indian leaders to address Congress; restore 110 million acres of land and terminated rights; repeal state jurisdiction of Native nations and federal control of Indian offenses; abolish the Bureau of Indian Affairs and create a new office; allow Indian religious and cultural freedom; and establish health, housing, employment, economic development, and education initiatives for Indians, among other things (Whittsock & Salinas, n.d.). AIM thought they would receive a fairly warm welcome, as the Nixon administration had advocated self-determination for Indians and helped to return 48,000 acres of land to the Taos Pueblo Indians in New Mexico (Sayer, 1997).

BIA officials had told AIM leaders they would work with them, but shortly after the group began negotiations, security guards attempted to remove members from the building. When AIM members resisted, the guards began using their clubs, only to find

themselves kicked out of the building. Ultimately, a group of 400 Indians ended up occupying the BIA building and commanding national attention to the Twenty Points. In early November, White House representatives reached an agreement with the AIM occupiers, acknowledging they would review and respond to the Twenty Points and that no charges would be filed against any AIM members for their role in the occupation (Sayer, 1997).

During the occupation, some AIM members took with them boxes of federal records. Leader Hank Adams attempted to get the missing items returned, but was arrested after an FBI agent provocateur, Johnny Arellano, implicated him. It turned out that the occupying group was so full of government infiltrators that it was impossible to determine who might be involved in any of the destructive activities taking place. The government then stepped up their efforts to make AIM look bad. The House Subcommittee on Indian Affairs announced that the occupation of the BIA building was "the most severe damage inflicted upon Washington, DC, since the British burned the city in the War of 1812" (Churchill & Vander Wall, 2002a, p. 127). The FBI also began a propaganda campaign to discredit AIM (Churchill & Vander Wall, 2002b).

At the same time these activities were occurring, back on Pine Ridge the BIA helped install conservative Richard "Dickie" Wilson as tribal president. It seems the BIA supported Wilson because they were concerned that Russell Means would seek the tribal presidency in 1974, as he had announced he would (Churchill & Vander Wall, 2002a). Wilson was, according to many Pine Ridge residents, nothing more than a BIA puppet. Problems emerged between full blood and mixed blood Indians. This was not really about blood quantum but rather conflict between the traditional Indians and those more aligned with white perspectives, as mixed blood Wilson was. Once elected, Wilson administered virtually all the federal funds, which were the primary source of income on the reservation (*Incident at Oglala,* 1991).

Meanwhile, the federal government, assisted by racist and corrupt local police, backed Wilson in the escalating tensions on Pine Ridge. In addition to weakening AIM, the federal government also had an economic interest in the area. The Black Hills yielded profits from logging and tourism, and South Dakota had become the hub of wheat growing in the U.S. The discovery of high-grade uranium in 1952 took on all new importance during the energy crisis of the 1970s. With total disregard for the tons of radioactive waste generated, the Interior Department authorized more than 5,000 speculative uranium-mining leases by the mid-1970s. In addition, the coal-rich area was considered a "national sacrifice area" as the nation struggled for energy (Churchill & Vander Wall, 2002a). Tensions on Pine Ridge escalated when Dick Wilson violated treaty and BIA requirements for consent and transferred 76,200 acres to the U.S. Park Service. Wilson and his supporters did everything in their power to ensure they were not opposed. Wilson assembled a squad of "enforcers" called Guardians of the Oglala Nation, or GOONS, who harassed AIM members (Churchill & Vander Wall, 2002a).

In January, 1973, 20-year-old Oglala Wesley Bad Heart Bull was stabbed by a non-Indian, in retaliation for a fight he had with James Geary, nicknamed "Mad Dog," in South Dakota (Frazier, 2000). The assailant, Darld Schmitz, was released on $5,000 bond the same day he was arrested, despite the fact that witnesses said they heard him say he planned to "kill him an Indian" earlier that night (Frazier, 2000, p. 145). Bad Heart Bull's mother called on AIM to assist her in achieving justice, as they had in the Yellow Thunder case (Churchill & Vander Wall, 2002a). AIM had experienced a busy year, leading the protest over the death of Yellow Thunder and providing food and housing for victims of a big

flood in Rapid City (Frazier, 2000). Things did not go well in their efforts to assist the Bad Heart Bulls. A meeting between Dennis Banks, Russell Means, David Hill, and state's attorney Hobart Gates in Custer, South Dakota, erupted in violence, and 36 Indians, including Means and Banks, were arrested and charged with burglary, arson, rioting while armed with a dangerous weapon, and assault with intent to kill (Frazier, 2000). Eleven police officers as well as Means and Hill required some medical attention. The National Guard was mobilized to Custer, and vigilante groups announced they would shoot AIM members if they saw them. It was later revealed the altercation was likely a setup designed to provoke AIM members and to make the group look bad, as the FBI had agents on hand. A deputy shoved Sarah Bad Heart Bull down the steps at the courthouse to incite the Indians. Ironically, she served five months in prison, although her son's killer never served a day as Schmitz was acquitted (Frazier, 2000). Dickie Wilson further alienated himself from AIM when he offered to send BIA police to assist local officers (Churchill & Vander Wall, 2002a).

WOUNDED KNEE II

Dickie Wilson's corruption prompted impeachment hearings, although Wilson largely presided over them himself. He was reinstated without tribal council quorum. Wilson opponents organized a meeting, defying his ban, and announced they would meet until something was done about Wilson. The BIA police, federal marshals, and the FBI put the meeting on 24-hour surveillance. At the time, AIM leaders had left the reservation to regroup after the Custer debacle. Indian traditionals called for AIM's return, and on February 26, 1973, five GOONS cornered Russell Means and beat him up. A caravan of 54 cars containing approximately 200 people headed to Wounded Knee, the site of the 1890 massacre, in a symbolic effort. They intended to hold a press conference in which they would air the BIA's abuses as well as rearticulate the Twenty Points. GOONS blocked the access routes, and BIA police as well as U.S. Marshals and FBI observers assisted them. These forces were heavily armed, and gunfire exchanges became regular. Approximately 200 militants, mostly AIM members, seized the village, temporarily holding 11 hostages. The standoff lasted a total of 71 days, with two occupiers killed and others wounded (Cannon, 2003). At the time of the Wounded Knee seizure, Pine Ridge was in dire straights, with 54 percent unemployment, chronic poverty, and debilitating rates of alcoholism and other health concerns (Cannon, 2003). Most of the businesses were white-owned and the median income for Indians was $800 (Sayer, 1997). On March 5, Dickie Wilson announced, ''AIM will die at Wounded Knee'' (Churchill & Vander Wall, 2002a).

The Justice Department asked AIM to release women and children by March, but only two people elected to leave. Tensions grew, and members of an AIM perimeter patrol were fired upon, leaving two Oglala wounded. An intense firefight followed on March 9. On March 10, the Justice Department switched tactics. Convinced the militants would leave if guaranteed they would not be arrested, they announced they were lifting their roadblocks. The plan did not work as the Justice Department thought, as only a few people chose to leave but hundreds more came in. Intensities again grew and the federal forces began to fire more steadily into the compound. An Oglala Vietnam war veteran, Roger Iron Cloud, explained, ''We took more bullets in seventy-one days than I took in two years in Vietnam'' (Churchill & Vander Wall, 2002a, p. 151). Negotiations for a stalemate were repeatedly ineffective. Furious with the media attention to the conflict, on March 21,

the Justice Department ordered the press out of the area by 4:30. Those reporters for alternative presses were told the FBI would arrest them when the conflict ended. The last groups left two days later, and the GOONs immediately amped up their barrage of small arms fire. An attorney who had been on the reservation, Ken Tilsen, slipped out and began to organize the Wounded Knee Legal Defense/Offense Committee in anticipation of a "second massacre at Wounded Knee" (Churchill & Vander Wall, 2002a).

In the following weeks, Russell Means, Dennis Banks, and Pedro Bissonette attempted to negotiate a cease-fire agreement with the federal government. On April 6, they reached an agreement that required Means to submit to arrest and go to Washington, DC, to meet with White House representatives. As soon as Means reported that talks had initiated, disarmament would begin. The Justice Department also agreed to a 30 to 60 day waiting period before they would arrest anyone involved in these incidents. A federal investigation of the issues AIM brought forward on Pine Ridge was also included, as well as an audit of tribal books, and the Justice Department agreed it would, where appropriate, help bring civil suits against the tribal council and the federal government for civil rights violations. Because it was important to address the historical concerns of AIM, the Justice Department also agreed to reexamine the Treaty of 1868 (Churchill & Vander Wall, 2002a).

In violation of their agreement, shortly thereafter the U.S. Marshals announced they were entering Wounded Knee to disarm AIM members, although disarmament was to have been mutual. Means did go to Washington DC, where he was told no talks would begin until the Indians were disarmed. He left per the agreement that there would be a 30 to 60 day delay in arresting those who were to face federal indictment. He commented,



Figure 1.2 A member of the American Indian Movement (left) offers a peace pipe to Kent Frizzell (right), assistant U.S. attorney general, ending the bloody standoff between AIM and federal authorities, 1973. Beside Wallace Black Elk, kneeling, are AIM leaders, from right: Russell Means, Dennis Banks (headband), and Carter Camp (vest). © AP Photo/Jim Mone.

''the Indians' last treaty with the government lasted all of 72 hours. The government broke it before the ink was dry'' (Churchill and Vander Wall, 2002a, p. 161). Over the following weeks, gunfire was light but tensions grew as the supply situation worsened. On April 17, the government escalated their assault when they opened fire on some families from an FBI helicopter. The families fired back. A federal spokesperson admitted that their forces fired at least 4,000 rounds, much of it with armor-piercing bullets, with some of it directed at a church. Five AIM members were wounded in the fight and one, Frank Clearwater, was fatally wounded. Clearwater died on April 25. The FBI tracked down the airlift pilots who tried to save Clearwater's life and charged them with interfering with federal officers in the lawful performance of their duties, conspiracy to commit offenses against the United States, and interstate travel with intent to aid, abet, promote, encourage, and participate in a riot. These counts each carried a possible five-year prison sentence and a $10,000 fine. Charges were later dropped (Churchill & Vander Wall, 2002a).

On April 20, two GOONs announced they were tired of all the waiting, and that, ''if the government does not move the 'militants' out of Wounded Knee by May 4, we will begin to lead commando-type raids'' (Churchill and Vander Wall, 2002a, p. 163). Wilson said he was behind them 100 percent. The Marshals' office realized the GOONs were out of control and began to attempt to restrain them, which almost prompted a shootout between the two groups. At the same time, the FBI decided to back the GOONs, and replaced their makeshift weapons with fully automatic rifles and ammunition and provided them with government-issued communications gear. On April 26, the marshals, who were now caught in the middle, began pumping tear gas into AIM bunkers. After being forced out of their bunker, one AIM member, Buddy Lamont, was hit by fire from an M-16. He bled to death while medics were prevented from reaching him for almost three hours. At approximately the same time, another warrior was shot by a sniper's .30-06. In early May, an agreement was reached so that the roadblocks were lifted for Buddy Lamont's funeral. AIM agreed that those with outstanding warrants would submit for arrest 72 hours after the funeral, and the government agreed to set up meetings to address concerns at Pine Ridge. Again, the government broke their end of the agreement by arresting almost immediately after the funeral (Churchill & Vander Wall, 2002a).

On May 17, White House delegates arrived for the scheduled talks. The meeting continued for two days. The White House delegates were patronizing to the Indians, and little was accomplished. They agreed to meet again on May 30, but on that day, only one spokesperson arrived to deliver a letter that informed the Indians that the days of treaty making were over, so the only way to address their concerns was through Congress. All the substance of the Indians' concerns was ignored (Churchill & Vander Wall, 2002a). The Wounded Knee trials were the longest federal trials in U.S. history, and involved 185 people initially. In the end, Judge Fred Nichol dismissed all the charges due to government misconduct (Whittsock & Salinas, n.d.). Means and Banks placed a replica of the Treaty of 1868 on the defense table and kept it there for the entire ten months as a symbol of all the treaties the federal government violated between 1778 and 1871 (Sayer, 1997).

Hundreds of civil rights complaints were filed with the Justice Department about GOON activities during the entire Wounded Knee period, but none were prosecuted, and only 42 were even investigated (Churchill & Vander Wall, 2002a). Over 500 Indians were arrested, and 185 had federal indictments. More than 90 percent of the charges were dismissed or resulted in acquittals, yet the Wounded Knee era diffused focus on AIM

missions and disrupted the group's leadership. According to members, it is one of the only organizations in the United States in which nearly every member has faced criminal charges at some point (*Incident at Oglala,* 1991). GOON activities against AIM escalated throughout mid 1973 and into late 1976. At least 69 AIM members and supporters died due to the violence, and more than 300 were physically assaulted (Churchill and Vander Wall, 2002a). The FBI claimed to be severely understaffed, which prevented them from responding to the GOONs' activities. Yet during the same time period, they managed to compile 316,000 investigation files on Wounded Knee from 1973 alone. According to Churchill and Vander Wall (2002a), "Throughout the three years of its peak activity on Pine Ridge, the Bureau justified its tactics on the basis that AIM was (and is) a public menace, a 'violence prone' or even 'violent' entity. In hindsight, we can readily discern that this portrait was largely the result of FBI fabrication and media manipulation. . ." (p. 176). In addition to their inaction against the GOONS, the FBI made no attempt to intervene when it became clear that tribal police were working as GOON agents, and the FBI even armed and equipped the GOONS. According to Churchill and Vander Wall (2002a), "by 1975, almost everyone on the reservation was armed, and few dared to walk around openly, even in daylight" (p. 188).

COINTELPRO

Although the FBI's counterintelligence unit is charged with investigating hostile foreign governments, foreign organizations, and the individuals associated with them, President Franklin Delano Roosevelt expanded their activities dramatically when he authorized FBI leader J. Edgar Hoover to investigate "subversives." Much of the investigation of subversives took place under the acronym COINTELPRO, or counterintelligence programs (Churchill & Vander Wall, 2002b). In the 1940s and 1950s, COINTELPRO efforts were directed at the Socialist Workers Party, and the Communist Party, USA. In the 1960s, COINTELPRO efforts were expanded to include Dr. Martin Luther King, Jr., and the Southern Christian Leadership Conference. Many times, COINTELPRO operations were conducted in conjunction with local law enforcement. Together, they utilized a variety of methods, including eavesdropping, bogus mail, "black propaganda," "gray propaganda," harassment arrests, use of infiltrators and agents provocateurs, pseudogangs, bad-jacketing, fabrication of evidence, and even assassinations (Churchill & Vander Wall, 2002a).

Eavesdropping of organizations occurred via wiretaps, electronic devices, mail tampering, live tailing of members, as well as through illegal entries and burglaries on a massive scale. Rather than gathering intelligence, Churchill and Vander Wall (2002a) maintain the primary purpose of these activities was to create paranoia amongst the targeted groups. Bogus mail was used to create division between members of targeted groups, or to intensify tensions where they already existed. This tactic was used extensively with the Black Panther Party to further divisions between followers of Huey P. Newton and Eldridge Cleaver. "Black propaganda" refers to fabricated publications distributed to discredit or foster/exacerbate tensions. This method was widely used with the Black Panther Party and the United Slaves Organization, and included release of cartoons caricaturing the other group. The FBI took credit for the killing of two Los Angeles Panther leaders in 1969 and recommended a new batch of cartoons. "Gray propaganda" refers to disinformation released to the press and electronic media. This tactic was also designed to

discredit and induce tensions, as well as to acclimate the public to FBI efforts to disband the targeted group. According to Churchill and Vander Wall (2002a), ''Such activities were so pervasive that one hardly knows where to begin in describing them'' (p. 44).

Individuals involved in, affiliated with, or even perceived to be involved in so-called subversive groups were targeted for arrest. According to Churchill and Vander Wall (2002b), there are numerous examples of the FBI fabricating evidence in criminal cases, withholding critical evidence that could assist the defense, intimidating witnesses, and coercing false testimony. This, according to Churchill and Vander Wall (2002a), had nothing to do with obtaining convictions, per se, although sometimes that happened. Rather, it was a useful means of depleting the groups' financial resources and of sewing dissension within the group.

Agents provocateurs were also charged with performing illegal activities or fomenting group members to engage in illegal activities. They also spread disinformation about a group and disrupted the group's regular functions. Churchill and Vander Wall (2002a) claim thousands of infiltrators were used against leftist organizations in the 1960s, and over 300 against the Socialist Workers Party alone between 1960 and 1976. Although less documented than the other techniques, there is some evidence the FBI created phony organizations, or pseudo-gangs, to undermine and even battle with targeted groups (Churchill & Vander Wall, 2002b). ''Bad-jacketing,'' also known as ''snitch-jacketing,'' involves the creation of suspicion that actual members were infiltrators, informants, cheating the organization, or otherwise disloyal. Agents would spread rumors or otherwise introduce fake evidence to spark paranoia among bona fide members (Churchill & Vander Wall, 2002a).

Finally, the FBI has been involved in the assassination of political leaders, typically by hiring surrogates to perform the actual assassination. Most notably, it is alleged that the Bureau arranged the assassination of Chicago Black Panther leaders Fred Hampton and Mark Clark (Churchill & Vander Wall, 2002b; Gibbs, 1996; Grady-Willis, 1998). Hoover officially disbanded COINTELPRO in 1971 (Churchill & Vander Wall, 2002a).

By many accounts, the FBI attained their goals. As Churchill and Vander Wall (2002a) note,

> the movement for social change loosely described as the ''New Left'' had been shattered, its elements fragmented and factionalized, its goals and methods hugely distorted in the public mind, scores of its leaders and members slain, hundreds more languishing in penal institutions as the result of convictions in cases which remain suspect, to say the least. (p. 61)

Former COINTELPRO Operative Wesley Swearingen maintains that, although COINTELPRO was officially disbanded, agents continued to carry on its objectives (cited in Churchill & Vander Wall, 2002a).

Churchill and Vander Wall (2002a) maintain the FBI used each of the techniques described above with AIM in the 1970s. According to the Leonard Peltier Defense Committee (Quick facts, 2003), 64 Native Americans were murdered and 300 were beaten or harassed during the FBI's Reign of Terror, virtually all of whom were AIM members or affiliated allies. In 1970, BIA police shot to death AIM leader Pedro Bissonette. It is clear the FBI was unhappy with Bissonette, who had publicly declared he would always stand by his Native brothers and sisters and would tell the truth about Wounded Knee. In particular, Bissonette vowed to be a defense witness in several of the Wounded Knee trials and to document the culpability of Wilson, the GOONs, and even the FBI. On October 17,

a man believed to be a GOON confronted Bissonette on the sidewalk in a small town of Nebraska. Bisonnette walked away, and an immediate alert was issued to find him to arrest him for assault. According to BIA police, Bissonnette resisted arrest and had to be subdued. Before anyone could view his body, it was removed from the morgue at Pine Ridge hospital and sent to Scottsbluff, Nebraska. AIM leaders believe Bissonnette was set up and murdered by GOONs, with the support of the FBI (Churchill & Vander Wall, 2002a).

GOONs killed Oglala Lakota tribal attorney Byron DeSersa, a vocal anti-Wilson activist, as well. Two GOONS were acquitted of murder charges, and two others pleaded to second-degree manslaughter and served two years in prison (Churchill & Vander Wall, 2002a).

In yet another example of an assassination, many believe Anna Mae Pictou Aquash was murdered with the support of the FBI. Aquash was one of a few female leaders of AIM, and had been involved in teaching drug and alcohol education as well as leading the Trail of Broken Treaties march. Aquash was aware of increased FBI surveillance and was concerned that false rumors that she was an FBI informant were making other AIM members suspicious of her (Cannon, 2003). She wrote to her sister that, ''My efforts to raise the consciousness of Whites who are so against Indians in the States are bound to be stopped by the FBI sooner or later'' (Churchill & Vander Wall, 2002a, p. 207). Although initially labeled a death by natural causes, an exhumation later revealed Ms. Aquash perished from a close-range bullet to her head. The exhumation and resultant X-rays revealed a bulge in her left temple, dried blood in her hair, and gunshot powder burns around her neck. The U.S. Commission of Civil Rights found it unbelievable that these things were not noticeable at the time of the initial autopsy, raising suspicions of FBI and BIA cover-up (Hill Witt & Muldrow, 1976). It is believed Ms. Aquash had been the subject of FBI investigations because of her close relationship with AIM leader Dennis Banks and the knowledge she might have had about the real nature of the death of the agents Coler and Williams (Churchill & Vander Wall, 2002a). Others believe it was AIM operatives who killed Aquash. In 1991, Russell Means accused AIM leader Vernon Bellecourt of ordering Aquash's execution (Cannon, 2003). In 2004, Arlo Looking Cloud went on trial for the murder of Anna Mae Aquash. He was convicted and sentenced to life in prison, despite making a deal with the federal government for his cooperation (Robideau, 2006).

The FBI also authorized a number of agents to infiltrate AIM. In addition, they stirred up concern that certain AIM members were actually agents or working with the corrupt police in order to provoke fear, mistrust, and disorganization. By early 1974, some AIM leaders thought other significant players were FBI informers, and AIM national codirector Carter Camp shot Clyde Bellecourt in the stomach, and Russell Means threatened to quit AIM unless Camp was excommunicated (Churchill & Vander Wall, 2002a).

Without a doubt, the FBI used a large number of informers, infiltrators, and agents provocateurs against AIM between 1972 and 1976. Churchill and Vander Wall (2002b) maintain it started as early as the Trail of Broken Treaties, when the Bureau placed agents into the group occupying the BIA building. One infiltrator, Douglass Durham, was a major player in the court cases involving AIM members and had advocated for more guerrilla violence, despite the protests of AIM leaders. A key prosecution witness in the case against Robideau and Butler, Mr. Draper admitted he had changed his testimony after being threatened by the FBI (Harbury, 2003).

The Incident at Oglala

By early summer 1975, it was rumored that AIM had established a heavily fortified and armed compound on the Jumping Bull property on Pine Ridge. Some 10,000 Lakota Sioux lived on the reservation at the time, and in 1975, it had the highest per capita murder rate in the United States. There was a sense of hopelessness and defeat on the reservation due to all the aforementioned problems (*Incident at Oglala,* 1991). Former Governor William Janklow said that, at the time, there were 10,000 to 15,000 people on the reservation and 700,000 in the state. Yet there was more violence in one month on the reservation than in the entire rest of the state (*Incident at Oglala,* 1991).

On June 25, FBI agents Ronald Williams and Jack Coler, accompanied by BIA Police Officers Robert Ecoffey and Glenn Little Bird, drove to the Jumping Bull compound, where they claimed to have a warrant for the arrest of Jimmy Eagle. Allegedly, Eagle and three other youth from the reservation were being sought for kidnapping, aggravated assault, and aggravated robbery charges. In actuality, the situation had involved minor horseplay and drinking among the three youths and two white ranch hands. One of the Indians took a pair of cowboy boots from one of the ranch hands, something unlikely to have spawned a federal arrest warrant had it happened to a native youth. No kidnapping occurred (Churchill & Vander Wall, 2002a).

Upon their arrival at the Jumping Bull compound, agents Williams and Coler and their Indian accompaniment performed a warrantless search of the home of Wanda Siers, where they were informed Jimmy Eagle was not present. All four left, and shortly thereafter, Coler and Williams confronted three AIM members who were walking. None resembled Jimmy Eagle, but all three were forced into the car, taken to BIA police headquarters, and interrogated before they were released. It is widely believed the entire "cowboy boot" situation was really a ruse to obtain intelligence about AIM members, as these three youth were quizzed largely about who was in residence at the Jumping Bull compound (Churchill & Vander Wall, 2002a).

The following morning, Coler and Williams returned to the Jumping Bull compound, heading toward the tent city. They were following a red and white vehicle that, according to their radio communications, appeared to be carrying some Indians with rifles. For reasons yet unclear, the agents stopped their car at the end of the slope by the tent city and began firing at some Indians standing ahead of them. The Natives believed they were under attack and returned fire. None of the Indians could understand why the agents made no effort to take cover, standing right next to their car in the open (*Incident at Oglala,* 1991). Evidently, law enforcement had been setting up roadblocks throughout the area, as Natives who attempted to leave encountered squads of GOONS, BIA police, state troopers, U.S. Marshals, and SWAT teams. Churchill and Vander Wall (2002a) have maintained that the police and GOONS were prepositioned before the agents arrived at the tent city. They explain what they believe this was to achieve:

> It appears that their mission, using the spurious warrant for Jimmy Eagle as a cover, was to provoke a shooting altercation which overwhelming numbers of their police and GOON colleagues would then finish. AIM was to be the loser, not only of the immediate "shoot-out," but in the longer term as the Bureau escalated the tactics employed against the organization and increased the number of agents assigned to Pine Ridge. (p. 241)

In all likelihood, the agents expected to encounter only a small number of youth and AIM members, based on the previous days' reconnaissance. However, their suspicious search had alerted AIM that something strange was going on, and some 30 members were on the scene that day. In the ensuing firefight, agent Coler was hit from a long-range .44, leaving Williams alone in the firefight. His radio transmissions became increasingly desperate, with the last one just after noon announcing he had been hit. None of the forces at the roadblocks stepped in at any time to back up Coler and Williams, instead engaging in long range and sporadic fire for about 40 minutes from their locations (Churchill & Vander Wall, 2002a). As radio transmissions revealed two agents to be wounded, if not dead, more law enforcement streamed into the area. By dusk, more than 250 FBI agents, SWAT officers, BIA officers, and state troopers were there (*Incident at Oglala,* 1991). Meanwhile, AIM members and supporters attempted to slip away. At 5:50 p.m., orders were given to assault the homes, and one Indian, Joe Stuntz Killsright, was killed. The Bureau claims Killsright was killed by a long-range sniper, but no FBI investigation of his death ever occurred, nor was an independent autopsy performed. Churchill and Vander Wall (2002a) maintain it is possible Killsright was executed by the FBI.

The morning after the firefight, the FBI moved, in force, onto Pine Ridge and Rosebud reservations, advancing some 200 agents with backup from the U.S. Marshals, BIA police, GOONs, and local vigilantes. The FBI named their efforts RESMURS, for reservation murders, although they focused exclusively on the killing of Coler and Williams, ignoring the dozens of other suspicious murders on the reservation in the previous three years. The FBI teargassed and shot holes in the home of the Jumping Bulls, an elderly couple in their seventies, then evicted them, even though it was clear they were not harboring AIM fugitives. Later, the U.S. Commission on Civil Rights determined the FBI investigations were an overreaction, and the chairman even called RESMURS a ''full-scale military type invasion'' (Churchill & Vander Wall, 2002a, p. 250). The Bureau responded by releasing fictitious documents, authoring press releases, and holding press conferences in which they argued the Oglala firefight was yet another example of AIM violence. They continued to violate the civil rights of Indians on the reservation, including marching Brule Lakota spiritual leader Crow Dog naked from his house, ransacking his home with his children present, and humiliating him by forcing him to squat naked in the crowd, arresting him, and threatening to kill him (Churchill & Vander Wall, 2002a).

As part of their ''disinformation campaign,'' the FBI issued a series of press reports after the Oglala shootings, all of which described the area as a heavily armed bunker with hyperviolent shooters. They claimed that AIM guerilla fighters ambushed and assassinated agents Coler and Williams. The press had been banned from the scene for two days following the shooting, so the ''official'' FBI story was promulgated as truth across the nation. Later, FBI Director Clarence Kelly clarified that the so-called AIM bunkers were really root cellars and cattle shelters, that rather than being ''riddled by bullets,'' neither agent had been shot more than three times, and that approximately 16, not 30, Indians had been somehow involved. ''Needless to say, these 'corrections' received far less media coverage than the original—superbly distorted—version'' (Churchill & Vander Wall, 2002a, p. 271), and virtually no attention was given to AIM members' descriptions of the incident. According to Churchill and Vander Wall (2002a), few members of the press were really interested in investigating what actually happened. Joel Weisman of the *Washington Post* concluded the Bureau had to be playing a spin campaign because their stories simply did not jive with the evidence. PBS journalist Kevin McKiernan, the only journalist

to gain access to the scene in the first 48 hours after the incident, concurred with Weisman. Churchill and Vander Wall (2002a) speculate that the FBI had sent Coler and Williams in to initiate an altercation that would end up destroying the AIM encampment and garner support for further repression of AIM.

Another part of the disinformation campaign was the testimony of infiltrator Douglass Durham before the Senate Subcommittee on Internal Security. Durham testified that AIM was committed to violence, falsely describing several ''terrorist'' attacks the group allegedly plotted and carried out, inaccurately claimed federal grant monies that were allotted for community service projects were appropriated for terrorist activities, and even claimed the group to be part of a communist conspiracy. Not only did these revelations get repeated in the press, but they also served as the basis of FBI reports (Churchill & Vander Wall, 2002a).

The FBI quickly narrowed their list of RESMURS suspects to four people: Darelle ''Dino'' Butler, Robert ''Bob'' Robideau, Leonard Peltier, and James ''Jimmy'' Eagle. Rather than based on evidence, these four were listed as key suspects because they were AIM leaders (*Incident at Oglala,* 1991). Eagle, who had actually turned himself in for the initial cowboy boot theft, allegedly confessed to his cell mate, Gregory Dewey Clifford. Two other Oglalas claimed they overheard Eagle's statements. Dino Butler was captured during the FBI assault on the Crow Dog property, and Robideau was arrested when the car in which he was riding exploded near Wichita. Within 60 days of the event, only Leonard Peltier remained to be captured (Churchill & Vander Wall, 2002a).

In January 1976, Robideau and Butler were moved to the Pennington County Jail to await trial. There deputies allegedly found hacksaw blades in their cellblock, and, despite the fact that 16 prisoners shared the two cells in question, authorities immediately labeled Robideau the ringleader of an escape attempt, with Butler and two other AIM members called accomplices. In May, Robideau and Butler were moved to the maximum security South Dakota State Penitentiary in Sioux Falls, where, as potential escape risks, they were held in stark conditions (Churchill & Vander Wall, 2002a).

The attorneys representing Robideau and Butler successfully argued for a change of venue based on the anti-AIM prejudice in Rapid City, and the trial was scheduled to be in Cedar Rapids, Iowa. On June 7, 1976, the trial of Robideau and Butler began. Judge Edward McManus allowed the defendants to present a self-defense argument, which meant there would be testimony about the violence at Pine Ridge leading up to the deaths of Coler and Williams, including the role of the FBI. According to Churchill and Vander Wall (2002a), the prosecution, despite having dropped some witnesses, still made ample use of false testimony and coerced statements. For instance, Prosecutor Evan Hultman called Wish Draper, a youth who had been strapped to a chair and interrogated for three hours before signing a statement implicating Robideau, Butler, and Leonard Peltier in the deaths of Coler and Williams. Draper admitted later, during the trial of Peltier, that the statement was false, as was his testimony before a grand jury and during the Robideau/Butler trials. He admitted the FBI had promised he would be exonerated on any charges against him and would receive educational assistance and ''a new life'' if he perjured himself (Churchill & Vander Wall, 2002a). The FBI told another witness that gave false testimony, Norman Brown, ''If you don't talk to us, you might never walk the earth again'' and ''you won't see your family again'' (Churchill & Vander Wall, 2002a, p. 300). The FBI also introduced non-AIM jailhouse snitches that claimed Robideau and Butler had confessed while incarcerated.

Both Robideau and Butler admitted they had been present in the shootout in which Coler and Williams were killed. They, through attorney William Kunstler, relied largely on testimony from investigative bodies, such as the U.S. Civil Rights Commission, that had concluded their actions were in self-defense (Matthiessen, 1984). The jury deliberated for five days before returning not guilty verdicts for Robideau and Butler on all four charges. The jury foreman made a press statement after the trial in which he said,

> The jury agreed with the defense contention that an atmosphere of fear and violence exists on the reservation, and that the defendants arguably could have been shooting in self-defense. While it was shown [indeed, admitted] that the defendants were firing guns in the direction of the agents, it was held that this was not excessive in the heat of passion. (cited in Churchill & Vander Wall, 2002a, p. 303)

In August 1976, FBI Director Clarence Kelly and U.S. Attorney Evan Hultman agreed to drop all charges against Jimmy Eagle, although they decided to pursue the case against Peltier with vigor (Messerschmidt, 1983).

Peltier had fled Pine Ridge to Canada, where Royal Canadian Mounted Police arrested him at a Cree camp west of Edmonton. Peltier was transported to a maximum-security facility near Vancouver while extradition arrangements were made. On May 11, the U.S. Department of Justice provided Canadian prosecutors an affidavit signed by Myrtle Poor Bear, who claimed to have witnessed the shootings on June 26, 1975, and who identified Peltier as the lone killer of the two FBI agents. Based on this document, Canadian officials arranged for Peltier to be extradited to the Pennington County Jail. Even by the time Peltier was extradited, just over a month later, it was clear the affidavit was one of three Poor Bear had signed, all of which contradicted the others. She had been held incommunicado and terrorized for 45 days when she signed all three (Churchill & Vander Wall, 2002a). Additionally, Myrtle Poor Bear claimed to be Peltier's girlfriend. At the time, Peltier said he did not know her and had no girlfriend (*Incident at Oglala,* 1991).

The prosecution, desperately seeking a conviction in light of the acquittals of Robideau and Butler, coerced Judge Fred Nichol (who had dismissed charges against Russell Means and Dennis Banks) into recusing himself, and succeeded in getting the case assigned to Judge Paul Benson. Benson immediately restricted the evidence to the day of June 26, thereby making inadmissible some of the evidence of persecution of AIM and the state-directed violence at Pine Ridge, the acquittals of Robideau and Butler, and the false affidavits. Because defense counsel was thrown aback by the ruling, he even admitted in his opening remarks that Coler and Williams were the victims of first degree murder, hardly an asset to Peltier's defense. The all-white jury was sequestered, a process that is known to bias juries against defendants, according to Churchill and Vander Wall (2002a).

The first prosecution witness, Mike Anderson, a member of the same AIM chapter as Peltier, contradicted himself multiple times and had been coerced to talk while incarcerated. Bureau agents threatened him, saying, ''If you don't talk, I will beat you up right here in this cell'' (Churchill & Vander Wall, 2002a, p. 307).

A major flaw in the prosecution's case was that they had very little ballistics evidence. Anderson claimed Peltier had an AR-15. This hardly implicated him as the shooter, because the only ballistics evidence was fragments of .22 caliber ammunition, which could have come from a .22, a .222, a .223 (which includes AR-15 and M16), or other weapons. Ballistics experts could not even determine whether those fragments were from the day of the shooting. Autopsies could not confirm the specific type of weapon used in the

shootings, either (Messerschmidt, 1983). In attempting to explain the lack of ballistics evidence, the FBI posited that the killer(s) stopped in the middle of the firefight and picked up all their spent cartridges, a pretty ludicrous contention (Churchill & Vander Wall, 2002a).

Despite acknowledging that this type of evidence was unavailable, a Bureau memo from July 1, 1975, prepared by unacknowledged agents, details the finding of a .223 cartridge case in the back of the 1972 Chevrolet Biscayne. The Bureau argued the shooter had extracted the casing from his weapon and somehow it ended up in the trunk. The defense questioned the introduction of this memo, asserting that no mention of it had been made previously, and that the officer introducing the evidence, Special Agent Courtland Cunningham, possessed no documentation of receipt of this evidence, which is typical Bureau practice. Although clearly there was tremendous question as to the admissibility of this evidence,

> it was ''established'' that this particular cartridge casing—regardless of where and when it was found, or by whom, or in whose custody it had been kept—had come from the ''murder weapon.'' The next trick was to match it to a particular rifle. (Churchill & Vander Wall, 2002a, p. 310)

Special Agent (SA) Evan Hodge, a specialist in the Firearms and Toolmarks Identification Unit, was charged with making this crucial link. Although he testified that he reversed normal Bureau procedure in that he tested the cartridges found furthest from the crime scene first, and performed a number of tests he acknowledged to be inconclusive, Hodge pronounced the AR-15 that had been obtained from the burning car in Wichita to be the murder weapon. Now, the Bureau had to link that weapon specifically to Peltier (Churchill & Vander Wall, 2002a).

Hodge again led the charge, and claimed only one Indian at the time had used an AR-15. Thus all that was needed was an eyewitness to put Peltier at the scene and at the time, holding the AR-15. According to Churchill and Vander Wall (2002a), the coerced testimony of Mike Anderson made this critical link. Defense attorney John Lowe even elicited testimony that SA Gary Adams threatened Anderson in his jail cell. Others testified they had seen Peltier with the weapon, although could not state they had seen him shoot it at Coler and Williams. Perhaps fearing the quality of these witnesses, the FBI introduced a Bureau ''eyewitness'' who did not testify at the Robideau/Butler trials. SA Fred Coward testified he saw Peltier running away from Coler and Williams' bodies holding an AR-15 at approximately 3:45 p.m on June 26, 1975. He witnessed this through a riflescope approximately one-half mile from the scene and claims he was positively able to identify Peltier, whom he had never seen before (Churchill & Vander Wall, 2002a).

The defense attempted to impeach all the circumstantial evidence introduced against Peltier, but Judge Benson prohibited the introduction of key witnesses who might do so, most notably Myrtle Poor Bear. One of the key points in the trial was what initiated Coler and Williams's venture onto Pine Ridge. Although their radio transmissions all indicated they were following a red pickup truck, at the trial that had been changed to a red and white van so as to provide a clearer link to Peltier (Harbury, 2003). Benson allowed prosecutor Lynn Crooks to maintain in his closing statement that the prosecution had proven Peltier murdered Coler and Williams in cold blood. He also refused to read the jurors' instruction number 19, which stated,

> Testimony has been given in this case which if believed by you shows that the Government induces witnesses to testify falsely. If you believe that the Government, or any of its agents, induced any witnesses to testify falsely in this case. . . this is affirmative evidence of the weakness of the Government's case. (Churchill & Vander Wall, 2002a, p. 318)

After six hours of deliberation, the jury found Peltier guilty on two counts of first-degree murder. Six weeks later, Judge Benson sentenced him to two consecutive life sentences, the harshest possible for the offenses. Peltier was sent to the federal "supermaximum" prison at Marion, Illinois, although typically first-time offenders with no felony convictions were sent to other facilities (Messerschmidt, 1983).

An appeals team was quickly assembled. A three-judge panel heard evidence of FBI and prosecutorial misconduct in the spring of 1978. Despite acknowledging that FBI affidavits contradict one another, and noting other investigative and procedural problems, the panel refused to grant Peltier another trial. Peltier's attorneys filed an appeal with the Supreme Court, and members of the Leonard Peltier Defense Committee sponsored an around-the-clock vigil outside the court on January 10, 1979, which continued for 55 days. On February 12, 1979, the Supreme Court announced it would not hear Peltier's case (Churchill & Vander Wall, 2002a). In the years since, a "Mr. X" has admitted he is guilty of killing Coler and Williams to others, but has not confessed officially to the FBI or law enforcement. Peltier says he knows who Mr. X is, but will not tell on one of his brothers (*Incident at Oglala,* 1991).

AFTER THE TRIAL

After a Freedom of Information Act (FOIA) suit, the Peltier defense team received 12,000 of the 18,000 pages of RESMURS documents pertaining to the deaths of Coler and Williams (Churchill & Vander Wall, 2002a). This included evidence regarding the type of car Coler and Williams had been following, the "scope sighting" of SA Coward, FBI admissions they could not conclusively determine the caliber of the weapon that killed Coler and Williams, and evidence that neither agent was killed point blank, as the trial testimony had said. Clearly, the FBI had suppressed critical information. Additionally, other material obtained from the FOIA request indicated that Judge Benson had met with the FBI and U.S. Attorneys for briefings on security in the court, alleging the highest security measures were required with no proof of such. According to Churchill and Vander Wall (2002a),

> it is likely that the allegation had a prejudicial influence on the judge's attitude toward the defendant. The extreme security measures which resulted could not have failed to convey to the jury the idea that the defendant was a member of a dangerous terrorist organization. (p. 323)

Following the release of these documents, the defense team filed an appeal in the District Court of Fargo, South Dakota, in 1982, requesting the case against Peltier be dismissed, that an evidentiary hearing be held, and that Peltier be retried. Certainly there is precedent that in cases where the prosecution withheld exculpatory evidence, a conviction has been vacated. A separate motion was filed requesting Judge Benson remove himself from the case. He refused and denied the appeal, asserting the newly discovered evidence had little significance to the case. The defense appealed the denial to the Eighth Circuit

Court, who expressed concern about the FBI ballistics evidence. In April 1984, the Eighth Circuit Court ordered Judge Benson to reopen the case and conduct an evidentiary hearing (Messerschmidt, 1983). The hearing began in October 1984, with Evan Hodge attempting to explain the discrepancies between his prior testimony and the new documents. Hodge provided excuses for all the discrepancies, but they were very weak, and it was clear that the prosecution's ballistics case in particular was shredded. Prosecutor Lynn Crooks shifted gears during oral arguments, maintaining that, although they could not prove precisely who killed agents Coler and Williams (in direct contrast to what they had previously asserted), their goal was never to do so. Rather, they had been trying Peltier for aiding and abetting in the deaths (Churchill & Vander Wall, 2002a).

The three-person panel of Judges Gerald Heaney, Oswald Ross, and John Gibson took almost a year to deliberate. In doing so, they acknowledged the failure of the prosecution's attempt at an about face and even admitted ''discomfort'' with much of the evidence, but they interpreted recent Supreme Court standards to require that new evidence ''probably'' would have changed the jury's verdict and decided that was not the fact. Thus, there was no new trial and Peltier's conviction and sentence stood (Churchill & Vander Wall, 2002a). Churchill and Vander Wall (2002a) contended that the judges were attempting to protect the FBI from further disclosure of ineptitude or even wrongdoing, as they wrote, ''We recognize that there is evidence in this record of improper conduct on the part of some FBI agents, but we are reluctant to impute even further improprieties to them'' (cited in Churchill & Vander Wall, 2002a, p. 326). Others have suggested they recognized the signs of improper conduct, but gave the FBI the benefit of the doubt that nothing more serious had occurred.

The appeals team filed a petition for an *en banc* hearing, which would have required that the full Eighth Circuit Court review the decision of the three-person panel. This was also denied, leaving another appeal to the Supreme Court as the only option. This was done under the claim that the Supreme Court needed to clarify whether illegally withheld exculpatory evidence needed to ''probably'' reverse the outcome or ''possibly'' do so. The Supreme Court refused to hear the case in October 1987 (Churchill & Vander Wall, 2002a).

In 1981, the human rights organization Amnesty International published an analysis of the Peltier case, claiming there was evidence that FBI COINTELPRO investigations had unfairly treated him, and recommended he, along with Black Panther Party member Geronimo Pratt and AIM/OSRO leader Richard Marshall (both serving life sentences), receive a new trial. In 1986, the Human Rights Commission of Spain selected Peltier to receive the International Human Rights prize, and by late 1986, 51 members of the Canadian parliament had officially demanded Peltier receive a new trial (Churchill & Vander Wall, 2002a). In 1999, Amnesty International proclaimed Leonard Peltier to be a political prisoner and recommended his immediate release. Also in 1999, Archbishop Desmond Tutu spoke out about the Peltier case, denouncing the judicial injustices and recommending Peltier's release (Harbury, 2003). The Christian Leadership Conference, the National Congress of American Indians, and Reverend Jesse Jackson have all recognized Peltier as a political prisoner and have demanded his release (Quick facts, 2003). Peltier has also received support from the Dalai Lama (Summers, 2004).

The Leonard Peltier Defense Committee continues to actively argue for his release. In doing so, they call attention to the judicial injustices faced by Peltier and other Native Americans. Each year in October they organize a fast to call for the release of Peltier and

for an end to the celebration of Columbus Day. They advocate the day be renamed Indigenous Peoples Day. The movement has spread to other countries, with activities taking place in England, Ireland, Germany, and Switzerland (Update on September 12, 2006).

According to Churchill and Vander Wall (2002a), there is strong evidence that the FBI developed and implemented a plan to have Peltier killed, beginning shortly after he was incarcerated at the supermaximum prison in Marion, Illinois. Supermaximum prisons typically hold the most serious and violent offenders. This, they contend, was the Bureau's means of ensuring its improprieties in this case (and others) remained disclosed. The agency employed Robert Hugh Wilson, known as Standing Deer, to carry out the plan. Standing Deer was in Marion because he had attempted to escape from the Oklahoma State Prison, where he was serving time for having shot a policeman during an armed robbery. Hence, he had every reason to believe he would be incarcerated for life. Additionally, he suffered from chronic degenerative spinal disease, and he was in the prison hospital when prison officials asked him to inform on Peltier's activities. Standing Deer initially refused, only to find out he was being moved to ''the hole.'' For six weeks, he was deprived of medical assistance (Churchill & Vander Wall, 2002a).

When he was asked again if he was willing to cooperate, Standing Deer responded that he was willing to talk about it in exchange for some medical help. He was returned to the prison hospital, and recalls being visited by the Chief Correctional Supervisor and a stranger. The stranger is thought to have been SA James Wilkins, and he discussed with Standing Deer ''neutralizing'' Leonard Peltier in exchange for immediate medical attention and a dismissal of the seven charges pending against Standing Deer. Standing Deer was to gain Peltier's confidence and to pass information along through Chief Correctional Supervisor Carey. He would be advised when a second assassin was in place. At the end of the meeting, Standing Deer was warned,

> Don't even thinking of playing us for fools because, at this point, it's Peltier's life or yours. We don't accept backing out or betrayals. You are now committed to this with your life. If you betray us, you will die. If you perform honorably, you will be rewarded even more than our arrangement. If you tell about this conversation it will be our word against yours and you won't be believed. (official affidavit cited in Churchill & Vander Wall, 2002a, p. 356)

Shortly thereafter, Standing Deer received treatment for his back and notice by state authorities charges had been removed. He was given a cell near to Peltier, but still felt the strong ''never rat'' mentality developed by convicts. Within weeks, he told Peltier, who advised him to pretend to cooperate. Standing Deer joined an Indian Culture Group to whom Peltier belonged. The ''stranger'' visited again in November, and told him that the plan was Peltier would be killed during an escape attempt. Since Marion had such tight security, both Standing Deer and Peltier were moved to Leavenworth, Kansas, and then to Lompoc. Also arriving in Lompoc was Chuck Richards, son-in-law of Dick Wilson and a GOON notorious for his involvement in several reservation murders. Peltier had heard of but never met Richards, who called himself Chuck Richardson, and the two struck up a friendship. Standing Deer sent word to Peltier of his new ''friend's'' real identity and the probability that he was an FBI assassin (Churchill & Vander Wall, 2002a).

Peltier began to avoid Richardson, but he realized he was still in danger. With the help of two other inmates, Peltier planned to escape before he was killed (Peltier, 2000). Peltier also enlisted the assistance of Roque Duenas, an AIM confederate from Washington State.

It is likely prison authorities intercepted some of his mail and knew the escape plans. On July 20, 1979, Peltier and his two friends escaped from Lompoc, climbing the chain-linked and bar-wired fence near Guard Tower 4. It is unclear why the guard never yelled at them nor fired at the men until they were too far away to be hit. The guard reported that a prepositioned person returned his gunfire. One of the men, Bobby Garcia, was separated from the other two and gave himself up as a means of diversion. Meanwhile, Peltier and the other man, Dallas Thunderbird, were stopped in the headlights of the vehicle driven by William Guild, an engineer at the prison power plant. It is unclear why Guild even had a weapon or whether he knew precisely which man he was shooting, but he fired a close-range shot at Thunderbird, who was left to bleed to death. Guild later testified he knew the escape route, but since Thunderbird and Peltier looked a lot alike, it is speculated he shot the wrong man. While guards were paying attention to the bleeding Thunderbird, Peltier escaped, only to be spotted by a farmer five days later as he tried to take a pumpkin from the field. The farmer shot at Peltier, but Peltier shot back. It is unclear how Peltier obtained the weapons. In the end, Peltier caught the farmer, who recognized him as a wanted killer. Peltier did not hurt the farmer, but he did take $30, his boots, and his pickup (Churchill & Vander Wall, 2002a).

The farmer, Jerry Parker, ran to a phone and called the sheriff's office. The truck was found on a gravel road not long after, and a team of Santa Monica police, lead by SA James Wilkins, pursued Peltier. Only hours later Peltier surrendered without a fight. On November 14, 1979, Peltier was tried for armed robbery, assault, auto theft, escape from a federal prison, conspiracy to escape, and other charges. He was convicted of escape and illegal possession of a weapon by a felon, and seven years were added to his double-life sentence. He was sent back to Marion and assigned an ''indefinite'' period in the Control Unit. Bobby Garcia was also convicted of escape and was held for 30 days in Marion's Control Unit. He was then placed in ''the hole'' and was found dead in his cell. The official cause of death was suicide, but given the amount of drugs in his body (Garcia was not a drug user) and the suspicious nature of how the body was found, it seems plausible he was murdered. Roque Duenas took a plea in which he agreed to have aided and abetted the escape attempt and received two years in prison. When he was released, he returned to Seattle, Washington. In 1981, the fishing boat he had been on with friend Kevin Henry was found overturned and Henry was dead. Duenas's body has never been found (Churchill & Vander Wall, 2002a).

Peltier has been imprisoned far longer than would normally be the case before an inmate is granted parole. He was denied parole in 2002, and waived his hearing in 2004 (Purpose, n.d.). The United States Parole Commission has said parole will not even be considered until 2008, although they have not provided a detailed rationale for that decision. Initially, parole was denied because Peltier was considered a ''cold-blooded cop-killer,'' yet there was never any (nonfabricated) evidence to support this assertion (Harbury, 2003). Even Judge Heaney of the Eighth Circuit Court of Appeals has demanded clemency or a commutation, writing to U.S. Senator Daniel Inouye, ''At some point a healing process begins. We as a nation must treat Native Americans more fairly'' (Harbury, 2003). An online petition for Peltier's clemency, available at www.petitiononline.com/Clemency/petition.html, has garnered over 22,000 signatures as of November 2006.

Peltier has suffered from a stroke that left him partially blind in one eye. He also has a debilitating jaw injury that keeps him in constant pain and makes it difficult to chew. The

CONDITIONS AT PINE RIDGE

Conditions at Pine Ridge have been compared to Third World countries (Summers, 2004). Many of the residents suffer from debilitating health conditions. Almost half the adult population has diabetes. Access to health care is lacking, especially because many lack any form of transportation and there is no reliable transportation on the reservation. Leonard Peltier describes how abandoned and half-working vehicles are the norm on Pine Ridge in his book, *My Life Is My Sun Dance.* Many tribal members simply forego medical treatment, resulting in life expectancy (48 for men and 52 for women) that is far below the national average (Henry, 2001). Education is hardly the vehicle to success, as teacher turnover is eight times the national average and dropout rates are the highest in the country. A poll of seventh and eighth grade students in the 1990s found 460 out of 500 saw little or no career opportunities on the reservation (Education, n.d.). In 1999, President William Clinton visited Pine Ridge, the first standing president to do so since 1936, to call attention to the poor conditions and to stimulate economic growth (Stevenson, Gordon, & Begun, 2000).

United Nations has rebuked the United States for the inhumane conditions under which Peltier and other prisoners are kept (Quick facts, 2003).

In addition to garnering support for Peltier's release, the Leonard Peltier Defense Committee lauds Peltier for his humanitarian contributions. He has sponsored an annual Christmas clothes and toys drive for children of Pine Ridge, has helped to establish the Native American Scholarship Fund, has assisted with programs for battered woman and substance abuse recovery on reservations, has helped develop a prison art program, and has worked with a program to assist adopted children from Guatemala and El Salvador (Quick facts, 2003).

Although there are many activists who support Peltier in his innocence, there are some who maintain he was rightly convicted and should remain incarcerated. Most notably, the No Parole Peltier Association believes Peltier to be guilty. The group was founded by a retired Special Agent who did not know Coler or Williams. He also never worked a reservation-based case. He met Coler's younger son in 2000 and was moved to start the organization. Their purpose is, ''to respond to the erroneous statements and allegations made by the International office of the Leonard Peltier Defense Committee (LPDC)'' (Purpose, n.d., para. 1). They oppose clemency and maintain an active counter on their site detailing the amount of time that has passed since Coler and Williams were killed.

AIM TODAY

One of AIM's major achievements has been the creation of educational initiatives for Indians. The group helped establish numerous survival schools dedicated to culturally appropriate programming, as well as adult education programs in prisons and numerous job training programs. Some members established Women of All Red Nations, an organization dedicated to addressing the issues of Indian women and families, including environmental issues (AIM-GGC profile, n.d.).

AIM still has active members, although they have gone on to different forms of protest. Since 1970, Native American groups have observed a National Day of Mourning on

Thanksgiving in an attempt to bring greater awareness to the theft of Native lands and the genocide of Native peoples. AIM has helped organize these efforts, as well as protests against the celebration of Columbus Day starting in Denver in 1989 (Robideau, 2006). In 1991, AIM members helped found the National Coalition on Racism in Sports and Media to address the use of Indians as mascots (AIM-GGC profile, n.d.). Every year since 1990, AIM has sponsored the International Youth and Elders Cultural Gathering and Sundance (aim.org). In 2003, AIM members and other Native Americans protested the YMCA's Indian Princess Organization. The Indian Princess Organization was created in 1926 as an outdoors club for kids and their dads. It incorporated so-called Native American traditions, ceremonies, and regalia. AIM leader Vernon Bellecourt argued that the regalia and "traditions" used in the program "totally distorts our culture. They can only relate to this very superficial, stereotypical image of who they think we are" (Malkin, 2003, p. 10).

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2

Ted Bundy: The Serial Killer Next Door

GARY BOYNTON

The Crimes

The last several decades of the twentieth century, a time of unprecedented, rapid change in American Society, produced a killer unlike any other who had come before him. With his boyish good looks, keen intellect, wit, and charm, Ted Bundy was the perfect fit for the ''Media Age.'' Highly mobile and cunningly clever, he was able to confuse police pursuers in five states and clog the courts for almost a decade.

A one-time Boy Scout and an ''A'' student, Bundy seemed headed for a sterling career in Republican politics in Washington State, and he even served as assistant director of the Seattle Crime Prevention Advisory Committee. Perversely, he was the author of a pamphlet instructing women on rape prevention (Lamar, 1989). Bundy also worked at Seattle's Crisis Clinic and earned his degree in psychology (with honors) at the University of Washington before attending law school at the University of Utah (Rule, 1980a, p. 30).

Bundy's reign of terror began in Seattle in 1974. On January 4, 18-year-old Joni Lentz was brutally attacked while sleeping in the large home she shared with several roommates. Although she was found in a coma, lying in a pool of blood and having been sexually violated with a broken bed rod, Lentz survived the assault.

On January 31, Lynda Ann Healy, a University of Washington law student and part-time weather reporter, disappeared from her basement bedroom in Seattle's University District. Her parents called the police—the police found her pillowcase and sheets soaked in blood.

Throughout 1974, young women disappeared from college campuses and other locations around Washington, Oregon, and Utah. All of them were slender, white, and wore their hair parted in the middle. They all disappeared in the late afternoon or evening (Lohr, 2002).

Two of the missing women, Denise Neslund and Janice Ott, were each last seen on July 14, 1974, at Lake Sammamish State Park in Issaquah, which is 12 miles east of Seattle. Several other women who were at the park that Saturday told investigators that they had

been approached by a handsome young man with his arm in a sling, who told them that his name was "Ted" ("Another Encounter," 1974).

On November 8, 1974, Bundy attempted to kidnap 18-year-old Carol DaRonch from a shopping mall in Salt Lake City, Utah. She escaped and was able to provide investigators with a description of the man and his vehicle, a tan Volkswagen. A similar vehicle was reported to have been speeding away from where a teenager named Debby Kent was last seen before she disappeared from Bountiful, Utah.

After his bungled abduction attempt, Bundy apparently stopped killing for four months, before he resumed in Colorado, where he abducted and murdered four more young women. After first being arrested and convicted of attempted kidnapping in Utah, and then being charged with murder in Colorado, Bundy escaped twice.

On June 7, 1977, while awaiting trial for the murder of Caryn Campbell in the Garfield County Jail, he received special privileges to use the Pitkin County Courthouse library in Aspen. He escaped by jumping from a second-story window. He was recaptured eight days later while trying to leave town in a stolen car.

Almost seven months later, on December 30, 1977, Bundy escaped again. In the intervening months he had eaten very little food and had shed 30 pounds, which was enough to allow him to shimmy through a small hole where a light fixture had been in the ceiling of his cell in the Garfield County Jail. He then crawled into the closet of his jailer's apartment and waited before casually walking out of the front door. It took jailers nearly 15 hours to realize he was gone. After making his way to the Midwest, he boarded a plane to Florida.

By January 1978, Bundy was renting an apartment near Florida State University. He supported himself by committing petty thefts; he grew a beard, and went by the alias Chris Hagen. However, he was not content with his new freedom, and he could not control his murderous impulses (Lohr, 2002).

Bundy killed three victims in Florida. On the night of January 14, 1978, he bludgeoned and strangled to death Margaret Bowman, 21, and Lisa Levy, 20, in the Chi Omega sorority house at Florida State University in Tallahassee. Two other coeds, Karen Chandler, 21, and Kathy Kleiner, 20, survived his attacks. Less than a month later, he killed his final victim, a 12-year-old Lake City, Florida, girl named Kimberly Leach (Lohr, 2002).

Bundy's four-year killing spree, which began in Washington State and continued in Utah and Colorado, finally came to an end in Florida, when he was caught in a stolen Volkswagen bug. However, the story of serial murderer Ted Bundy was just beginning.

The Actions of the Criminal Justice System

Law Enforcement

Bundy's assault on Lentz and the disappearance of Healy were both investigated by detectives from the Seattle Police Department. The detectives were unable to find a motive or a viable suspect in either case, and they were unable to link the two cases together.

Investigators learned that Lentz was a friendly, shy girl with no enemies. They concluded that she had been a chance victim, attacked simply because someone knew she slept alone in her basement bedroom, and perhaps the attacker had seen her through a window and found the basement door unlocked.

In the Healy case, every inch of her neighborhood was searched—including all the dark, leafy ravines of nearby Ravenna Park—both by officers and by dogs from the K-9 unit. No traces of Healy or of her abductor were found; detectives were perplexed.

BUNDY ESCAPES TWICE

Despite being held for one murder, and suspected of several others, Ted Bundy's charm and cunning helped him escape from custody. After he was caught, law enforcement officials were embarrassed to have him escape a second time and tragically kill again.

First Escape

On June 7, 1977, at the Pitkin County Courthouse in Aspen Colorado, Ted Bundy assisted in the preparation of his own defense for the murder of Caryn Campell. While a new deputy guarded the courtroom door, Bundy, his handcuffs and leg irons having been removed, slipped to the back of the adjoining law library. He then jumped from a second story window to the ground 25 feet below, hitting the lawn so hard that he left a four-inch deep imprint.

A young woman on the street below saw Bundy jump. She immediately went into the Sheriff's office inside the courthouse and asked, ''Is it normal for people to jump out of windows here?'' The deputy who had been guarding Bundy heard her question, swore, and bolted down the stairs, but Bundy was nowhere to be found. He was not captured until eight days later while trying to flee town in a stolen car.

Second Escape

Seven months later, on December 30, 1977, Bundy escaped again. Now being held in the supposedly more secure Garfield County Jail in Glenwood Springs, Colorado, and having starved himself rail thin, he squeezed through a hole where there had once been a light fixture in the ceiling of his cell. He then crept through a crawl space and climbed down into a closet in his jailer's apartment, waited until the time was right, and then casually walked out the front door of the jail. It was not until 15 hours later that the authorities realized he was gone.

Bundy soon made his way to Ann Arbor, Michigan, then to Chicago, Illinois, before heading to Florida, where he committed his final three murders (Lohr, 2002).

While these cases were being investigated, detectives from the Thurston County Sheriff's Department were having problems solving the disappearance of Donna Gail Manson, a 19-year-old coed, who had disappeared from the campus of Evergreen State College, southwest of Olympia, Washington.

Investigators talked to everyone who knew Manson and followed up on every possible lead. They learned that she had been a bright but troubled young woman, who was weighed down with depression and obsessed with death, magic, and the ancient pseudoscience of alchemy. She was also known to have smoked marijuana daily, to have used other drugs as well, and to have been dating four different men. None of these leads produced a suspect. Detectives considered the possibility that she might have committed suicide, and they even had a psychiatrist evaluate her writings. He concluded, however, that dark thoughts were not unusual for a young woman of her age and that there was no indication that she feared anyone.

When Bundy's next victim, Susan Rancourt, disappeared from the campus of Central Washington State College in Ellensburg, a rodeo town that has retained the flavor of the old West, the campus police department investigated. They learned what outfit she was wearing when last seen, and they attempted to retrace her route from a meeting with an advisor back to the dorm where she lived. Somewhere in between was when she had vanished.

As word spread of Rancourt's disappearance, other coeds came forward with descriptions of incidents that had vaguely disturbed them. Two of them told of encounters with a tall, handsome man in his late twenties, who had his arm in a sling and asked for their help putting books or packages in his car, a tan Volkswagen. Both had felt uncomfortable with the situation and fled. One had noticed that the car's passenger seat was missing, and the other did not want to get into a stranger's vehicle to start the engine for him (Rule, 1980a, pp. 61–62). As with Bundy's earlier crimes, investigators from Kittitas County and the Central Washington State College Police were unable to locate either the victim or the person who abducted her.

Bundy's next victim, Kathy Parks, disappeared from Oregon State University in Corvallis, which is 250 miles south of Seattle. The investigation into her disappearance was the responsibility of the Oregon State Police Criminal Investigation Unit, which had a lieutenant stationed on the OSU campus. He led a week-long search of the campus but was unable to find any trace of the missing coed or of any suspicious strangers like those reported in Ellensburg. For a while, investigators considered the possibility that Parks had committed suicide, after they learned that she had recently broken up with her boyfriend, was homesick for her native California, and was guilt-ridden over an argument with her father. When no body was found in the nearby Willamette River, where police feared she might have killed herself, they abandoned the suicide theory and concluded that she had been abducted.

Police bulletins with pictures of the four missing girls were now tacked up side-by-side on the office walls of every law enforcement agency in the Pacific Northwest, with smiling faces that looked enough alike to be sisters. Yet, only the commander of the Seattle Police Department's Crimes Against Persons Unit was convinced that Parks was part of the pattern. Other detectives thought that Corvallis was too far away for her to be a victim of the same man who prowled Washington campuses.

Bundy's next victim, Brenda Ball, was last seen in the parking lot of a tavern in Burien, Washington, just south of Seattle. She was talking with a handsome, brown-haired man who had one arm in a sling. The investigation into Ball's disappearance was the responsibility of the King County Police (now Sheriff's Department), which had jurisdiction in the unincorporated areas of Washington State's most heavily populated county. It would not be the last case that would pit Bundy against King County detectives.

When Bundy's next victim, Georgeann Hawkins, disappeared from "Greek Row," a tree-lined street of sorority and fraternity houses just north of the University of Washington, the initial report was taken by a detective from the Missing Persons Unit of the Seattle Police Department. Usually any police department will wait 24 hours before beginning a search for a missing adult, but in view of the events of the first half of 1974, the disappearance of Georgeann Hawkins was immediately treated very seriously. Three homicide detectives and the head of the Western Washington State Crime Lab covered 90 feet of the alleyway behind Greek Row on their hands and knees, searching for evidence: They found nothing.

Leaving the alley cordoned off and guarded by patrolmen, they went into the Theta House to talk with Hawkins's sorority sisters and her housemother. They learned that she had last been seen leaving the nearby Beta fraternity house by the back door after a quick visit to her boyfriend who lived there, on her way home from a party that she had attended with a sorority sister. It was only 40 feet down the alley from the back of the Beta House to the back of the Theta House, but Hawkins never made it that far. The detectives were baffled that she could have vanished within such a short distance.

When the news of Hawkins's disappearance was released to the media, two witnesses came forward with a familiar story: they reported seeing a tall, good-looking man on crutches, carrying a briefcase on Greek Row on the night that Hawkins vanished. Detectives canvassed every house on each side of the street. They found that the housemother at a sorority across the street from the Theta House recalled being awakened by a high-pitched, ''terrified'' scream in the middle of that night. She figured it was ''just kids horsing around'' and went back to sleep. No one else reported hearing the scream (Rule, 1980a, pp. 65–69).

With six young women now missing in the Pacific Northwest, the pressure on law enforcement was tremendous. On July 3, 1974, more than 100 representatives from departments all over Washington and Oregon met at Evergreen State College for a day-long brainstorming conference. The law enforcement agencies represented included the Seattle Police Department, King County Police Department, Washington State Patrol, the U.S. Army's Criminal Investigation Department, University of Washington Police, the Central Washington Security Force, Tacoma Police Department, Pierce County (WA) Sheriff's Office, Multnomah County (OR) Sheriff's Department, Oregon State Police, and dozens of smaller police departments.

The investigators noted the striking similarities among all the girls—their age, their appearance, and the circumstances of their disappearance. They also discussed that in two instances a man wearing a sling had been seen in the vicinity around the time that the girls had vanished. Also considered were the possibilities that there might have been more than one perpetrator or that there might be some kind of satanic cult involvement in the disappearances. The latter speculation was fueled by a rash of reports of the apparent ritual mutilation of cattle in the region during this same time period.

The general consensus was that there was not a cult involved but that only one man was responsible for the disappearances. Investigators focused on how the man was able to get his victims to trust him enough so that he could kidnap them without leaving much evidence for investigators. They speculated that perhaps he was, or pretended to be, someone in an occupation that people would automatically trust such as a clergyman, doctor, fireman, or police officer. Or maybe he was, or pretended to be, handicapped in some way and in need of assistance: perhaps a man with his arm in a sling or on crutches?

As the discussion turned to the law enforcement response, it was determined that they lacked the manpower to infiltrate every campus in the Northwest to stop every man dressed like a priest, fireman, or police officer or every man with his arm in a sling or leg in a cast. In the end, the only thing to do was to warn the public with as much media saturation as possible, to ask for information from citizens, and to keep working on every tip that came in (Rule, 1980a, pp. 71–73).

It was less than two weeks after the meeting in Olympia when Bundy's next two victims vanished from Lake Sammamish State Park, which fell under the jurisdiction of the King County Police. They immediately formed a ''Ted Squad,'' based on the

name that the young man with his arm in a sling had given to several women at the park that day.

The scope of the investigation drew all of the manpower of King County's Major Crimes Unit, along with Seattle detectives and personnel from the small-town police departments near Lake Sammamish State Park, Issaquah, and North Bend. The Ted Squad knew that the disappearances in Issaquah were part of an increasingly familiar pattern. They began interviewing the dozen or more people who had seen "Ted" in the park that day, including the young women he had approached and several individuals who had seen Bundy talking to Janice Ott before she walked away with him.

As a result of the descriptions these people provided, a police artist was able to render a composite sketch of "Ted," which was widely disseminated in the news media. Hundreds of calls came in response to the drawing, but it was hard for investigators to come up with a distinguishing characteristic that would differentiate the real "Ted" from all the other possible suspects who looked like him.

Some of the witnesses even went under hypnosis in the hope that they would remember more. All they could recall was that he sounded well-educated, was tan, and had a memorable smile. Several also noted the strange way that he had stared at the women he had approached. Aside from these few tidbits, the only other thing investigators had to go on was a description of the suspect's car: a tan Volkswagen bug. In the early 1970s, such vehicles were very common.

Police closed the 400-acre park and searched the park on foot and horseback along with volunteers from the Explorer Scouts. They also had police divers probe the lake for evidence and helicopters search from above. Planes flew over the vast areas of woodlands surrounding the park to take infrared photos, hoping to find where the two young women might have been buried. No evidence of the victims or of their abductor was found.

The detectives asked a local psychiatrist to draw a verbal picture of the man now known as "Ted." The profile he gave them was of a sexual psychopath, between the ages of 25 and 35, who feared women and their power over him, and would at times demonstrate "socially isolative" behavior.

Investigators followed up every lead, even those from psychics, and compiled a long list of possible "Teds." Among the names on that list was that of Ted Bundy, whose name had been given to detectives separately by true-crime writer Ann Rule, who had worked side-by-side with Bundy at the Crisis Clinic, and by Bundy's girlfriend (Rule, 1980a, pp. 77–89).

In early August 1974, just a few weeks after the disappearances at Lake Sammamish, the remains of Ott, Neslund, and a third young woman believed to be either Manson or Hawkins were discovered by a King County road worker near the side of a service road about two miles from the park. It appeared to investigators that the three young women had been murdered during a crazed sexual frenzy. There was little evidence at the scene, but the similarities between the Washington and Oregon cases quickly caught the attention of investigators in Utah. The three states began working together and soon agreed that one man was committing these murders (Lohr, 2002).

A task force of Seattle and King County detectives was set up in a windowless room hidden between the first and second floors of the county courthouse. The walls were covered with maps of Lake Sammamish and the University District with flyers bearing the missing girls' pictures, and composite drawings of "Ted" (Rule, 1980a, p. 97).

In March 1975, more young female remains were discovered near Taylor Mountain, about ten miles east of the site where the other bodies had been found. The remains were identified as Ball, Healey, Rancourt, and Parks.

As the summer dragged on, the task force began feeding the names of all their possible ''Ted'' suspects into a county computer. They assigned each list they had—registered owners of Volkswagens, transfer students among all the universities, attendees at a company picnic at Lake Sammamish, released mental patients, and all the names of suspects they had been provided—with a different letter or pair of letters of the alphabet. They then used the computer to produce a list of the 25 men whose names appeared on the most lists. Among those 25 was Theodore Robert Bundy, whose name appeared on four different lists. Bundy was noted an ''AAA'' because his name was in the suspect file (List A) three times; a ''C'' because he was the registered owner of a Volkswagen bug; an ''FFF'' because he was in three different psychology classes with Healy at the University of Washington; and a ''Q'' because he was observed by an anonymous citizen driving a Volkswagen bug near the location where two women disappeared.

The task force detectives decided to concentrate their efforts on Bundy and the other 24 men whose names appeared on at least four different lists. A week into this part of the investigation, they received a call from a detective in Salt Lake City informing them of Bundy's arrest for the attempted kidnapping of Carol DaRonch (Keppel and Birnes, 1995, p. 74).

Bundy was arrested when a Utah Highway Patrol officer noticed an unfamiliar, tan Volkswagen bug driving by his home in the Salt Lake City suburb of Granger. The patrolman shined his bright lights to read the license plate. Suddenly, the Volkswagen's lights went out and it took off at high speed. The patrolman gave chase, pursuing Bundy through two stop signs and onto the main thoroughfare. Bundy then pulled over into a vacant gas station parking lot.

Bundy told the officer that he had been to see a movie and had gotten lost, but the patrolman knew that the movie Bundy had claimed to have seen was not playing at the local drive-in.

When the cop asked if he could look in the car, Bundy said, ''Go ahead.'' The officer then saw a small crowbar resting on the floor behind the driver's seat and an open satchel sitting on the floor in front. Using his flashlight, he saw some of the items inside the satchel: A ski mask, a crowbar, an ice pick, rope, and wire. The Utah patrolman placed Bundy under arrest for evading an officer, frisked him, and then handcuffed him (Rule, 1980b).

The patrolman then called for assistance in transporting Bundy and his vehicle. When a Salt Lake County deputy arrived at the scene, there were already three Utah State Police officers with Bundy. The deputy immediately looked in the canvas satchel, in which he found not only the ice pick, crowbar, ski mask, tape, and wire, but also a flashlight, gloves, torn strips of sheeting, another mask made from pantyhose, and handcuffs. He then checked the trunk of Bundy's Volkswagen and found some large green garbage bags.

Bundy was released on his own recognizance after he was booked for evading the officer. But two days later, when a detective was reviewing the arrest reports for the weekend, the name ''Bundy'' piqued his interest. He recalled that it was the name of a man being considered for the murders of women in Washington, Oregon, and Utah.

The detective noted that the physical description of the man who had just been arrested fit with the details provided by Bundy's ex-girlfriend, and Bundy drove a tan Volkswagen

bug. He pulled out the files on the DaRonch and Kent cases, looking for any common threads. Although the handcuffs confiscated from Bundy were a different brand than those used on DaRonch, the investigator wondered just how many men carried handcuffs with them. He also noted that where Bundy had been arrested was not far from where a girl named Melinda Smith had last been seen.

On August 21, 1974, Bundy was arrested on the added charge of possession of burglary tools. The Salt Lake County Sheriff's detectives thought he was responsible for the DaRonch kidnapping, and they suspected that Bundy might well be the man who had taken the three young women from Utah who were missing.

The investigators obtained permission from Bundy to search his apartment. Because it was a consent search, there was no warrant to limit the scope of the search. In the apartment, investigators found a number of interesting items, including a bicycle wheel suspended from a meat hook with an assortment of knives hanging from it, and a chopping block. There were other items—seemingly innocuous, but meaningful to the ongoing probe—including a map of ski regions in Colorado, with certain areas marked, and a brochure from a ski resort in Utah.

Investigators showed mug shots of Bundy, along with those of several other men, to DaRonch and to a teacher who had last seen Kent talking to a stranger before she vanished. DaRonch set aside Bundy's photo, saying that it looked like the man who had tried to kidnap her, but she was not sure. The teacher picked Bundy's photo out immediately without hesitation. When shown a second set of photos by a detective from Bountiful, Utah, DaRonch selected Bundy's picture out of the montage, but she was less certain about photos of Bundy's Volkswagen, which had been cleaned up and repaired since it was impounded.

Bundy was now under the constant attention of law enforcement agencies. His gasoline credit card records and school records were subpoenaed, and Utah detectives contacted his fiancée in Seattle (Rule, 1980a, pp. 120–124). This and other evidence was enough to have Bundy charged with the attempted kidnapping of DaRonch. While free on bail as he awaited trial, Bundy visited the Seattle area. Detectives from King County asked him if they could talk to him about the local murders, but Bundy told the officers that his attorney said, ''No.'' The difficulty that King County detectives had in trying to talk to Bundy was compounded by the fact that they had no specific evidence against him. They found no clothing, jewelry, or other personal items belonging to any of the local victims. For example, Naslund was known to wear six rings at the time of her disappearance, and Ott's yellow bicycle was also never found (McCarten, 1978).

Unlike their Northwest counterparts, investigators in Utah and Colorado did have some physical evidence linking Bundy to some of their victims. Scalp hair found on the front floor of his Volkswagen matched that of Campbell, the nurse who had disappeared from the ski resort in Aspen, Colorado. Pubic hair found in the trunk matched that of Smith, who was slain in Salt Lake City in the fall of 1974. Detectives in Aspen used Bundy's gas credit card records to show that he was in the Aspen area on the day that Campbell disappeared. They also obtained a statement from a woman who claimed to have seen Bundy in the same ski lodge from which the young nurse had vanished. Campbell's nude, frozen body had been found near Aspen six weeks after she went missing. She had been raped and bludgeoned to death. Utah investigators continued to search for links between Bundy, Smith, and at least three other young women who had disappeared or been killed in the Salt Lake area during the fall of 1974 (McCarten, 1977).

A three-day meeting of law enforcement authorities from Washington, Utah, Colorado, and California was held in Aspen to discuss the various murders believed to be linked to Bundy. Officers from California attended, even though there were indications that slayings in their state had no connection with those in the other three. The investigators compared notes and agreed to a cooperative strategy to solve these cases. They kept the meeting quiet to avoid publicity that might endanger the chance of a conviction, should charges be filed in any of the deaths (McCarten, 1975).

A detective from King County's Ted Squad informed his colleagues from the other states of his squad's attempts to link Bundy to the crimes in Washington. He also gave them a thumbnail sketch of Bundy's formative years and his relationships with women, including his fiancée, who told of being tied up and choked by Bundy during sex. The detective then outlined the possible connections between Bundy and some of the Northwest victims. Bundy not only had several classes with Healy, but they lived in the same neighborhood and shopped at the same grocery store.

Bundy was known to frequent Evergreen State College to play racquetball around the time that Manson disappeared. And, most damning of all, he was positively identified by two witnesses at Sammamish State Park and tentatively identified by a third as the man last seen with Ott. Other witnesses from the park were uncertain, describing a man of varying height, build, and hair color.

The detective also bemoaned the lack of physical evidence, telling his colleagues, ''All we have is bones.'' At the conclusion of the conference, one of the Colorado investigators told a detective from Utah, ''It looks like the only chance any of us has of tying down Mr. Bundy is your kidnapping case there in Salt Lake City'' (Larsen, 1980, pp. 113–123). Unfortunately, he was wrong. Bundy would not be stopped until he was caught in Florida and more young women were dead.

Two-and-a-half years later, when Bundy attacked four coeds in the Chi Omega House at Florida State University, the case was initially handled by both the Leon County Sheriff's Office and the Tallahassee Police Department. A Be On the Lookout (BOLO) bulletin was issued to every law enforcement officer in the area, based on the description given by a member of the sorority who had seen the attacker (Rule, 1980a, p. 238).

Detectives photographed and collected evidence at the crime scene, including hair and fingernail scrapings taken from the victims' bodies, and traces of bark from the oak club used in the assaults. For hours, police searched streets, sidewalks, yards, and garbage cans, looking for the murder weapon. Hundreds of wood chunks and branches lay beneath the old oak trees in the neighborhood, but none were found with blood on them.

A joint task force of detectives from Leon County, Tallahassee, the Florida Department of Law Enforcement, and members of the Florida State University Police investigated the attacks. A member of the university's police force soon received a call from a detective from King County advising him, ''You might want to look for a guy named Ted Bundy'' (Larsen, 1980, p. 253).

Unlike in the western states, Florida investigators had a great deal of physical evidence to collect and process. This evidence included blood from the victims (which was useful in determining the logistics of the attacks); numerous latent fingerprints (none of which proved to be useful); a piece of chewing gum found in one of the murder victims' hair (which was accidentally destroyed at the crime lab, rendering it useless); and a section of flesh from Levy's buttocks with teeth marks in it. There were also all the sheets, pillows,

blankets, nightgowns, and panties belonging to the victims. The killer also left behind a pantyhose garotte on Bowman's neck.

When Bundy's final victim, 12-year-old Leach, went missing in Lake City, Florida, halfway between Tallahassee and Jacksonville, her parents contacted the Lake City Police Department, who immediately issued a BOLO for her. At the same time, a Leon County detective received a call from a Jacksonville detective seeking help in tracing a white van in which a man had tried to pick up the detective's own teenage daughter. The girl had gotten the license number of the van. The Leon County investigator determined that the license plate had been stolen not far from the FSU campus. He also learned that a white Dodge van matching the one described by the Jacksonville detective's daughter had been stolen from the campus around the same time as the plates. This was the first link between the Tallahassee attacks and the disappearance in Lake City.

The Jacksonville detective arranged to have his daughter and her friend—who had been with her when approached by the strange van—hypnotized, to see if this would help them enhance their recollections. The teenagers were then separated to assist police artists in putting together sketches based on their hypnosis-aided memories. Both sketches looked amazingly similar. Investigators would also later note how much they looked like mug shots of Bundy.

In the early morning hours of February 15, 1978, a patrolman for the Florida Police Department in Pensacola spotted an orange Volkswagen bug emerging from an alley near a well-known local restaurant. Knowing that the eatery had closed hours earlier and not recognizing the vehicle as belonging to any of the restaurant employees, the officer called in to see if it was stolen. Upon learning that it was, the cop signaled for the driver to pull over. When he did not, the officer gave chase until the car finally pulled over a mile later.

After first refusing to do so, Bundy finally got down on the ground as ordered by the armed officer. As he was about to be handcuffed, he kicked the legs out from under the cop and then hit him. The officer was able to get off one shot from his revolver to get the suspect off of him. Bundy then attempted to flee, but the officer was able to get off another shot and Bundy hit the ground. When the cop checked him to see if he had been hit, Bundy again leapt up and began fighting. Strangely, all through their struggle, Bundy kept yelling for help. The officer finally subdued Bundy, handcuffed his hands behind his back, and then placed him in his patrol car, where he read him his rights. Bundy, who seemed quite depressed, repeatedly said, ''I wish you had killed me'' (Rule, 1980a, pp. 251–261).

The Prosecutors

Because Bundy committed his crimes in so many different jurisdictions, many different prosecutors had to get involved. They not only worked with investigators from their own areas, but they also actively participated in the multistate consultations that took place once the connections among the various disappearances and murders became apparent (McCarten, 1975). Prominently involved were the King County prosecuting attorney, whose office had jurisdiction over all the cases in Seattle, as well as those in other parts of the county; the District Attorney of Pitkin County, which includes Aspen; and prosecutors from Salt Lake County. Although the King County prosecutors had the most cases to deal with, they also had the least evidence. The Pitkin County officials were reluctant to prosecute Bundy for the Campbell murder before Salt Lake County had a conviction for

HIGH-TECH 1975

King County's ''Ted Squad'' borrowed one of the computers used to process the paychecks of county employees. Unlike modern computers, it used conveyor belts of rolling ball bearings to sort punch cards into their proper bins.

The squad's detectives requested that the computer experts have their machine sort through and cross-reference the names of over 300,000 individuals who were on various alphabetically designated lists they had already assembled, such as:

A. 3,500 suspect names provided by the public

B. 5,000 released mental patients

C. 41,000 registered owners of Volkswagens

D. 300 campus vendors at the University of Washington

E. 2,100 guests at a hotel near Lake Sammamish State Park

F. 4,000 classmates of Lynda Ann Healy

G. 1,500 transfer students among all the universities

H. 600 attendees at a company picnic at Lake Sammamish

At first, the investigators asked for the names of all the individuals who had at least two letters from the more than 30 such lists beside their names. This provided 1,807 names, still an unmanageable number. Looking for names on three or more lists reduced the number to 622, and seeking those on four or more lists provided only 25 names.

Among the names in this ''Top 25'' was that of Theodore Robert Bundy, a former law student, originally from Tacoma, Washington. The computer listed Bundy as an A, C, F, and Q. He was an AAA, because his name had been given to the task force by three different tipsters, including his fiancée and true-crime author Ann Rule, who worked with Bundy at Seattle's Crisis Clinic hotline. He was a C, because he owned a Volkswagen, an FFF, because he had been in three different classes with Lynda Ann Healy, and a Q, because an anonymous citizen reported having seen him driving a VW near the location where two women vanished.

The detectives began investigating each of the individuals in the computer's ''Top 25.'' They were just about to look into Ted Bundy when they got a call from the detective in Utah who told them that Bundy had been arrested for an attempted kidnapping in Salt Lake City.

The total cost of the computer-assisted segment of the investigation was a mere $10,000. (Keppel and Birnes, 1995, pp. 70–74).

his attempted kidnapping of DaRonch, so officials from all three jurisdictions met in Salt Lake City a week before the kidnapping trial (McCarten, 1976). Eight months after Bundy was convicted in Utah, he was charged with the Campbell murder by the Pitkin County district attorney and extradited to Colorado, but he was able to escape from jail there twice and from the murder charge altogether (Lohr, 2002).

In Florida, Bundy fell under the jurisdiction of the Florida State Attorney's Office, which prosecutes all murders in Florida. Two separate teams of prosecutors handled the Chi Omega trial in Miami and the Leach trial in Orlando (Larsen, 1979a).

The Defense

Over the course of his criminal career, Bundy had 21 different attorneys representing his interests. During his kidnapping trial in Salt Lake City he had two very competent and respected defense attorneys in court, and he also frequently consulted with a Seattle public defender, who later went on to become one of that city's most prominent criminal defense lawyers.

In Florida, Bundy acted as his own attorney, assisted by a number of different lawyers. Even so, he bitterly complained that having to prepare for two different trials simultaneously put him in "an untenable and fundamentally unfair position" (Larsen, 1979a).

Before each trial, Bundy and his lawyers flooded the Florida courts with pretrial motions, including two successful motions for change of venue. The trials were moved to Miami and Orlando. During the trials, Bundy often took the lead in questioning key witnesses, and at one point, he fired his legal team and replaced them with a group more to his liking, while assuming greater control over his own defense.

Despite disorganization among and bumbling by his defense team, a number of legal experts thought that Bundy had a shot at an acquittal in the Chi Omega trial in Miami. This view was held despite the fact that Bundy had a disagreement with the most experienced member of his team, after the lawyer worked out a plea bargain, which Bundy vetoed (Larsen, 1979b).

The Trials

Bundy had much in his favor in the DaRonch kidnapping trial in Salt Lake City. He had the support of family and friends, one of the top criminal lawyers in Utah, and a judge with a reputation as a fair-minded jurist. Judge Stewart J. Hanson Jr., of Salt Lake County Superior Court, presided. Because Bundy surprisingly waived his right to a jury trial at the last minute, it was up to Judge Hanson to weigh both the facts and the law.

The key witnesses were the victim and Bundy. DaRonch was not a confident victim. She appeared intimidated by the way Bundy stared at her, and she sobbed during her testimony. Her greatest show of strength was when she pointed at Bundy and identified him as the man who had tried to kidnap her. In contrast, Bundy appeared extremely confident, as he testified on his own behalf. He had an explanation for everything. He said that he had fled the patrolman because he had been smoking marijuana in his car, that he had found the handcuffs in a dump and had no key for them, and that there had been a mix-up on the license plate numbers he had given to a gas station attendant around the time of the abduction attempt.

Judge Hanson took his dual role very seriously and often took it upon himself to ask questions of witnesses. After hearing five days of testimony and argument, and requesting extra security for his courtroom, he spent the following weekend "agonizing" over his verdict. The next Monday afternoon, he announced that he had found Bundy guilty of aggravated kidnapping (Rule, 1980a, p. 161). He then sentenced him to 15 years in prison (Larsen, 1980, p. 148).

In Florida, Bundy faced two different judges. Judge Edward Cowart of the 11th Circuit, who presided over the Chi Omega trial, decided that he could not seat an impartial jury in

BITE MARKS

The key pieces of forensic evidence against Ted Bundy were bite marks he left on the buttocks of Lisa Levy, one of the two young women murdered at the Chi Omega House in Tallahassee, Florida. Although bite mark evidence has a long history in American jurisprudence, going all the way back to colonial times, it was the Bundy case that first brought it to the public's attention.

At the crime scene, an alert police officer had placed a yellow ruler next to the bite marks and photographed them. This would prove to be a crucial move, because the actual tissue samples from Levy's buttocks were later destroyed during analysis. The photographs would have to suffice for comparison to impressions of Bundy's teeth.

Shortly after he was arrested in Florida, Bundy had refused to voluntarily allow impressions of his teeth to be made. A search warrant was issued compelling him to comply. Prosecutors now had both photos of the bite marks and models of Bundy's teeth to compare to the wounds.

The first expert to testify about the dental evidence was Dr. Richard Souviron, a dentist from Coral Gables, Florida. Souviron gave the jury a detailed description of the injuries, then explained how they matched the impressions of Bundy's teeth. He pointed out the teeth's alignment, size, sharpness, and some chipping.

In order to dramatically illustrate his testimony, Souviron put up a board with an enlarged photograph of the bite marks. He then put a clear sheet with an enlarged photo of Bundy's teeth on top of the picture of the wounds. There appeared to be a perfect match between them (''Bite Marks Used as Evidence to Convict'').

Souviron then explained that there had been a double bite of the same area. After biting once, the assailant had turned sideways and bit again, with the top teeth remaining in the same position, as the lower teeth left two rings.

Although up to this point in the trial Bundy had been acting as his own attorney, he knew how damning this evidence was and decided to turn over the cross-examination of Dr. Souviron to one of his attorneys. The defense lawyer did his best to raise questions about the exactitude of the science of forensic odontology and about Souviron's own procedures and interpretations, but the dentist had more ammunition. He carefully explained how he had conducted several experiments on cadavers at the morgue with the model of Bundy's teeth, in order to ensure the standardization of his results.

The State then called Dr. Lowell Levine, the chief consultant on forensic dentistry for the New York City Medical Examiner's Office. Levine testified that Levy had been stationary at the time the bite wounds were inflicted. He also gave an impressive lesson in the history of forensic odontology.

Most observers of the trial agreed that the two dental experts' testimony was the clearest and most compelling scientific evidence given in the case (Rule, 1980a, pp. 223–224).

Tallahassee, so he moved the trial to Miami. Judge Cowart ran his courtroom like the captain of ship, taking no nonsense from Bundy or any of the attorneys.

The Miami trial could not have been more different from the rather mundane proceedings in Utah. Throughout the trial, Bundy took center stage in his dual roles as defendant



Figure 2.1 Forensic odontologist Dr. Richard Souviron points to a blown-up photograph of accused murderer Ted Bundy's teeth during Bundy's murder trial, 1979. © AP Photo.

and defender. With television cameras in the courtroom and Bundy acting as his own attorney, including cross-examining many of the state's witnesses, it was unlike any trial that had ever come before. Very much aware of the television cameras and other media, he displayed the full range of his complex personality from his charm, intelligence, and wit to his ego, temper, and contempt for authority.

The trial consisted of a parade of lay and expert witnesses for both the prosecution and the defense. The state attempted to link Bundy to the crimes by both circumstantial and direct forensic evidence, while Bundy and his lawyers tried to cast doubt on every element of the state's case.

One of the most crucial elements of the trial was the testimony regarding the bite marks found on one of the victims. The prosecution's expert claimed that the marks had clearly been made by the defendant, and Bundy and his team attempted to question the reliability of such evidence.

The defense's key testimony came from a serologist who had concluded that a semen stain found on a bed sheet belonging to one of the victims came from a man who was a ''non-secretor,'' meaning that his blood type antigens were not secreted into his other bodily fluids. Bundy was a secretor.

When Bundy was convicted, Cowart dispassionately cited the aggravated circumstances in the case, and he sentenced Bundy to death for the murders of Levy and Bowman. He then told Bundy to ''take care of yourself. It is a tragedy to this court to see such a total waste of humanity. You'd have made a good lawyer. I would have loved to have had you practice in front of me'' (Larsen, 1980, p. 321).

The Leach trial was presided over by Judge Wallace Jopling. After an unsuccessful attempt to seat a jury in Suwannee County, where Leach was killed, Judge Jopling moved

the trial to Orlando, in Orange County. There he presided over the trial in a careful, restrained manner.

The trial began with a long and tedious jury selection process. Because of all the publicity from the Miami trial, it took the questioning of over 130 prospective jurors to finally impanel a jury of 12. Bundy then got off to a bad start by railing against the judge and prosecutor for allegedly wanting a prejudiced jury.

Although there was physical evidence linking Bundy to Leach's murder—footprints, fabric, blood, and semen—the crux of the case came down to credit card receipts putting him in Lake City around the time of the killing and the testimony of a fireman who identified Bundy as the man he saw leading a young girl into a white van parked in front of Leach's school on the day that she disappeared. Another witness linked Bundy to the knife that was used to kill Leach. Bundy and his defense counsel focused their efforts on attacking the credibility of the witnesses, claiming that their testimony had been tainted by all of the publicity surrounding Bundy.

Bundy, however, was convicted, and Judge Jopling sentenced him to death. He echoed the words of Judge Cowart, telling the defendant, ''You have every ability that a young man could expect to have to succeed in your life. May God have mercy on your soul'' (Larsen, 1980, p. 336).

RESOLUTION

Bundy was convicted on all charges rising out of the attacks in the Chi Omega House, including two counts of aggravated murder, two counts of assault, and one count of burglary. He was sentenced to death by electric chair.

Bundy was also convicted of the kidnapping and murder of Kimberly Leach. During the penalty phase of the trial, he surprised all onlookers by marrying a woman from Olympia, Washington. He wed Carole Boone in open court after she had obtained a valid marriage license and arranged to have a notary present, along, of course, with the judge (Larsen, 1980, pp. 334–335). Married or not, Bundy was also sentenced to death for the Leach murder, but he did not stop fighting. He filed numerous appeals and received several stays of execution. When his legal remedies were nearly exhausted, he tried to stay alive any way he could.

After many years of denying his involvement in any of the murders that he was suspected of, he began confessing to some of the killings, while holding back information on others to use as bargaining chips in his attempts to avoid execution. When asked if he had killed 30 women, Bundy taunted, ''Put a zero after that'' (Millitich, 1989). He also offered himself as a ''consultant'' on the unsolved Green River Killer cases in Washington State, which were being investigated by some of the same detectives who had served on the Ted Squad years before (Keppel and Birnes, 1995, pp. 198–210).

Bundy also did a widely viewed, videotaped interview with a Christian radio psychologist, in which he blamed his aberrant behavior on a lifelong addiction to violent pornography. Most investigators familiar with Bundy dismissed his claim as a way to relieve himself of responsibility for his crimes and to win enough sympathy to be kept alive, at least for a while longer.

Bundy's legal appeals and other maneuvers finally ran out. On January 24, 1989, he was executed in Florida's electric chair. Outside the prison, several hundred people gathered,

representing both sides of the death penalty debate. Loud cheers could be heard when word of Bundy's death was announced.

Media Coverage

Bundy's first few crimes, which at first seemed like isolated incidents, received little if any media coverage. It was not until it became clear to law enforcement that there was a possible link among the disappearances that newspaper and television coverage began to escalate. The turning point was when the two young women vanished from Lake Sammamish State Park on the same day. From then on, the "Ted" story was big news across the Pacific Northwest and eventually on a national level.

When Tacoma native and University of Washington graduate Bundy was arrested in Utah, the Seattle and Tacoma papers became flooded with stories on his arrest and his possible link to the local cases of missing women. Bundy's dramatic escapes from jail only added to the interests of the media and the public. When he eventually was caught in Florida, his story took on a new importance on a national scale. It was in large part due to the extensive press coverage of having both his trials moved to different venues.

The novel combination of television cameras in the courtroom and Bundy's acting as his own attorney turned his two trials in Florida into full-fledged media circuses. The numerous delays and heated debates over his impending electrocution kept the show going. In addition to extensive coverage of Bundy by newspapers, television, and magazines, several books told his story from various perspectives. Former Seattle policewoman-turned-true-crime-writer Ann Rule, who worked with Bundy at the Crisis Clinic and considered him a friend, wrote of it all in *The Stranger Beside Me,* which years later was made into a television movie.



Figure 2.2 Ted Bundy smiles during the second day of jury selection in his murder trial in Miami, 1979. © AP Photo.

Seattle Times reporter Richard Larsen, who first met Bundy while covering Washington State politics, wrote *Bundy: The Deliberate Stranger,* which was made into a network miniseries. Robert Keppel, King County's lead detective on the "Ted" cases, wrote *The Riverman: Ted Bundy and I Hunt for the Green River Killer* about Bundy's attempts to delay his execution by offering investigators his thoughts on yet another Northwest serial killer. Other books on Bundy included *The Only Living Witness* (Michaud and Aynesworth, 1983), in which he chillingly recounts his crimes to two journalists in the third person, and books by Bundy's former girlfriend and by the final attorney to represent him. The Bundy saga continues to be kept alive by a plethora of Web sites and by true-crime shows on cable television.

Relevant Social, Political, and Legal Issues

Although there had been many serial killers before him, from Jack the Ripper to The Boston Strangler, it was not until Ted Bundy that the term came into the consciousness of American and, indeed, international society. With his cunning intelligence, good looks, charm, and the number and nature of his crimes, he became the archetype for a new breed of killers both in fact and in fiction. Behind his ''mask of sanity'' lurked a human killing machine totally without empathy or remorse (Cleckley, 1982).

On a national level, the Bundy cases did not have much of a political impact, other than to add to the public's already high level of fear about violent crime. But, on a local level in Tallahassee, they were an important issue in the election campaign for prosecutor.

A number of significant legal issues did arise from Bundy's murder trials in Florida. Chief among them was the issue of cameras in the courtroom. Bundy's Miami trial was the first major criminal trial to come into America's living room, live and in color. At the time, there was a great deal of debate on the pros and cons of allowing the trial to be televised. Little was settled, as the debate roared on in future trials, including the rape trial of William Kennedy Smith and, of course, the O.J. Simpson trial.

Another key legal issue was the bite mark evidence. Although it had actually been first used in an obscure case in the same Miami courthouse where Bundy stood trial, it was the Chi Omega trial that put the spotlight on this new kind of forensic evidence. Despite the defense's attempts to discredit bite mark evidence as unscientific, it played a key role in Bundy's conviction and in many other cases since.

The most significant issue raised by the Bundy cases was the death penalty, because advocates for and against it tried to exploit this case for their position. Death penalty proponents viewed the number and nature of Bundy's acts as the perfect justification for the ultimate penalty, and those opposed to capital punishment argued that the use of Florida's antique electric chair, known as ''Old Sparky,'' amounted to cruel and unusual punishment (Barber, 1989).

Significance of the Case

The Bundy saga has had a lasting impact on both legal and popular culture. His interstate murder spree helped bring about the creation of the Violent Crimes Apprehension Program, which hoped to overcome many of the difficulties in dealing with cross-jurisdictional murder sprees exposed by the Bundy investigation by compiling a national database of reports of such crimes. It also brought a new awareness within law enforcement of both the prevalence and nature of serial homicide (Keppel and Birnes, 1995, pp. 134–158).

On the popular culture front, Bundy in some ways became almost a folk hero. He was played on television by Mark Harmon, who had been named *People* magazine's ''Sexiest Man Alive'' in 1986 (Larsen, 1988). While in the spotlight, Bundy drew legions of female fans (Licitis, 1979). He also became a subject of fascination among young people, who were both intrigued and repulsed by the lethal charmer (Thunemann, 1989).

Although other high-profile murder cases continue to dominate the news media and other serial killers have come and gone, it is not likely that we will ever see the likes of another Ted Bundy. At least we can hope we never do.

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3

The Unabomber: Theodore John Kaczynski

CHRIS SHIELDS, KELLY DAMPHOUSSE, TAD SOURS, PAXTON ROBERTS, AND BRENT SMITH

On April 3, 1996, agents from the Federal Bureau of Investigation, Alcohol, Tobacco and Firearms, and the United Sates Postal Service knocked on the door of a one-room cabin in the heavily wooded mountainous area known as Stemple's Pass outside of Lincoln, Montana. This 10 feet by 12 feet cabin with no electricity or running water was the residence of Theodore John Kaczynski, a Harvard-educated theoretical mathematician who had served as an assistant professor at the University of California at Berkley until fleeing society to live in isolation in 1971. Inside the cabin, agents found chemical compounds, sections of pipe, batteries, electric wire diagrams, notes on manufacturing destructive devices, and other materials for constructing pipe bombs. This day would set forth events by which agents would take Kaczynski (also known as the Unabomber) into custody and lead to a near trial and subsequent guilty plea in January 1998, thus ending the longest and most expensive manhunt in U.S. history (Gibbs & Allis, 1996). In this chapter, we describe what is known about the life and crimes of Ted Kaczynski, the Unabomber investigation, his arrest, and the events that led to his pleading guilty.

Who Was Theodore John Kaczynski?

Theodore John Kaczynski was born on May 22, 1942, in Chicago, Illinois, to Wanda and Theodore Richard Kaczynski. His father was a sausage maker who taught Ted and his brother, David, how to survive in the outdoors. His mother brought him up reading advanced materials such as *Scientific American* before Ted was in the fifth grade. Both parents were upper middle class intellectuals who highly valued education for their sons beginning at a very early age. Kaczynski excelled at math throughout his school years, and he graduated from Evergreen Park High School in 1958 after skipping two grades.

Kaczynski went to college at Harvard University when he was 16 years old and, upon graduating in 1962, he continued his education at the University of Michigan, earning his PhD in mathematics in 1967. He was described as a ''very serious student with a meticulous attention to detail'' by one member of his doctoral dissertation committee (Magner, 1996, A24). After teaching at the University of California–Berkeley from 1967 to 1969, he resigned without explanation.

Kaczynski eventually moved back to the Chicago area and began working for his brother at a factory. Things did not go well, and Kaczynski was fired for sexual harassment of a female employee. This and other failures with women would later be used to help explain his secluded existence over the next 20 years. Kaczynski then returned to Lincoln, Montana, in 1980 where he had built a cabin on the land that he and his brother had purchased in the early 1970s. Kaczynski proceeded to live a hermit's life, hunting off the land and growing vegetables. He would use this as his official residence until his arrest in 1996.

The Bombings

While it is not known why Kaczynski began mailing bombs to individuals or why his targets were selected, it is generally believed his bombing spree ran from 1978 to the time of his arrest. His targets were spread all across the United States. The victims varied in terms of field of study or employ, and his bombs often exploded at the wrong time, wounding or killing the wrong person (Laquer, 1999). The collateral damage from his bombings did not appear to bother Kaczynski, who wrote about a 1982 bombing that injured a woman in one of his journals, ''No indication that the woman was permanently disabled. Frustrating that I can't even make a lethal bomb'' (AP, 2006).

The first bomb exploded at Northwestern University on May 25, 1978, causing minor injuries to a police officer and continued almost 18 years through the lethal bombing at the California Forestry Association, which took the life of Gilbert Murray (see bombing timeline). This final bombing was so vexing to the Department of Justice that it eventually allowed *The New York Times* and the *Washington Post* to publish his ''manifesto'' in an effort to ward off further attacks (Magner, 1996). One of the reasons that the Unabomber was so difficult to apprehend was the randomness of his bombings. Often he would go years without an incident, then something would trigger his anger and he would strike again. Another difficulty in the pattern of the bombings was the targets. Contrary to many terrorist targets, the victims of the Unabomber tended to be relatively nondescript, obscure, and less-than-powerful academics, psychiatrists, and lower-level executives (Luke, 1996).

Throughout the course of his bombing campaign, Kaczynski's skills as a bomb maker improved, and his devices proved to be more accurate and deadly. One of the hallmarks of the Unabomber was that the pieces of his bombs were painstakingly handcrafted, even though a ready-made part available at any local hardware store would have sufficed or been more effective (Restivo et al., 2001).

As his journals would later indicate, Kaczynski was not without his contradictions. The ideology behind the bombings was severely anti–science and technology, but Kaczynski's journals are the picture of experimentation and trial as he worked to perfect his bombs, creating better shrapnel, switches, and chemical compounds to use as the explosive material. The journals also indicated how detached and cold Kaczynski was as a killer. In one journal entry after the lethal bombing that took Hugh Scrutton's life in Sacramento,

BOMBING TIMELINE

May 26, 1978	Intended victim was Buckley Crist, Jr., Engineering Professor, Northwestern University, Evanston, IL. The actual victim is Northwestern police officer Terry Marker who was injured in the blast upon investigating the suspicious package.
May 9, 1979	John Harris, a graduate student at Northwestern University, Evanston, IL, was injured in the blast.
Nov. 15, 1979	American Airlines, Flight 444, Chicago to Washington, package catches fire instead of exploding, forcing an emergency landing. Twelve passengers were injured in the event.
June 10, 1980	Percy Wood, United Airlines President, was injured in his home in Lake Forest, IL, after opening a package that he thought contained the book *Ice Brothers*.
Oct. 8, 1981	A bomb explodes on the campus of the University of Utah in Salt Lake City, UT. No one was injured in the blast.
May 5, 1982	Intended victim was LeRoy Bearnson, an electrical engineering professor at Brigham Young University. His address was listed as the return address on a package that was mailed (with canceled stamps) to Patrick Fischer, head of the computer science department at Vanderbilt University, Nashville, TN. Dr. Fischer's secretary, Janet Smith, was injured in the blast.
July 2, 1982	Diogenes Angelakos, an engineering professor at the University of California, Berkeley, CA, was seriously injured when a can that he picked up in the computer science department exploded.
May 15, 1985	John Hauser, an engineering student, was severely injured when a bomb exploded after he moved a stack of binders in the computer science department at the University of California, Berkeley, CA. Ironically, an earlier victim (Diogenes Angelakos) rendered lifesaving first aid to Mr. Hauser.
June 13, 1985	A mail bomb was discovered at the Boeing Aircraft Company Fabrication Division in Auburn, WA. The bomb was later detonated by police and no one was injured in the event.
Nov. 15, 1985	The intended victim was James McConnell, a psychology professor at the University of Michigan, Ann Arbor, MI. The actual victim was graduate student Nicklaus Suino, who opened the mail bomb. Professor McConnell suffered hearing damage as a result of the blast.
Dec. 11, 1985	Hugh Scrutton, the owner of RenTech in Sacramento, CA, was killed when he moved a box that had been placed in the parking lot of his computer rental store.
Feb. 20, 1987	Gary Wright, co-owner of CAAMS Inc. in Salt Lake City, UT, was injured when he moved a bag outside his business. A witness described the

	person who delivered the bag as wearing a hooded sweatshirt and aviator sunglasses. Her description becomes the drawing for the famous ''wanted poster'' for the Unabomber.
June 22, 1993	Charles Epstein, a geneticist at the University of California, San Francisco, is injured after opening a mail bomb at his home in Tiburon, CA. The intended target may have been James Hill, chair of the chemistry department at California State University, Sacramento, whose name was listed on the return address on the bomb.
June 24, 1993	David Gelernter, a computer scientist at Yale University, was severely injured after opening a mail bomb in his office. The intended target may have been Mary Jane Lee, a computer science professor at California State University, Sacramento, whose name was listed on the return address on the bomb.
Dec. 10, 1994	Thomas Mosser, an advertising executive from North Caldwell, NJ, was killed in his home after opening a mail bomb in his home. The Unabomber claimed he was targeted because of the work his public relations firm did for Exxon following the Exxon Valdez disaster.
April 24, 1995	Gilbert Murray, president of the California Forestry Association in Sacramento, CA, was killed when opening a mail bomb. The intended victim may have been William Dennison, the former CFA president, to whom the package had been addressed.

he wrote, ''Excellent! Humane way to eliminate someone, he probably never felt a thing'' (Chase, 2003, p. 66).

As the number of attacks increased and it became increasingly clear that they were all the work of one man, the FBI created the ''UNABOM (university and airline bomber) Task Force'' to investigate the crimes. As the media began to pick up on the story, they began referring to the suspect using a variant of the FBI's task force name. Kaczynski thus became known as the ''Unabomber'' (or ''Unibomber'' or ''Unabomer'').

THE UNABOMBER MANIFESTO

On April 26, 1995, a letter was received by *The New York Times* and the *Washington Post* from a purported terrorist entity known simply as ''FC.'' Authorities would later learn that this stood for ''Freedom Club'' and was a takeoff of the terrorist group in Joseph Conrad's book *The Secret Agent,* a book with which Kaczynski was very familiar (Chase, 2003). The timing of this letter is interesting in that it was mailed within a week of the Oklahoma City bombing. This timing has suggested to experts that Kaczynski was spurred on by the events in Oklahoma City. They either encouraged him to become more active or prompted him to act out of jealousy for the media spotlight.

The letter referenced the series of bombings that were attributed to the Unabomber and informed the news organizations that unless they agreed to publish a ''29,000–37,000'' word essay, the campaign of package bombs would continue. Agreeing to print such an essay on behalf of a purported terrorist group was obviously controversial, but the papers conceded to the demands after the Department of Justice suggested

they do so for the sake of public safety (Heymann, 1998). The publication of the ''Unabomber manifesto'' has brought with it concerns that it may have set a precedent for anyone willing to use ''murder and mayhem to get their 15 minutes of fame'' (Harper, 1993, p. 1).

The manifesto, entitled *Industrial Society and Its Future,* was a disorganized series of short paragraphs some 35,000 words long that ranted against technology, modernity, and the destruction of the environment (Hoffman, 1998). Reactions to the document ranged from total support (the author was described as a ''rational and serious man, deeply committed to his cause, who has given a great deal of thought to his work and a great deal of time to his expression of it'') to total opposition (one writer diagnosed the author with a Narcissistic Personality Disorder that ''seems to be the most illuminating explanation of the Unabomber's seemingly incomprehensible behavior'') (Luke, 1996, p. 82).

The majority of the manifesto concentrates on the downward spiral society has been on since the Industrial Revolution, how having an industrial system has destabilized society, and how living in a technological society robs people of any sense of self-worth that comes with being self-sufficient and not relying on the technology that makes life easier. As Kaczynski wrote,

EXCERPT OF THE 35,000-WORD UNABOMBER MANIFESTO (INDUSTRIAL SOCIETY AND ITS FUTURE)

The industrial revolution and its consequences have been a disaster for the human race. They have greatly increased the life expectancy of those of us who live in ''advanced'' countries, but they have destabilized society, have made life unfulfilling, have subjected human beings to indignities, have led to widespread psychological suffering (in the Third World to physical suffering as well) and have inflicted severe damage on the natural world. The continued development of technology will worsen the situation. It will certainly subject human beings to greater indignities and inflict greater damage on the natural world, it will probably lead to greater social disruption and psychological suffering, and it may lead to increased physical suffering even in ''advanced'' countries.

The industrial-technological system may survive or it may break down. If it survives, it MAY eventually achieve a low level of physical and psychological suffering, but only after passing through a long and very painful period of adjustment and only at the cost of permanently reducing human beings and many other living organisms to engineered products and mere cogs in the social machine. Furthermore, if the system survives, the consequences will be inevitable: there is no way of reforming or modifying the system so as to prevent it from depriving people of dignity and autonomy.

If the system breaks down, the consequences will still be very painful. But the bigger the system grows the more disastrous the results of its breakdown will be, so if it is to break down it had best break down sooner rather than later.

Source: Kaczynski, Theodore. (1995, September 19). *Unabomber Manifesto*. Washington, DC: *Washington Post.*

> We are socialized to conform to many norms of behavior that do not fall under the headings of morality. Thus the over socialized person is kept on a psychological leash and spends his life running on rails that society has laid down for him. In many over socialized people this results in a sense of constraint and powerlessness that can be a severe hardship. (Kaczynski, 1996, para. 26)

Thus, the document advocated a violent revolution to destroy the system that is controlling society and keeping people from attaining a true sense of self-confidence and self-esteem, as well as a sense of power. Kaczynski argued that society destroys the possibility for these to occur by

> embedding people in weak, unfree roles in every amorphous aspect of market-mediated social reproduction. This is why the system is in crisis and must be destroyed by a popular social revolution. (Kaczynski, 1996, para. 44)

The work itself, though flawed in some ways, contains too many points of comparison to other academically accepted critiques of modern society to be simply written off as the ravings of a deranged person, which is the common and popular review of the manifesto in the media. As one of the scientists involved in the UNABOM task force wrote, Kaczynski's

> fascination arises from the fact that he is a combination of modern day romantic and countercultural revolutionary. As a romantic he is successor to the German poets and artists, in the grip of raw nature, opponents of industrialization and machines. As successor to Thoreau, he is less a writer but more a lover of solitude. But as well he is—unfortunately—a successor of the revolutionaries, a latter-day Symbionese Liberationist who absorbed the 1960s without understanding their meaning and the transformation of society that the counterculture wrought with age, not violence. (Restivo et al., 2001, p. 100)



Figure 3.1 Ted Kaczynski's mug shot, 1996. © AP Photo/ho.

Ultimately, though, it was the publication of the manifesto that led to the arrest and eventual conviction of its author.

THE FBI INVESTIGATION

The job of the UNABOM Task Force was to track down the person who was responsible for a series of bombings around the country—not an easy exercise given the lengths Kaczynski went through to mask his identity, even going so far as to construct a special pair of shoes with smaller soles attached to the bottom to mask his footprints (AP, 2006). The one common denominator in all of his bombs was wood; at least some component of each bomb had a piece of varnished or polished wood (Chase, 2003).

The investigation leading up to the capture of the Unabomber was the longest and most expensive manhunt in U.S. history. Over $50 million and literally hundreds of thousands of manhours were spent trying to track him down. The UNABOM Task Force opened up a call center and posted a $1 million reward for the capture of the serial bomber (ironically, a reward that was eventually paid to Ted's younger brother, David Kaczynski). In the span of the 18 year investigation, the FBI fielded some 20,000 phone calls to the hotline and had worked their way through a list of over 200 suspects (Arnold, 1997).

After the Oklahoma City bombing on April 19, 1995, the Unabomber seemed to find new vigor in his work. Perhaps he was concerned with being upstaged by another less sophisticated bomber, or he was angry that the media was turning away from him after a successful 17 year criminal career without being caught. Either way, he got the attention he was seeking. Five days after the Oklahoma City bombing, the president of the California Forestry Association was killed by a package bomb, bearing the Unabomber's unique signature (Gibbs & Allis, 1996).

Still, after many years of investigation, the case by the FBI was not very much advanced beyond a vague drawing of the suspect for the "Wanted" poster and an FBI profile (neither of which bore much resemblance to Kaczynski). The break in the investigation came when Kaczynski's own obsessive relationship with the media led him to reveal himself through his writing. In the wake of the Oklahoma City bombing in 1995, the Unabomber was able to get his manifesto published in national newspapers. This allowed the world to see for the first time the thoughts of the Unabomber. Unfortunately for Kaczynski, his brother (David) recognized the writing style as being similar to the radical antiestablishment letters Kaczynski had sent him and his mother over the years. David Kaczynski subsequently contacted the FBI through his lawyer, and the search for the reclusive Unabomber began to come to an end (Hoffman, 1998).

The FBI compared the writing style of letters from Ted Kaczynski to his family with material that had been published by the Unabomber. Upon finding sufficient similarities, the FBI sought from David Kaczynski the identity of the letter writer. After being assured that (1) he would remain anonymous and (2) the federal government would not seek the death penalty, David identified his brother as the author and told them how he could be found. Ted Kaczynski (the Unabomber) was arrested in his isolated cabin in Montana on April 3, 1996.

THE COURT CASE

The Indictment and Venue

The United States District Court in Sacramento, CA, was chosen as the proper venue for the trial because two of the fatal bombings had occurred there and two bombs had been mailed from there (Lavelle, 1997). A federal grand jury in Sacramento returned an indictment against Kaczynski on June 18, 1996, in which he was charged with four counts of "Transportation of an Explosive with Intent to Kill or Injure" (18 U.S.C. §844), three counts of "Mailing an Explosive Device with Intent to Kill or Injure" (18 U.S.C. §1716), and three counts of "Use of a Destructive Device in Relation to a Crime of Violence" (18 U.S.C. §924 C). Kaczynski was transported to Sacramento on June 23, 1996, to stand trial in federal court. Federal prosecutors in New Jersey, where the third fatal attack had occurred, also indicted Kaczynski pending the outcome of the Sacramento case (Chase,

2003). In May 1997, Attorney General Janet Reno announced that the government would be seeking the death penalty in the case. The decision did not set well with Kaczynski's brother, who had turned him in based on the belief that the death penalty would not be sought. Kaczynski's family and defense team would argue that Kaczynski was mentally ill and therefore not eligible for the death penalty.

Principal Players

The case was assigned to Judge Garland E. Burrell, Jr., and it was his first capital case. In fact, the Unabomber case was the first death-penalty case to be filed in the Eastern District of California, and Kaczynski's execution would have been the first federal execution since 1963 (Walsh, 1996, p. 1). The court appointed two attorneys, Quin Denvir and Judy Clarke, to represent Kaczynski, both of whom were opposed to capital punishment. A year earlier, for example, Judy Clarke had helped Susan Smith avoid the death penalty in South Carolina for the drowning deaths of Smith's two young sons. The prosecution was headed by Robert J. Cleary who was assisted by Stephen P. Freccero and R. Steven Lapham, all Special Attorneys to the United States Attorney General. Cleary and Freccero had both been a part of the UNABOM Task Force for several years before Kaczynski was caught.

Evidence Presented

Since the case never made it to trial, no evidence was actually produced. That said, two interesting evidentiary strategies evolved as the trial date drew near. First, in a move that has been questioned by some legal experts (Chase, 2003), both the prosecution and defense intended to use the same body of evidence. The prosecution team intended to introduce the books, journals, bomb-making implements, the typewriter, and the manifesto found in Kaczynski's cabin. They hoped these items would prove definitively that Kaczynski was the Unabomber. Defense counsel also planned to use the same materials, along with evidence of his reclusive life-style, in an effort to establish an insanity defense. Unfortunately for the defense team, Kaczynski opposed their use of this defense strategy, and this disagreement would turn out to be one of the key issues that played out during the events leading up to the trial. A second evidentiary maneuver made history. For the first time in American criminal trial proceedings, an entire *structure* was moved to be presented in a courtroom. At the request of the defense team, Kaczynski's one room Montana cabin was transported and reassembled in Sacramento (Wigley, 1999, p. 123).

The Defense

The defense team employed several standard pretrial defense tactics in the months leading up to the trial. For example, Kaczynski's lawyers mounted an unsuccessful challenge to the search of his cabin. Similarly, defense counsel attempted to suppress statements Kaczynski made after his capture. These motions were also denied.

In addition to these suppression motions, Kaczynski's appointed attorneys began plans to implement an insanity defense, a tactic that Kaczynski did not favor. According to Michael Mello, the University of Vermont Law Professor who assisted Kaczynski throughout the ordeal, the "evidence that Theodore Kaczynski suffered from paranoid schizophrenia, or any other actual serious mental illness, was surprisingly flimsy . . . unless anti-technology politics, a willingness to kill for them, and a reclusive lifestyle" add up to mental illness (Mello, 2000, p. 22). Even so, the defense team's strategy to employ the

CRIMINAL JUSTICE TIMELINE

April 3, 1996	Kaczynski is arrested in Lincoln, MT.
June 18, 1996	A federal grand jury in Sacrament, CA, indicts Kaczynski for four bombings that resulted in two deaths and two injuries.
June 23, 1996	Kaczynski is booked into the county jail in Sacramento, CA.
June 25, 1996	Kaczynski pleads not guilty to all counts in the indictment.
May 15, 1997	Upon approval by Attorney General Janet Reno, the state announces that it will pursue the death penalty.
June 27, 1997	Judge Garland Burrell allows evidence found in Kaczynski's home to be entered as evidence even though the defense claimed that the government lied to obtain the original search warrant.
Sept. 29, 1997	Mental competency examination ordered and interlocutory appeal filed by Kaczynski.
Oct. 3, 1997	Court orders jurors to remain anonymous.
Oct. 22, 1997	Judge Burrell orders two separate government psychiatrist examinations of Kaczynski.
Nov. 12, 1997	Jury selection begins.
Dec. 5, 1997	Kaczynski's cabin is transported from Montana to Sacramento at the request of the defense team.
Dec. 22, 1997	A jury of three men and nine women is selected.
Jan. 4, 1998	Scheduled date for opening statements. The start of the trial is delayed when Kaczynski complains to Judge Burrell about his defense team's plan to use the ''mental defect'' defense on his behalf. The start of the trial is delayed.
Jan. 7, 1998	Judge Burrell denies Kaczynski's request for new lawyers, citing the late date.
Jan. 8, 1998	Start of trial is again delayed. Kaczynski requests to be able to serve as his own defense attorney. Judge Burrell orders a psychological exam before making his decision on the motion.
Jan. 11, 1998	The prosecution quietly restarts plea bargain discussions with the defense in an apparent move to avoid having to settle for a media circus trial if Kaczynski is allowed to defend himself.
Jan. 21, 1998	Sally Johnson, a psychiatrist at the federal correctional facility in Butner, NC, informs the court that Kaczynski is competent to stand trial but is a paranoid schizophrenic.
Jan. 22, 1998	Judge Burrell denies Kaczynski's motion to serve as his own lawyer. Kaczynski enters a guilty plea in exchange for a life sentence.
May 4, 1998	Kaczynski is sentenced to four consecutive life sentences plus 30 years.

May 5, 1998	Kaczynski is transferred to the federal supermaximum prison in Florence, CO. The prison also houses Timothy McVeigh (Oklahoma City bombing), Ramzi Yousef (1993 World Trade Center bombing), Richard Reid (Shoe Bomber), Eric Rudolph (Olympic Park bomber), and Zacarias Moussaoui (9/11 conspiracist).
June 4, 1998	Kaczynski's lawyers file a motion to keep Johnson's psychiatristic report private. Judge Burrell delays release of the report until June 11.
June 10, 1998	The 9th U.S. Circuit Court of Appeals in San Francisco blocked release of the psychiatric report until oral arguments could be heard on June 30.
Aug. 20, 1998	David Kaczynski receives $1 million reward for helping to capture his brother. The Court of Appeals allows the government to make public Kaczynski's psychiatric report. The report is released on September 9, 1998.
Feb. 11, 1999	Kaczynski files an appeal stating that he was coerced into making his guilty plea.
Oct. 22, 1999	The 9th U.S. Circuit Court of Appeals in San Francisco agrees to hear convicted Kaczynski's appeal.
Feb. 12, 2001	The federal appeals court denies Kaczynski's appeal for a new trial.

mental defect defense for Kaczynski was spurred on for two very pressing reasons. The first was the monumental stack of evidence that the prosecution had secured from Kaczynski's cabin. The second was U.S. Attorney General Janet Reno's announcement that the government would be seeking the death penalty in this case (Chase, 2003). The high certainty of conviction coupled with the severity of the punishment resulted in the desperate move to use the insanity defense.

Both the prosecution and the defense provided their own psychiatric experts to evaluate Kaczynski. Those retained by the defense found that he was a highly functional paranoid schizophrenic, meaning that even if he were mentally ill, he would be on the least-ill end of that spectrum. So even though Kaczynski might have been diagnosed with a mental illness, he was not as ill as his lawyers were suggesting (Finnegan, 1998). The prosecution's mental health experts found that Kaczynski was methodical and vicious in his attacks and that he had what appeared to him to be a rational agenda, which he followed throughout his long bombing career. Even in his journals, Kaczynski expressed concern that once he was captured or killed the media or the court would label him as a ''sickie'' and therefore take away from his political agenda and belief structure (Mello, 2000).

According to one observer, Kaczynski's lawyers never questioned his competency to stand trial or to take an active part in his defense until he began to reject their mental defect defense. Adding to Kaczynski's belief that he had been betrayed by his family, David Kaczynski and his mother, Wanda, began an intensive media campaign attesting to Ted's mental illness from a very early age, a move they believed might save his life (Chase, 2003).

By December 1997, Kaczynski was able to convince his defense team to cease all efforts to prepare an insanity defense.

About the time the jury selection was completed, Kaczynski filed a motion with the court seeking to dismiss his lawyers (given their interest in using the insanity defense) and for permission to represent himself. In response to Kaczynski's request, the court ordered Kaczynski to be evaluated by Dr. Sally Johnson, a court appointed psychiatrist. After five days of study, Dr. Johnson declared that Kaczynski was competent to stand trial. She also gave a provisional diagnosis that Kaczynski might have suffered from a mild form of paranoid schizophrenia. Based on this finding, Judge Burrell denied Kaczynski's request for two reasons. First, the judge ruled that the request had come too late in the game—the trial was just about to begin. Second, the judge felt that to abandon the mental illness defense that Kaczynski's lawyers had advocated would turn the court into ''a suicide forum for a criminal defendant'' (Deutsch, 1998, p. 1). As a last ditch effort to avoid a mental defect defense, Kaczynski attempted suicide the night before his trial was set to begin. The next day he pursued a guilty plea. In a letter to his *pro bono* legal advisor Michael Mello, Kaczynski described the suicide attempt in detail, claiming that his attorneys had told him that if he found a life sentence unbearable that suicide was an option, in order to get him to go along with an antideath penalty plea (Mello, 2000).

Guilty Plea

One of the biggest ironies of the Unabomber case is that, for all the evidence and the arguments back and forth about whether Kaczynski was mentally competent to stand trial, he never did. The evidence against Kaczynski (including, for the most part, his own words) was so strong that if he had gone to trial, it is very likely that he would have been found guilty (Mello, 2000). The day before the trial was to begin, Kaczynski pleaded guilty to all ten counts in this indictment (96-CR-259), and to three additional counts from an indictment filed in 1998 (98-CR-21). The guilty plea covered charges related to the two people who were killed in the California attacks and two people who were injured by the bombings. He also admitted to mailing an additional 11 bombs that caused 21 injuries—crimes with which he had not been formally charged. The agreement resolved all federal charges against Kaczynski, which precluded federal officials in New Jersey from pursuing their case against him (but not, however, any state charges that might later be filed). In exchange for pleading guilty, Kaczynski was able to avoid receiving the death penalty.

The government agreed to the plea because it was unconditional and final, eliminating Kaczynski's right to appeal (Higgins, 1998). Accepting the guilty plea was also expedient, given their fear of the trial turning into a media circus. Kaczynski later claimed that the only reason he pleaded guilty was to stop his lawyers from arguing he was a paranoid schizophrenic, as the court appointed psychiatrists had diagnosed (Dubner, 1999).

On May 4, 1998, Ted Kaczynski was sentenced to life imprisonment on five counts, 30 years of imprisonment on one count, and 20 years of imprisonment on four other counts, all to run concurrently. He was also sentenced to life imprisonment on three counts to run consecutively to one another and the prior sentences. Effectively, his sentence was for a total of four consecutive life terms. The court waived a fine, but ordered Kaczynski to pay $15 million in restitution. There was no possibility of parole. The following day, Kaczynski was transferred to the federal supermaximum prison in Florence, CO.



Figure 3.2 Convicted Unabomber Ted Kaczynski, seen in this courtroom sketch, reads a prepared statement before being sentenced to four consecutive life sentences, 1998. © AP Photo/Vicki Behringer.

The prison also has housed other infamous inmates such as Terry Nichols and Timothy McVeigh (Oklahoma City bombing), Ramzi Yousef (1993 World Trade Center bombing), Richard Reid (Shoe Bomber), Eric Rudolph (Olympic Park bomber), and Zacarias Moussaoui (9/11 conspiracist).

In some ways, the guilty plea reached in the Unabomber case can be seen as a victory for each party. The prosecution won because the Unabomber would never see the outside of a maximum security prison. The defense team won, because their client escaped the death penalty. The court won, because the finality of the plea agreement precluded any appeals. On the last point, some observers of the case argue that the finality of the agreement was crucial, as some of the courts rulings could have been reversed on appeal. Court observers noted, for example, that the ruling not allowing Kaczynski to dismiss his court-appointed attorneys and represent himself was a potential point of appeal (Witkin and Greenberg, 1998).

Post-Conviction

Even though the court believed that no appeals would be filed, the case was not over yet. With the help of Michael Mello and several of his students working *pro bono,* Kaczynski filed a motion to vacate the guilty plea. Professor Mello had helped prepare the motion as a safety net in case a suitable lawyer could not be found to help Kaczynski in the process. The lawyer whom Professor Mello had contacted backed out and the motion was denied (Mello, 2000). After this setback in District Court, Kaczynski filed to appeal the

FBI PROFILE OF UNABOMBER

A recluse, white man in his late 30's or 40's with at least a high school education. He is familiar with university life, too. He is a neat dresser with a meticulously organized life, probably likes to make lists, and is probably quiet and an ideal neighbor. He has low self-esteem, most likely has had problems dealing with women—because of his physical flaws, either real or perceived. If he does have a relationship, it would be with a younger woman.

He fashion his bombs from makeshift material and scrap, and prides himself on the intricate construction of his bombs. He crafts and polishes parts by hand, even though they can be bought at a hardware store. He normally mails the bombs out of Northern California.

He scratches ''FC'' on most of his bombs.

The suspect seen moving the bomb in the Febuary 20, 1987, Salt Lake City bombing is the one seen in the sketches of the Unabomer. The description given at that time was:

White male, 25–30
5'10–6' tall Weight 165
Reddish-blonde hair, a thin mustache
and a ruddy complexion

He would now be in his 30's–40's, and his physical description could have changed since then. This suspect is who the FBI sketch of the Unabomer that has appeared everywhere.

Also, it may be a group responsible for the bombings, and not just one person.

decision in the 9th Circuit Court of Appeals. On October 22, 1999, the permission to appeal was granted. The 9th Circuit ruled that Kaczynski had the right to appeal on three levels. The first was to determine whether the guilty plea was voluntary. The second was to determine whether he should have been allowed the possibility to represent himself. The third was whether he could deny the mental defect defense his lawyers used (Mello, 2000, p. 73). On September 4, 2001, the 9th Circuit affirmed the conviction.

After his trial and subsequent appeals, Kaczynski became obsessed with what he considered his ''intellectual property''—his books, journals, and other evidence seized from his Montana Cabin and other ''murderabilia'' (CBC News, 2007). The items, which had been assembled by Kaczynski's defense as evidence of his mental instability were ordered seized and auctioned by a federal appeals court in San Francisco to help pay off $15 million in restitution to four of the Unabomber's victims. Kaczynski has challenged the order under First Amendment grounds, saying that the confiscation and alteration of his work by the government violates his rights. Instead, Kaczynski wanted to see his materials preserved as they were written and donated to the University of Michigan Labadie Collection of anarchism and other radical movements (Kovaleski, 2007, p. 1). In 1999, the Collection began warehousing letters that had been mailed to Kaczynski. At the time of this writing, Kaczynski is still asking that the material that was seized be returned, while the

government has been authorized by the courts to sell the material to provide restitution to the Unabomber victims.

MEDIA COVERAGE

Atypical of most trials, the media proved to be a major player in this case. After Kaczynski's indictment and arrest, a media frenzy ensued. The media made its presence known in the courtroom in other ways. A coalition of media organizations filed numerous motions and briefs to gain access to court documents, and the media filed objections each time the court sealed a document or when Judge Burrell agreed to view evidence in his chambers and off the record. The media's presence was so profound that Judge Burrell began notifying the media coalition representatives along with the prosecutors and defense lawyers when he would make a ruling on how the trial would proceed. Court records indicate that Judge Burrell occasionally set specific deadlines for the media to file motions and responses, just as he did for prosecutors and defense counsel. Judge Burrell took protective steps to ensure that the names and identities of people in the jury pool were protected from the media.

The New York Times first published an article about a serial bomber who had been terrorizing campuses for 15 years in October 1993. The organization would go on to publish over 441 articles on the ''Unabomber.'' The media are what made the Unabomber a terrorist. Kaczynski's relationship with the media is mutually beneficial. While the media obsessed over the latest attacks, Kaczynski enjoyed the anonymous exposure and fame that his actions brought him. The two fed off of each other (Borowitz, 2005, p. 156). The upside of this relationship is that it is possibly the reason that Kaczynski was eventually apprehended. After a six year hiatus two bombs were mailed from Sacramento, coincidentally during the same time period as the 1993 World Trade Center attack and the standoff at the Branch Davidian compound in Waco, TX; after these events a letter to the New York Times arrived, with a group simply known as ''FC'' taking credit for the bombings. After the Oklahoma City bombings in 1995, the Unabomber felt that he



Figure 3.3 Shown are some of the victims of the Unabomber attacks. From left, Hugh Scrutton, David Gelernter, Thomas Mosser, and Gilbert P. Murray. © AP Photo/files.

was not receiving the media attention that he deserved. It was this publication of his ''manifesto'' that led to Kaczynski's eventual arrest (Borowitz, 2005, p. 104).

The media has also come under heavy criticism for their handling of the Unabomber case, turning what should be legitimate in-depth reporting into sensationalism. One example of this is the *Time*'s exposé on the Unabomber, which failed to connect him with the liberal radicalism movement, to which his writings make a direct connection (Kramer, 1996, p. 12). Another aspect of the damage that the media did to the case was their immediate advocacy of Kaczynski's questionable mental health. Since the publication of the first photographs taken at his capture, the media was far too quick to dub the Unabomber a madman (Mello, 2000, p. 22). Some legal observers of this case have commented that it is fortunate that this case never went through the process of a jury trial, because by the time that opening statements were set to be made, the trial had already degenerated into the worst kind of farce of the judicial system (Mello, 2000, p. 54). During the ''nontrial'' as it has been dubbed, the media circus surrounding the courthouse was huge. Seventy-five news organizations covered the pretrial proceedings, and media tickets allowing entrance in the courtroom sold out for $5,000 apiece (Mello, 2000, p. 7). The presence of the media was so thick, that because of the protests and objections raised by some of the court's decisions, the media was included along with the prosecution and defense when discussing how the trial should proceed (Chase, 2003, p. 131).

CONCLUSION AND SIGNIFICANCE OF CASE

What made the Unabomber trial so interesting to the media and to the rest of the country? There are several reasons. The timing of his arrest in the wake of the Oklahoma City bombing, for example, connected the two defendants in the public's mind (even if incorrectly). The ''brother vs. brother'' part of the story brought to mind biblical metaphors such as ''Cain and Abel'' and intrigued watchers and readers. The public's interest in serial murder is well documented, so this case provided welcome fodder. Finally, the question about the defendant's mental health—including the dissonance between his PhD and his haggard appearance upon arrest and the rustic condition of his home—and the impending death penalty (along with the near certainty of conviction) provided an opportunity for the media to expand the ongoing discussion about the death penalty in America. This story line was strengthened by Kaczynski's resolve to face the death penalty rather than to have his protests be swept aside as the ramblings of a lunatic.

It is also useful to place the events of the trial in context of the times. Not only were the raw events of the Oklahoma City bombing still fresh in the minds of the public, but both the public and the media had just finished being treated to two murder trials whose spectacle created a great deal of public interest. The trial of Colin Ferguson involved a man who had killed six people and injured 19 others at the Merillon Avenue Station on the Long Island Rail Road. Like Kaczynski's defense team, Ferguson's lawyers planned an insanity defense before being fired by Ferguson who decided to serve as his own defense counsel. The nightly news was filled with videos of an apparently insane Ferguson questioning witnesses (including himself) on the stand. Ferguson was convicted in February 1995.

As bizarre as Ferguson's trial was, nothing matched the interest created by the O.J. Simpson trial. The so-called ''Trial of the Century'' involved a famous athlete who had been charged with the murder of his ex-wife and her friend. Simpson had been

arrested following an infamous low speed chase in June 1994. The Simpson trial began on January 24, 1995, and ended with a ''not guilty'' verdict on October 3, 1995. Both the preliminary hearing and the trial itself were covered live by Court TV. The void left by the end of the O.J. Simpson trial (probably the most watched criminal trial in television history) created an appetite for courtroom coverage that the Unabomber trial was sure to fill.

Consequently, the pretrial events that led up to the eventual guilty plea became a major media event that dragged on for months. In an interesting turn of events, however, coverage of the Unabomber case eroded almost as soon as the trial ended because of an even bigger breaking story. In the same week that Kaczynski entered his guilty plea, the media was quickly becoming consumed with a story about a White House intern (Monica Lewinsky) who claimed to have had an affair with President Bill Clinton. While it is doubtful that the media coverage would have continued at its previous rate given the end of the trial, this new presidential scandal left little room for additional discussion about the Unabomber.

The Unabomber case itself is fascinating on many levels of modern terrorism study. Ideologically, Kaczynski began his serial bombing campaign as ''revenge'' on the ''whole scientific and bureaucratic establishment,'' further adding that ''if my crime (and my reasons for committing it) gets any public attention, it may help to stimulate public interest in the technology question'' (Borowitz, 2005, p. 103). As his victim list grew longer, his need to bring these issues forward became more and more important and his vendettas against science, technology, and psychology (especially behavior modification) grew stronger. As his campaign continued, he added environmental issues to his belief structure. Although environmentalists were quick to disassociate their movement with the Unabomber tactics, one might see his work as some of the earliest examples of environmental extremism.

On another level, Kaczynski's actions and relationship with the media also set him apart from other terrorists, beginning with the coerced publication of his manifesto in *The New York Post* and the *Washington Post,* and continuing through the media circus that enveloped his trial. It is not unusual for terrorists to use the media. Indeed, there is a large literature on this relationship, some of it critical of the role played by the media. Terrorists perform their acts in order to draw attention to the issue that they are protesting against. When the media describe their campaigns (through the coverage of terrorist attacks), terrorists are able to exploit a valuable tool. Kaczynski's tactic was slightly different. Instead of issuing statements in the wake of an attack that claimed credit for the event and called for an end to those things that he despised, he simply said, ''if you print my message, I will stop the bombings.''

Kaczynski is perhaps one of the most famous ''lone-wolf'' terrorists in the history of domestic terrorism in the United States. Over the course of 17 years, Kaczynski escaped detection and was responsible for at least 16 bombings resulting in 23 injuries and three deaths stretching across the United States. From the words of his manifesto, Kaczynski advocated a ''revolution against the industrial system'' and spoke of the possibility of using violence. This revolution was not, however, a ''political revolution'' to overthrow the government; its goal was instead to overthrow the ''economic and technological basis of present society'' (Kaczynski, 1995). As we examine the long list of victims and targets of Kaczynski, his manifesto helps us obtain a better understanding of his terroristic intentions.

In the end, we are left with several interesting questions, the most important, perhaps, being ''What prompted Kaczynski to take the extreme steps that he chose?'' Efforts to explain his actions point to the ''liberalism'' that ruled elite college campuses during the 1960s (Sowell, 1996). As one of the scientists who were called in to help with the investigation concluded, Kaczynski ''drew on radical activist models available in the late 1960s, concluding (erroneously) that resistance demanded violence'' (Restivo et al., 2001, p. 100). Others point to the evidence that suggests that Kaczynski took part in some of the psychological studies that took place at Harvard during the 1960s. These interrogation-style studies, which focused on the impact of high stress interrogation on brilliant young men, may have left a lasting impression on the young and easily impressionable student (Chase, 2003). The truth may never be known. What is known is that something drove Theodore John Kaczynski into that secluded cabin in the Montana wilderness and allowed him to select and attack targets across the United States for 17 years. His strategy was so successful that, without the publication of the ''Unabomber Manifesto,'' it is likely that he would never have been caught. The actions of his brother, who has since become a well-known speaker against the death penalty, helped to end the Unabomber's reign of terror, saving many lives in the process.

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4

The Central Park Jogger: The Impact of Race on Rape Coverage

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Shortly after 9 p.m. on April 19, 1989, a young woman on her nightly run through New York's Central Park was bludgeoned, raped, sodomized, and left for dead. She was 28-year-old investment banker Trisha Meili, but she came to be known as the Central Park Jogger. At the time, several teenage boys were arrested for various crimes related to the attack on Meili and other incidents on the same night. Approximately 30 boys were said to be involved in some way in these incidents, but the seven main suspects and the focus in this chapter are as follows: Antron McCray, Raymond Santana, Kevin Richardson, Kharey Wise, Steve Lopez, Yusef Salaam, and Clarence Thomas. All were black or Hispanic, ranging in age from 14 to 16; five were convicted in two separate trials (Sullivan, 1992). More recently, however, their convictions were vacated because another man, Matias Reyes, confessed to the assault and rape of Trisha Meili.

The case of the Central Park Jogger received amazing amounts of press coverage in 1989. According to Hap Hairston, then city editor of *New York Newsday* and later city editor of the *Daily News,*

> The story was New York. It was upwardly mobile New York attacked by the not so upwardly mobile; the working class attacks the upper class. It was every wealthy Manhattanite's nightmare to be attacked by a group of black kids. (Benedict, 1992, p. 189)

Interest in the case was recently reignited due to Reyes's confession and the publication of Meili's autobiography, *I Am the Central Park Jogger,* in 2003.

The Incident

Friends had been warning Meili not to run alone at night in Central Park for some time, but that only seemed to have made her more determined to do it. On the night of



Figure 4.1 **Trisha Meili, author of *I Am The Central Park Jogger,* acknowledges the applause of people gathered in the Capitol Rotunda in Frankfort, Kentucky, after delivering a speech at the Crime Victims' Rights Day ceremony, 2005. © AP Photo/Ed Reinke.**

the incident, a friend from work, Pat Garrett, was supposed to have come over to look at Meili's new stereo system at 10 p.m. after her run. When Garrett arrived, Meili was nowhere to be found. Although he thought it curious that she had stood him up, he was generally unconcerned. The next morning, however, when Meili failed to appear for work at Salomon Brothers, Garrett as well as many others became concerned. Garrett eventually called the police, and the police decided that the "Jane Doe" in the hospital was likely to be Meili. Garrett identified her from a distinctive bow-shaped ring she frequently wore (Meili, 2003a).

Meili was discovered at 1 a.m. on Thursday, April 20, in a muddy ravine. Linda Fairstein, chief of the sex crimes division of the prosecutor's office, assigned Elizabeth Lederer as prosecuting attorney to the case. Homicide detectives investigated the case, as it was not clear Meili would survive the attack (Couric, 2003). Meili's eye socket was fractured in 21 places, and she had lost nearly three-quarters of her blood. The soles of her feet appeared to be the only part of her body unbruised ("There's a recipe," 2005). The initial picture of the crime provided to Lederer by the investigators was that 15 boys met in front of Schomburg Plaza, a housing complex near the northeast corner of Central Park. They were joined between 8:30 p.m. and 9 p.m. by another group of approximately 15 boys from the Taft House complex. The group went to the park to steal, beat people up, and create havoc. During the night of April 19, they allegedly committed several misdemeanors and felonies that involved at least 12 people (Couric, 2003). For example, they surrounded a Latino man in the park, but they decided to let him go because someone in

the group knew him. They beat and left unconscious a drunken Latino man, Antonio Diaz, whom they referred to as ''the bum.'' The group tried to dismount several cyclists, including one couple on a tandem bicycle. The group of 30 split up after the police arrived to investigate these incidents.

Although this string of incidents was significant, what made these boys notorious was the accusation that they raped and sodomized Meili. The attack on Meili occurred in the midst of several inflammatory racial incidents in New York. In 1986 and 1987, the focus was on Howard Beach in Queens, where a gang of whites beat three black men, then chased a black man, Michael Griffith, into the street where he was struck by a car and died. Tawana Brawley, a black teen from upstate New York, falsely accused six white police officers of raping her, writing racist insults on her body, smearing her with dog excrement, and leaving her in a plastic trash bag in 1987. Trials were ongoing for the murder of a black teenager, Yusuf Hawkins, 14 years old, by whites in Bensonhurst, Queens. Blacks were organizing a boycott of two Korean grocery stores. Spike Lee's racially inflammatory *Do the Right Thing* was released, and the city replaced their white mayor, Ed Koch, with a black mayor, David Dinkins (Benedict, 1992). Additionally, the city's urban areas were being ravaged by crack, violent crime rates had increased for three straight years, and homicides hit a record high (Smith, C., 2002).

The Central Park Jogger case became an instant national news story. New York City Mayor Ed Koch and New York State Governor Mario Cuomo both spoke frequently about the case. Donald Trump purchased $85,000 worth of news advertisements that called for New York to reinstate the death penalty (Sullivan, 1992). All three of the major women's magazines, *Ladies' Home Journal, Good Housekeeping,* and *McCall's,* featured articles about the assault. In December 1989, the Central Park Jogger was chosen as one of *Glamour* magazine's Women of the Year, and *People* magazine selected her as one of the year's most interesting people. It also made international news, appearing in papers in London and Lebanon (Meili, 2003b).

RAPE AND THE MEDIA

Rape is a hard crime to understand, to prosecute, and to discuss. Despite numerous theories, there is still no clear understanding of why someone commits rape. Prosecuting rape offenders is difficult because, in many cases, the only witnesses are the victim and the alleged offender. Exacerbating the difficulties is the way that society has been socialized to discuss and, consequently, think about rape. The Central Park Jogger case was particularly difficult because of the racial environment surrounding the incident. Race intersected all aspects of the case, including the media coverage, the police tactics used, and ultimately the verdicts.

According to Benedict (1992), there are ten myths about rape that are presented in the media and used in the courtroom. The myths shape public understanding of the crime. The result of these myths is that portrayals of rape victims often become dichotomized —victims are either ''virgins or vamps.'' The description of the Central Park Jogger, as described by most people and in the mainstream press, was consistent with the virgin paradigm. Most of the early stories focused on the seriousness of the attack and the symbolic value of Central Park for New Yorkers. Some coverage brought up the social class and physical appearance of Meili in a flattering rather than stigmatizing way. For instance, the tabloids began early on to use a ''beauty and the beast'' theme. As Miller, Like, and Levin assert, ''the image of the young, attractive, middle-class, white (often blonde) female

rape victim is the epitome of our society's construction of the innocent victim of street crime'' (2002, p. 101). The Central Park Jogger exemplified this ''ideal'' victim.

Of Benedict's ten rape myths, several were employed in some way during the Central Park Jogger case. Some black newspapers, as well as a few people who zealously defended the innocence of the accused, described Meili in terms more consistent with the vamp ideology. Many blacks were disturbed by the largely positive coverage of Meili, as they asserted that black victims do not receive such flattering coverage. Many blacks thought the myth that assailants are usually black and/or lower class and their victims are generally white and middle or upper class was clearly emphasized in the Central Park Jogger case. In reality, most rapes occur within the same race or same class. The rapes that vary from the majority such as black/poor on white/wealthy description are given much more press coverage. The coverage of the Central Park Jogger case is especially problematic when compared with coverage of cases involving white offenders. For instance, there were 28 other first-degree rapes or attempted rapes in the same week as the assault and rape of Meili, yet these received little, if any, coverage. The gang rape of a 26-year-old prostitute who was also stabbed 138 times by eight youths received scant attention, arguably because both the victim and offenders were black (Benedict, 1992).

Another myth of Benedict's used in the Central Park Jogger case was that the victim provoked the rape through her sexuality or that she deserved to be raped based on her careless behavior. These are part of a larger myth, referred to as the ''Just World'' ideology, which instructs people that bad things do not happen to good people. By default, if a bad thing, like rape, happens to a woman, she must have done something to warrant it. In this case, Meili's decision to run alone in the park provided some reporters with an opportunity to apply those myths related to the victim's behavior. Many of the articles had a punitive tone, and several seemed to imply that Meili's privileged background should have ensured that she knew better (Benedict, 1992). It was as if the press struggled with how much to use the traditional blame-the-victim tactics versus how much sympathy to show for such a heinous assault. Of all the newspapers, the *New York Times* ran the least amount of victim-blaming coverage; they even included a piece with advice from runners about safety in the park (Benedict, 1992).

Coverage of the case intensified with the defendants' first trial. Most of the later coverage continued using the virgin ideology, describing Meili as a heroine and emphasizing her amazing recovery. New York tabloids focused on Meili's recovery. By the end of the first trial, there were clearly two camps. The black press stressed that no one involved in the case could be trusted, alleged that the police had coerced the boys' confessions and lied on the witness stand, claimed that Meili lied about her boyfriend, and contended that the white press covered up facts and slandered the suspects. In sum, the black press portrayed the accused as innocent martyrs. The white press, however, presented the accused as guilty thugs, depicted the demonstrators at the trial as crazed by racial resentment, and stressed that Meili was a noble victim (Benedict, 1992).

Race and the Media

There were three main race-related concerns with media coverage of the Central Park Jogger case: negative depictions of the black defendants, overemphasis on the white victim, and differential coverage by white versus black presses. Most of the quotes from authorities, as well as editorials, claimed the case was *not* about race. Such coverage, by

the sheer amount and lack of perspective offered by the largely white authors, merely served to inflame race-related issues (Benedict, 1992).

Early media coverage coined the term ''wilding'' to describe the incident. Some claim ''wilding'' was a ''ghetto term,'' although many blacks say there is no such term used in the ghetto and that authorities made it up, mishearing the boys singing ''Wild Thing.'' Welch, Price, and Yankey (2002) maintained that use of the term ''wilding'' was about news sensationalism and helped to create a moral panic about youth violence, particularly violence committed by young men of color. Virtually all the coverage emphasized the boys' lack of remorse. The press continually used animalistic descriptions of the accused, something not done when defendants are white. A study of the first two weeks of newspaper coverage, for instance, found that there were 390 instances of ''emotional negative language,'' with 185 references to animals (Benedict, 1992). ''Wolf pack's prey'' was one of the headlines in the *New York Daily News* (Hancock, 2003). A *San Jose Mercury News* columnist captured the theme of animalistic savage versus innocent victim when he wrote, ''They were predators. She was Bambi'' (Miller et al., 2002, p. 101). Blacks were especially upset by some of the news coverage that they thought presented the behavior of the accused as generalized to all of Harlem. It was racist to ignore the sympathy for Meili expressed by many Harlem residents. Some even held a vigil at the hospital for her (Sullivan, 1992). Several editors said they received more angry phone calls about the coverage of this case than for any other (Benedict, 1992). Further, the press was deemed racist because they treated the suspects as guilty from the start and profiled the accused by providing their names, schools, and addresses. This type of coverage did not occur in the Howard Beach or Bensonhurst cases where the accused were white (Benedict, 1992). According to Welch, Price, and Yankey (2002), the media hostility and reliance on racial criminal stereotypes adversely affected the way the suspects were initially processed by police. After Reyes's confession, a group of journalists and city officials began meeting to discuss their coverage of the case. Many expressed remorse that they had succumbed to the pressure from editors to follow the ''party line'' about the case (Hancock, 2003).

Use of the black rapist myth has occurred throughout history. The fear originates in stereotypes of black criminality, as well as in concerns about race mixing or miscegenation. Ironically, miscegenation was common but had largely been between white masters and black slaves. Of the 455 men who were executed for rape (before the use of the death penalty for the rape of an adult woman was declared unconstitutional), 405 of them were black (Mann and Zatz, 2002). The myth appears in contemporary media coverage as well. The Central Park Jogger case provides an example, especially when juxtaposed with coverage of sexual assaults committed by whites. On the same day that Meili's assault and rape made the front page of most daily newspapers, at least ten other rapes occurred in New York City, with two ending in fatalities. The difference was less about the brutality of the attacks—one of the women was pushed from a ten-story building—than it was about race. In these cases, both the victims and offenders were black or Hispanic (Mann and Zatz, 2002). One example is the difference between coverage of the Central Park Jogger case, and the rape and sodomy committed by a group of suburban white teens of a mildly retarded girl in Glen Ridge, New Jersey, just six weeks later. Both cases were brutal; in Glen Ridge, eight teens watched as the young woman was forced to perform sex acts and was raped with several objects, including a broomstick and a miniature baseball bat. The first difference is that the Glen Ridge case received much less coverage. Second, the Central Park Jogger defendants were described as ''vicious, sadistic terrorists,'' and the boys

involved in the Glen Ridge assault were referred to as ''collegiate,'' ''former captain of the football team,'' and ''honor student'' (Mann and Zatz, 2002, p. 75). The boys from New York were described as a gang; the descriptions of the boys from New Jersey emphasized their grade point averages, sports achievements, and post–high school plans, sometimes not even mentioning the assault. The tone of the coverage implied that such vicious behavior was normal for the black and Hispanic suspects, but the behavior of the white assailants was surprising and unusual. A reader who repeatedly encounters these images can easily internalize the notion that these images are true and representative of minorities (Mann and Zatz, 2002). In particular, these images may garner support for harsh punishments and punitive policy measures. For instance, throughout the press coverage of the case, real-estate magnate Donald Trump spent $85,000 on full page advertisements calling for the perpetrators to be executed (Hancock, 2003).

The media proposed a variety of reasons why the New York boys might have committed such brutal offenses: race, drugs, class, the ''culture of violence,'' music, lack of father figures, a soft-on-crime justice system, poor schools, popular culture, and boredom. No one in the media, however, emphasized that the attack on Meili was a sex crime and could and should be explained by societal sexist attitudes toward women. None of the journalists wrote about this as a gang rape, nor did they seem at all familiar with research literature on this topic. Yet, the callous views toward women that were elicited through interrogations and testimony are common in cases of gang rape (Benedict, 1992).

The two main black newspapers to cover the case, the *City Sun* and the *Amsterdam News,* were both weeklies. Both papers compared the coverage of this case with the coverage of the Tawana Brawley case, claiming that Brawley, as do other minority victims, received much less favorable coverage. Although this is generally true, as Benedict (1992) asserted, these two cases are not really analogous. There was generally no doubt that Meili was raped; however, there was doubt that Brawley had been, and, in fact, a grand jury had dismissed her case. The mainstream media was criticized for identifying Brawley as the victim and for generally not identifying Meili, but Brawley's name was given with the permission of her family. Furthermore, the *Amsterdam News* did publish Meili's name; the editor claimed he was addressing the racism of naming the black accused but not the white victim (Benedict, 1992).

PREPARING FOR TRIAL

Most of the boys gave written and videotaped statements, some doing so several times. The conflicting statements made during the interrogations of the boys, both between and within statements, made preparing the case somewhat difficult for the prosecution. Most of the defendants claimed during the trial that the videotaped and written statements they made had been coerced, adding another element for the prosecution to address in their case. Anticipating the issue, the tapes had been used both to gather information and to preclude certain defenses. Further, because it had already been determined that the prosecution would seek convictions based on the acting-in-concert rule, the videotapes were used to get information about other defendants (Sullivan, 1992).

The attitude of the boys during their interrogations, as well as the degree of involvement each admitted, varied tremendously. Each was relatively quick to implicate others, however. Various individuals questioned if the police had coerced the boys into saying things they did not want to, both about themselves as well as others. The concern that

the police coerced the boys seems to have even more merit in light of the recent developments with the case.

Antron McCray acted meek and embarrassed throughout his videotaped session, while Raymond Santana maintained a defiant attitude. Kevin Richardson was devoid of emotion. Steve Lopez, who was identified as the leader in the attacks by many of the boys, appeared smarter and more mature than the others, according to Lederer. Kharey Wise was the least coherent, providing conflicting statements that made little sense. No tape was made of the interviews with Jermain Robinson, who was 15 years old, because his father refused permission (Sullivan, 1992).

McCray was the only one to confess to actual penetration. He had done so in a written statement before his videotaped session. In the videotaped session, however, he denied that his penis was ever in Meili, claiming that he was acting like he penetrated her to impress the others. He implicated Lopez, Santana, and Richardson in the assault and Richardson and Salaam in the rape. Although there was no videotape of Robinson, he told one of the detectives who drove him to the booking that his intent that night was to ''get some whites.'' He was the only defendant identified by a witness or victim (Sullivan, 1992).

Santana confessed to sexual abuse by admitting that he ''grabbed her tits'' while Robinson and Richardson allegedly penetrated Meili. Santana also implicated McCray in the rape. Santana described Lopez as the primary assailant, claiming in his video that Lopez was kneeling on her arms, covering her mouth, smacking her, and hit her twice with a brick.

After initially denying ever seeing the Jogger, Lopez eventually admitted being present, but he never admitted any involvement in the attacks. Richardson also claimed to be merely a tagalong. Richardson primarily implicated McCray and Santana. Wise admitted assaulting ''the bum'' and kicking another jogger, as well as playing with Meili's legs while Lopez, Santana, and Richardson ''started a little rape.''

After all of the interrogations, Lederer, who was assisted by Arthur ''Tim'' Clements, decided on the formal charges. Wise, Richardson, Lopez, Salaam, McCray, Santana, and Thomas were all charged with several counts of assault, riot, rape, sodomy, sexual abuse, robbery, attempted murder, and assault with intent to do serious damage. As juveniles, all but Wise faced a maximum sentence of three and one-third to ten years unless they were convicted of murder, arson, or kidnapping. The prosecutors were disappointed with this, but they knew that they could at least up the minimum years with multiple convictions, so they decided to indict the boys on as many felonies as possible. Jail staff were appalled to find that, while in the holding cells, the boys were joking, comparing stories, singing ''Wild Thing,'' and making cat calls at a female detective. The grand jury heard evidence about attempted murder, assault with intent to cause serious injury, rape, sodomy, riot, and two counts of robbery (related to John Loughlin's headset). Despite having a hard time finding victims or witnesses who could identify the boys, the prosecutors got 13 grand jury indictments on Lopez, Wise, Richardson, McCray, Salaam, and Santana. Robinson was indicted for the assaults, robbery, and riot. The grand jury did not return any indictments for Clarence Thomas (Sullivan, 1992).

The case was assigned to Judge Thomas Galligan, rather than a judge being selected at random, as was normal practice. Both the defense attorneys and the prosecution objected, but Galligan remained on the case. Galligan had a reputation as being fair, although he was referred to as ''Father Time'' due to his heavy sentencing (Sullivan, 1992).

The prosecution was able to reach a plea bargain with Robinson. He first had to provide them with a blood sample to ensure that he was not involved in the rape; the deal was off if his DNA showed up on the victim. He was then interviewed a total of five times, where he primarily implicated Lopez (Sullivan, 1992).

Other Pretrial Issues

The primary pretrial issue revolved around the admissibility of the videotape statements for each defendant. Galligan also considered motions for separate trials. These pretrial issues were much less significant for the prosecution, however, than the scientific evidence.

Santana was represented by Peter Rivera, McCray by Mickey Joseph, and Richardson by Howard Diller. Lopez's attorney was Jesse Berman, Bobby Burns represented Yusef Salaam, and Colin Moore represented Wise. The defense attorneys were all very concerned about the tapes, especially after *Newsday* received copies and printed much of the information, although Richardson's had actually been released by Diller to allegedly debunk the myth that all the defendants had confessed on tape. In the days following, virtually every station aired pieces of the tapes.

The motions for separate trials were based on the Sixth Amendment right to cross-examine witnesses; such a right is impossible if the witness is a codefendant because of self-incrimination issues. Also at issue was whether the videotapes would self-incriminate or would unfairly prejudice the case against codefendants. Galligan allowed the prosecution three weeks to edit the tapes in such a way so as not to prejudice the jury, as well as to propose which defendants would be tried together (Sullivan, 1992).

DNA results indicated that the semen on the Jogger's tights matched her boyfriend, but the two other samples were not matched. This was a significant blow to the prosecution's case, as they had no conclusive physical evidence linking the boys to the victim. The lack of DNA prompted some to suggest that the Jogger never was raped and had engaged in rough sex with her own boyfriend, a position largely held by a group known as the "supporters." This group included such well-known figures as Alton Maddox, Vernon Mason, and Al Sharpton (Sullivan, 1992).

Galligan finally made his ruling on the admissibility of the tapes, much to the chagrin of the defense attorneys. He determined that all written and videotaped statements were admissible. Galligan also denied the motions for separate trials. The prosecution came up with the trial combinations of Santana, Salaam, and McCray for the first trial and Lopez, Wise, and Richardson for the second. Galligan determined that the editing they did of the videotaped statements would not be prejudicial to the codefendants in these combinations. Some people, especially members of the black community, thought that the pretrial issues would have been handled differently if the defendants had been white and that the case was pushed forward absent physical evidence because of the boys' race (Sullivan, 1992).

TRIAL ONE: MCCRAY, SANTANA, AND SALAAM

Judge Galligan granted a seven-week delay before the trial began so the prosecution could get the DNA results on semen found on the Jogger's sock. This time the sample was clearly strong enough to obtain a result, but it still did not match any of the defen-

dants. Not only did this further weaken the prosecution's case, but it likely meant that at least one guilty party was going free. Lederer maintained that it was possible one of the defendants masturbated on the sock, but many did not believe that explanation. To some, the lack of a DNA match reinforced the defense and "supporters" contentions that the boys were innocent scapegoats. The city of Harlem was split by the case; much of Schomburg Plaza was appalled by the violence and had even held a vigil for the Jogger, but others resented the media's trashing of the neighborhood and their tendency to blame blacks (Sullivan, 1992).

Three hundred potential jurors had to be called, due to the publicity about the case, to select a jury. Jury selection proceeded smoothly at first, until a supporter, Paul Antonio Williams, was caught passing out fliers to potential jurors claiming Judge Galligan was biased. He later pled guilty to disorderly conduct. After eight days of voir dire a jury was seated; the jury included ten men, two women, four whites, four blacks, three Latinos, and one Asian.

Lederer's opening statement emphasized that the defendants were guilty, and the jury would be able to hear their confessions to the crime. She also stressed that their individual actions were less important than their collective actions. This was critical in presenting the notion of acting in concert, which requires that defendants share in the intent to commit the act and aid in some way, even if they do not commit the crime, per se. Rather than the victim identifying the accused, in this case, the accused would be identifying their victims. Lederer also provided a chronology of the case where the rape occurred before some of the attacks (Sullivan, 1992).

Joseph and Burns requested permission to call experts to testify that their clients were susceptible to psychological coercion. McCray allegedly had an IQ of 87. Although Salaam's IQ was above average, he supposedly suffered from low self-esteem. Galligan denied both requests. Joseph was the better attorney of the three and ended up leading the other two attorneys. Burns's opening statement was disjointed and largely ineffective. Rivera stressed that overzealous police violated his client's Miranda rights. He also suggested that his client was arrested only because he was Latino and brought up whether his client's father and grandmother understood English well enough to consent to the interrogation (Sullivan, 1992).

The prosecution began their case by calling seven joggers and cyclists who were in Central Park that night. Each personified the significance of the case—all were middle class New Yorkers who had survived the nightmarish urban onslaught. Probably the most important testimony came from John Loughlin, a physical education teacher. The boys had thought Loughlin was a cop at first because of the fatigue jacket and camouflage pants he wore. He initially stopped when he saw the group beating Robert Garner. Loughlin recalled someone calling him a vigilante and then being facedown on the pavement and hit twice in the head. He was unconscious for a while. He suffered damage to his head, shins, right arm, ankle, right knee, back, and rib cage. His eyes were so injured they looked like they had been "outlined in charcoal" (Sullivan, 1992, p. 122). He testified that he had lasting pain in his right knee and the left side of the back of his head. Loughlin identified Robinson as one of his assailants during the lineup.

Witnesses who found Meili were next to testify. The first was Patrolman Joseph Walsh. He was with his partner when two men approached them and said they had found a man beaten and tied up in the woods. When they arrived at the scene, Walsh and his partner discovered a woman, otherwise naked, with a dirty bra pushed up around her breasts.

Walsh testified that her head was beaten, her eyes were swollen shut, and there was a significant amount of blood. A cloth was tied around her wrists and neck and stuffed in her mouth. The two men who found her, Charles Colon and Benicio Moore, also testified (Sullivan, 1992).

Several of the doctors who treated Meili testified. Robert Kurtz was the surgeon who supervised Meili for the seven weeks she was at Metropolitan Hospital. He stated that she was barely alive when she was brought in; they could not get a blood pressure reading, she had lost almost 80 percent of her blood, and her body temperature was 85 degrees. Meili could not breathe on her own, so a technician had to pump oxygen into her body through a throat tube. Brain damage made her thrash around in her bed. She was bleeding from five major head cuts and had several skull fractures. The jury was also shown pictures of Meili's injuries (Sullivan, 1992).

The jury next heard from the officers who collected evidence or found the suspects. A major issue was whether McCray's statements to police could be used or whether a Miranda violation had occurred. Joseph managed to cast some doubt on the credibility of Officer Rosario. Lederer also called a DNA expert with the intent to make the DNA results look inconclusive; however, Joseph got the expert to admit on cross-examination that the results were conclusive and definitely did not match McCray. Throughout most of the witnesses' testimony, the defendants appeared bored (Sullivan, 1992).

Meili herself testified to refute the claim that the semen was from a voluntary partner. Lederer also wanted to put a face on the crime for the jury. She testified that she did not remember the incident. She last had sex with her boyfriend three days before the incident. Press coverage praised her for her courage; the *New York Times* placed the story on the front page (Sullivan, 1992).

Detective Greg Hildebrandt was called to describe the interrogation of McCray. He described McCray's family as cooperative. He said that McCray acted nervous, so he eventually asked his mother to leave the room. Then, McCray told of the attack on Antonio Diaz and how he kicked Meili and jumped on her. The jury saw McCray's videotape, where he said he rubbed his penis on the Jogger. On cross-examination, Joseph tried to persuade the jury that McCray's statements were not made voluntarily but were induced by promises and threats made by cops. Several of the jurors said they had doubts about Hildebrandt's testimony (Sullivan, 1992).

Detective Thomas McKenna was the primary witness against Salaam, and he mainly focused on the interrogation. McKenna was allowed to testify even though his testimony was hearsay because of Salaam's admission of guilt. McKenna described how he tried to trick Salaam into confessing by telling him they had his fingerprints. He said Salaam admitted to being there but said he did not rape her. Salaam also said that Richardson hit the Jogger with a pipe and raped her, as did Wise and two others. According to McKenna, Salaam said, "it was something to do. It was fun." Burns, who was already in trouble for making disparaging comments when McKenna was testifying, tried to depict Salaam as an innocent kid who had been coerced, but he also tried to argue that his client made no incriminating statements. The jury had to believe that McKenna and the others tried to trap him and failed, so they fabricated his statement, a fairly unlikely combination (Sullivan, 1992).

Detective John Hartigan testified about his interrogation of Santana. He said that Santana admitted to participating in the rape and also implicated McCray. McCray signed a statement, but his grandmother refused to sign it. Santana drove with officers to where

the pipe was supposed to be and said he had ''touched her tits.'' He came across on the videotape as a smart aleck, trying to portray himself as a leader (Sullivan, 1992).

The Defense Strategy

Joseph tried to explain why McCray would confess to crimes he did not commit, even when his parents were present. His argument was that the McCrays were made promises by the police. McCray's dad testified that he told his son to lie or else he would go to jail.

Burns began his case amidst a spectacle. Reverend Sharpton and Vernon Mason brought Tawana Brawley to court with them. Sharpton, Mason, and Alton Maddox had represented Brawley until a grand jury dismissed her case. Burns presented the same case he had at the preliminary hearing. Several witnesses testified that Salaam was only 15 years old and was thus questioned in violation of the requirement to have a guardian present. Salaam testified that what he told McKenna was secondhand. Lederer tried to expose him as malicious and belligerent. The jury later said he seemed too cool and detached, so they did not find him very believable. Burns was lambasted in the press for allowing Salaam to testify. Rivera also put forward virtually the same case as in the preliminary hearing (Sullivan, 1992).

In his closing statement, Joseph focused on the fact that no one identified McCray and that there was no physical evidence tying him to the crime. He reiterated that McCray's statements were not voluntary but were coerced by the police based on their pressure to solve the case. Burns suggested that Meili might not have been raped and that there was no physical evidence against Salaam. Rivera argued that Santana was framed by the police, pointing out the errors in his client's description of the crime. The prosecution reiterated the evidence of acting in concert and reviewed the sequence of events. Lederer managed to maintain her composure despite the fact that a group of supporters silently marched out of the courtroom during her closing (Sullivan, 1992).

The Jury

After hearing the law on all 13 counts, the jury began deliberations. The deliberation process was made more difficult because most of the jurors had fallen asleep during the trial (Sullivan, 1992). The jurors considered the lower charges first and had little trouble deciding on most of them. During their deliberations about the more serious charges, they asked for a review of the acting-in-concert principle, and they also reviewed the tapes many times. As the defense attorneys had worried, the editing failed to protect their clients. The jury was easily able to guess whose name had been bleeped out (Sullivan, 1992). Salaam suffered the most from guilt by association. Another problem was that some of the jurors had seen press coverage of the case.

The jury convicted all three defendants of rape, assaults, robbery, and riot, although some jurors had doubts about McCray and rape. Each defendant was sentenced to three and one-third to ten years for the rape and robbery (Sullivan, 1992).

The Deal with Lopez

The prosecution wanted to try Lopez separately because the editing of the tapes that would be required if they did not would hurt the case against Richardson and Wise and because they needed time to build a stronger case. Jesse Berman represented Lopez. Lopez denied everything but witnessing the crimes, and because the tapes could not be used Berman felt fairly confident that Lopez would not be convicted. However, he was concerned

with how much the other defendants might reveal. Before the trial, the prosecution lost a mystery witness who would have placed Lopez at the rape, so they were left with no conclusive evidence against him. The prosecution could not make any kind of offer to those who were already convicted, so they were unwilling to testify. In the end, Lopez took a plea just as jury selection was beginning. He pled guilty to one count of robbery against Loughlin and was sentenced to one and one-half to four and one-half years (Sullivan, 1992).

Trial Two: Richardson and Wise

The two remaining defendants, Richardson and Wise, were tried together next. It took seven days to seat a jury of five whites, four blacks, two Latinos, and one Asian (Sullivan, 1992). Lederer's case was essentially the same as in the first trial, but she did not focus on the chronology. Colin Moore represented Wise, and Howard Diller represented Richardson. Moore was known to have an ambitious political agenda and had been referred to as an antiwhite activist. Diller offered little in the way of a coercion defense, focusing more on the idea that acting in concert requires intent and Richardson had none. Moore stressed the chronology problem, and he embraced the boyfriend theory. He also argued that psychological and physical stress was what made Wise's four statements differ from one another. Throughout the trial Kharey Wise was agitated, fidgeting in his chair and mumbling. At several times during the trial, he even yelled out in court (Sullivan, 1992).

Diller and Moore had dramatically different styles. Diller approached the state's witnesses respectfully, while Moore was much more aggressive. Moore assumed the trial was all a part of a racist plot. Although animated, sometimes he failed so badly during cross-examination that the jurors actually laughed. He was also very aggressive in his cross-examination of Meili, stressing the boyfriend theory and accusing her of not doing enough to regain her memory. The press praised Meili and criticized Moore. Midway through the trial Richardson's family, the Cuffees, wanted to switch to Moore because they thought Diller was dull and ineffective. Diller was eager to leave, as he had been receiving death threats, but Justice Thomas Galligan would not allow it (Sullivan, 1992).

To no avail, Moore had tried to get the detectives to admit that Wise had a hard time understanding what was happening. Both of the defendants' mothers testified, and both were very hostile toward Lederer. Two teenagers, Al Morris and Raheim Fladger, were called to testify, but both pled the Fifth Amendment. The supporters bashed both Morris and Fladger for failing to help the defendants. Moore also argued that Wise had an alibi; he was at a neighbor's house with his girlfriend. He could have been present for the rape, however, but not for the assaults at the reservoir. Wise claimed he was told what to say by the detectives. He, too, was hostile on cross-examination and kept having outbursts. In closing, Moore emphasized that this was a case of the powerful versus the powerless. He compared the New York Police Department to storm troopers and pointed out the leading nature of Lederer's interrogations (Sullivan, 1992).

The Decision

The jury found Richardson guilty of all charges. They did not buy the coercion arguments, as his sister and father were present during the interrogations. The jury found Wise guilty of sex abuse, the assault of Meili, and riot. As the only adult tried, Wise received a lengthier sentence of 5 to 15 years (Sullivan, 1992).

AFTER THE TRIALS

Immediately after the crime, Manhattan borough president and then-mayoral candidate David Dinkins responded to the attack by calling for an ''anti-wilding law,'' which was to increase the penalties for anyone who committed a crime as part of a group. Dinkins also advocated hiring more police. Incumbent Mayor Ed Koch called for the death penalty for those involved in ''wilding'' incidents (Rome, 2002).

In June 2002, 31-year-old Matias Reyes, a convicted murderer and serial rapist serving 33 years to life, said that he alone raped Meili and left her for dead. His DNA matched the semen on the Jogger's sock, yet he could not be charged because the statute of limitations had expired (''It's Time,'' 2002). At the time of the Central Park Jogger investigations, investigators did not compare the DNA found on the scene to any DNA database, as such things were still in their infancy. All investigators could do was compare the DNA to samples found in local cases (Smith, D., 2002). Detective Mike Sheehan took Reyes's confession for the rape. He said, ''In 25 years on the job, I took over 1,000 confessions in 3,000 homicides. Out of all the bad guys I've talked to across the table, this is one of the top five lunatics. This guy was a frightening guy. He was capable of doing anything. He's very manipulative'' (Smith, D., 2002, p. 2). Reyes, who was born in Puerto Rico and was himself the victim of a sexual assault at age seven, said religion moved him to come forward (Smith, D., 2002). Reyes was already in custody at the time of the trials. He had been arrested on August 5, 1989, and he confessed to raping four women and murdering one of them, a pregnant woman, while her three children called to her from another room. Reyes stabbed some of the victims in the eye, hoping they would not be able to identify him (''It's Time,'' 2002). At the time of the Central Park Jogger investigations, Sheehan says he did not think of Reyes as a suspect, as he seemed to have a different *modus operandi* in his prior rapes. Reyes was known as a hostage taker who wanted control, and would not typically have acted as part of a group (Smith, D., 2002).

The prosecutor's office has been criticized for not following up on leads relating to Reyes at the time of the attack, as it was clear that the assault on Meili fit his *modus operandi.* At least one police officer and one assistant district attorney worked on both cases, and Judge Galligan presided over both (Allah and Little, 2003). On December 19, 2002, Judge Charles Tejada vacated the convictions of McCray, Santana, Salaam, Richardson, and Wise for the attack on Meili (Meili, 2003a). Salaam, Richardson, Santana, and McCray had served seven years, and Wise had served 12 years (McQuillan, 2003). In 2004, each of the young men who had been convicted filed suit against the city of New York for $50 million. The suits also name Manhattan District Attorney Robert Morgenthau and Police Commissioner Raymond Kelly and assert the boys are due compensatory and punitive damages because they were falsely arrested and imprisoned, were maliciously prosecuted, and were unlawfully searched, and also because exculpatory evidence was suppressed and concealed. Additionally, the suits include allegations of assault and battery, harassment, and intentional and negligent infliction of emotional distress. The plaintiffs also allege negligent hiring and retention of police officers, detectives, and prosecutors, as well as negligent training, instruction, and discipline of the same (Carter, 2004). The Manhattan district attorney said he would not seek a retrial on any of the other charges (Meili, 2003a). The new developments brought the case renewed media attention, as did the publication of Meili's book in 2003. Meili spoke about the case with Katie Couric, and *A&E* aired a special about the Central Park Jogger case.



Figure 4.2 Demonstrators march in front of Manhattan State Supreme Court, New York, 2002. State Supreme Court Justice Charles Tejada gave prosecutors until December 5 to complete their report on whether the convictions of five men in the notorious 1989 rape and beating of a Central Park jogger should be overturned. © AP Photo/Robert Mecea.

Reyes's confession has also brought scrutiny to the issue of false and coerced confessions. The Supreme Court has ruled that coerced confessions are inadmissible, but what constitutes coercion is not always clear. Torture and beatings were outlawed in 1936 in *Brown v. Mississippi,* but psychological coercion remains on shakier ground. According to *Haynes v. Washington,* allegations of psychological coercion must be evaluated on the totality of circumstances. The result is that police are often trained in the use of psychological tactics designed to get a suspect to confess. For instance, training manuals instruct officers to use the physical environment to their advantage, interrogating suspects in small, sterile, and brightly lit rooms. Officers learn how to extend interrogations over lengthy periods of time and to ignore the suspects' food, bathroom, and sleep needs. Officers also learn that they can use deceptive tactics to obtain confessions. They are allowed and encouraged to suggest to suspects that they will get a better deal if they talk, they can tell them a passing polygraph test will provide for their release, and they can lie to suspects about the evidence they have or what others allegedly told them (Cassel, 2002). All but the polygraph lie test were used with the suspects in the Central Park Jogger case. For instance, the interrogations lasted for more than 30 hours (Allah and Little, 2003). Of course, these tactics are sometimes successful in breaking down guilty parties, but they may be even more successful with vulnerable and innocent populations.

TRISHA MEILI—BIOGRAPHY

Trisha Meili returned to work at Salomon Brothers and later became vice president of the bank. She is now a paid speaker, where she will discuss teamwork, leadership, self-knowledge, the power of choices, the power of possibilities, and living in the present moment. She volunteers at the Sexual Assault and Violence Intervention Program (SAVI) at Mt. Sinai Hospital and at Gaylord Hospital, where she received wonderful help and support in her recovery. She also works with the Achilles Track Club, an organization that assists people with disabilities in completing marathons. With their assistance, Meili completed the New York City marathon in 1995. Meili received a Pacesetter Award from the New York Hospital in Queens, received a Spirit of Achievement award from Albert Einstein College of Medicine, and was an Olympic torch bearer (Trisha Meili, n.d.). It is said that, ''Trisha's story is not one of an attack, but rather, one of healing'' (Central park jogger, n.d., para. 2).

Playing suspects off one another is also a tactic police use to gain confessions and evidence. In this case, each boy tended to minimize his own involvement while implicating others. Individually there was little evidence against any of the boys, but their statements seem to have been taken as some sort of collective confession (Cassel, 2002).

The case has become emblematic of problems in the New York Police Department, the prosecutor's office, and the U.S. criminal justice system in general. The case has called attention to the race-based approach to investigations that are often employed by the police (Hays, 2002). In recent years, the New York Police Department has faced several major setbacks regarding their treatment of racial minorities. Abner Louima was tortured and sexually assaulted by police officers. While some of the officers were initially convicted, their convictions have since been vacated. Amidou Diallo, a Haitian immigrant, was shot 41 times by officers. Unfortunately, neither these cases nor the Central Park Jogger case brought about necessary reforms. Disregarding the decision by the Manhattan district attorney and a state supreme court judge to vacate the charges against the five teens, the New York Police Department began its own reinvestigation of the case to determine whether policy or procedures needed changing. The resulting report focused on the incident and virtually ignores the interrogations and other potential police misconduct (Allah and Little, 2003). The NYPD Central Park Jogger Report found no evidence of misconduct during arrest or interrogation, and even noted they could not corroborate Reyes's confession that he acted alone (Executive summary, n.d.). These cases have brought some public attention to the issue of racial profiling and police abuse of authority, albeit still quite limited.

With the resurgence of interest since Reyes's confession, it is surprising that little attention has been paid to the many race-related issues involved in the Central Park Jogger case, especially those involving the media. Little has changed in the ways that the media cover crime and have covered this important case. Nonwhite offenders are still often demonized by the press in ways that white offenders are not, and white victims fare better in the media than nonwhite victims do. For instance, the press gave an excessive amount of attention to Robert ''Yummy'' Sandifer, Jr., a black boy from Chicago who was 11 years

FALSE CONFESSIONS

People have difficulty understanding why anyone would confess to a crime he (or she) did not commit. Although there is no central database of false confessions, it is clear that they occur with some regularity. In January 2003, Illinois Governor George Ryan commuted the sentence of 150 death-row inmates, largely due to concerns that they had falsely confessed. A 2003 study of one decade's murder cases in just one Illinois county found 247 instances in which statements made by the defendant were either thrown out or deemed insufficient for a conviction by a jury (Perina, 2003). Those with lower IQ and less education are more vulnerable, as they do not fully understand the complexities of legal rights like Miranda and the consequences of waiving those rights. Research seems to show that youth under the age of 15 do not have the developmental capacity to understand the specifics of their legal rights. In the Central Park Jogger case, all the defendants were young. One had only a second-grade reading level, while another had an IQ of 87 (Perina, 2003). Another explanation for false confessions is that some people have compliant personalities and are more prone to suggestion. Still another explanation is that some decide to confess after a cost-benefit analysis; for instance, they decide the punishment is inevitable, but confession will reduce its severity (Perina, 2003). Some defendants even begin to doubt their own memory after they have falsely confessed, with young people, the mentally ill, and people who were under the influence of drugs and alcohol being most prone to this ''internalized false confession'' (Perima, 2003, p. 12). Although some police precincts already did this, in 2003, Illinois became the first state to require police to tape interrogations and confessions of murder suspects in an effort to reduce the number of false confessions (''Ill. law,'' 2003).

old when his stray bullet hit a 14 year old instead of the gang member it was intended for. A rival gang killed Sandifer shortly thereafter. Yet, little attention was paid to other crimes committed by white youths around the same time, such as the Washington 12-year-olds who shot a migrant worker who had yelled at them (Rome, 2002). In 1991, Alfred Jermaine Ewell, a black 17-year-old, was attacked and seriously wounded. *New York Newsday* described the assailants as a ''gang of white toughs.'' Black community members questioned why the attack was not labeled a wilding. They insisted that term is only used for black suspects (Rome, 2002). Although the term ''wilding'' is not used as frequently now, other terms with negative connotations are used to describe groups of blacks. For instance, a group of black males is often described as a gang, which connotes violence and mayhem (Rome, 2002).

Perhaps, most importantly, media coverage influences how people think about crime and, consequently, the adjudication of criminal cases. Surveys have shown that more than one-half of all Americans think blacks are prone to violence (Robinson, 2002). Many people are quick to believe that blacks commit an inordinate amount of crime due to stereotypes of the black male criminal, like those employed in the Central Park Jogger case. Such media coverage creates a hierarchy of victims. Researchers have found that the harshest sentences for rape are assigned to black men who rape white women, while white men who rape black women receive the most lenient sentences (Miller et al., 2002). The disparity is especially true when a black stranger or strangers, as in the Central Park Jogger case, assault a white woman (Miller et al., 2002).

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5

The Murder of Yusuf Hawkins: Bias Crimes and a Neighborhood on Trial

VICKY MUNRO

They don't want us here. We should stay in our own neighborhood. Stay in Bensonhurst and the niggers should stay in theirs.

—Do the Right Thing

On August 23, 1989, twenty-four days after Spike Lee's film *Do the Right Thing* opened, a 16-year-old black youth named Yusuf Hawkins was shot and killed by a 19-year-old Italian American in the Bensonhurst section of New York City. Hawkins and three of his friends came to Bensonhurst that evening to look at a used car advertised in the newspaper. They were confronted by a mob of white teenagers with baseball bats who were waiting for a group of blacks and Hispanics supposedly coming to "kick their asses." In the end, the mere fact of black skin was enough to condemn Hawkins to his death from two bullets fired point blank into his chest.

Just as the characters in *Do the Right Thing* represented the anger and frustration among the variety of peoples making up New York's diverse population, so too the Bensonhurst incident, as it came to be known, grew to far greater significance than the murder of one individual by another. From the beginning it was clear that the killing was a "bias incident," a new designation used by the New York Police Department for crimes committed on the basis of racial or other bias. Hawkins was killed because he was black and had ventured unknowingly into a neighborhood that did not welcome outsiders.

In the aftermath of the shooting of Yusuf Hawkins, national attention remained on the arrest and trial of the members of the white mob in large part due to the protests and counterprotests that sprang from the case. Involvement of leaders such as the Reverend Al Sharpton and Louis Farrakhan, and the bringing of the protests into the Bensonhurst neighborhood resulted in bitter invective from both sides. There were numerous scenes

in the newspapers and on television of faces contorted with hatred, fingers pointed in anger, and symbolic gestures such as the watermelons hoisted by Bensonhurst youth designed to taunt and belittle black Americans.

While the Bensonhurst incident drew national attention to race relations between black and white Americans, it also added a chapter to the increasing number of bias crimes singled out in the news. New York City during the 1980s was the setting for many of these types of cases, and the response from the media and by the general population was heightened by the numerous political aspirations of some of the main actors. The prevalence of these nationally known bias cases led to federal bias legislation passed at the end of the decade.

EARLIER EXAMPLES OF BIAS CASES

On June 22, 1982, black New York City transit worker Willie Turks stopped after work to get a snack with two of his co-workers, Dennis Dixon and Donald Cooper. The three drove into the Brooklyn neighborhood of Gravesend. As they left a bagel shop and got back into their car, a white youth yelled racial epithets at them. The car was soon surrounded by a group of 15 to 20 young white men who rocked the car and broke the car's windows. As Dixon and Cooper fled, 34-year-old Willie Turks, his arm in a cast, was pulled out of the car and beaten to death by the mob of predominantly Italian American men. Initially, three young men were convicted of the crime. Paul Mormando, age 19, was sentenced to two consecutive one-year terms for misdemeanor assault, second-degree riot, and discrimination. Although it is likely that he was responsible not only for pulling Turks from the car, but throwing a bottle that severely injured Dixon, he served a total of seven months. Anthony Miccio, age 20, was convicted of assault, rioting, and civil-rights violations. He was sentenced to three to nine years in prison. Gino Bova, 18, was convicted of second-degree manslaughter, first-degree assault, first-degree riot, violation of civil rights, and sentenced to 5–15 years. The final man indicted was Joseph Powell who was 29 years old. He was charged with second-degree murder, assault, riot, and discrimination. Powell was a fugitive for two years after the incident, and then turned himself in. He pled guilty to first-degree assault in return for the other charges being dropped and a lesser sentence (3–9 years rather than the usual 5–15). The defendants were prosecuted by Elizabeth Holtzman, the District Attorney, and her staff. While the incident was recognized as a racially motivated killing, an unprovoked attack that had everything to do with race, there was little mention of bias crime or hate crime in the press.

On September 28, 1983, Michael Stewart, 25, died 13 days after he was delivered hogtied (arms and legs bound together behind his back) with elastic cords, with bad bruises and in a coma to Bellevue Hospital in New York. Stewart, who was black, had been arrested by 11 white Transit Authority police officers at 2:30 a.m. on September 15 for scrawling graffiti on a subway wall. He was charged with resisting arrest and unlawful possession of marijuana. Stewart was returning home from an evening out when he scrawled three letters on a subway wall with a black marker. He struggled with transit police and ended up in a coma. The preliminary autopsy report, written by New York City Chief Medical Examiner Elliot Gross, stated that Stewart had died of cardiac arrest and made no mention of the bruising over much of his body. In fact, he stated that there was no evidence of physical injury resulting in or contributing to Stewart's death. A month later, amid the controversy surrounding the case, Gross amended the report to state that

Stewart's fatal coma was caused by a spinal cord injury. He declined to state how the injury might have occurred. The autopsy had been observed by Dr. John Grauerholz, a forensic pathologist who was hired by Stewart's family, and he greatly disagreed with Gross's initial and final conclusions. The medical stenographer who wrote up the findings was "horrified" that Gross's conclusions did not mention the extensive bruising on Stewart's body. Stewart's eyes, which showed evidence of strangulation (broken blood vessels), were removed one day after the autopsy by Gross against the wishes of the family. The eyes were stored in a solution that bleaches out all traces of blood.

Although he died as a result of injuries that could not have been self-inflicted, Stewart's death was never classified as a homicide. Six transit officers were indicted on charges of failing to protect Stewart's life while he was in police custody. Manhattan District Attorney (DA) Robert Morgenthau brought the case to a grand jury. The first grand jury was dismissed when a member of the jury began investigating the case on his own (he believed that the prosecutors were trying to block a murder indictment). A second grand jury indicted six officers. Three were charged with criminally negligent homicide and assault. All six were charged with perjury. Morgenthau attempted to prosecute the case on the omission of an act, stating that police officers have an affirmative duty to protect all those in custody from harm. While this tactic was well established, it was not often used. The six officers indicted were acquitted of all charges by an all white jury in November 1985. With the delay in prosecuting the case, by the time witnesses were called, no witness could reliably say which officer was responsible for what actions. The Stewart family filed a civil suit in Federal District Court against the transit police in 1987, which prompted hundreds of off duty transit officers to march in protest in front of the Metropolitan Transit Authority building. In 1990, the Stewart family received a $1.7 million settlement although there was never an admission of wrongdoing on the part of the transit police.

If there was public outcry regarding Willie Turks and Michael Stewart, it was nothing to the reaction that occurred after the death of Michael Griffith in the Howard Beach neighborhood of New York.

Howard Beach

The Howard Beach incident took place in December 1986. Late on the night of December 19, four black men were driving back to Brooklyn when their car broke down near the Howard Beach section of Queens. While Curtis Sylvester stayed with his car, the other three men headed off to find a subway back to Brooklyn. These three were 23-year-old Michael Griffith (Sylvester's cousin), 36-year-old Cedric Sandiford who was married to Griffith's mother, and 18-year-old Timothy Grimes. Griffith and Sandiford were construction workers, Grimes was unemployed. After a verbal encounter with some white teenagers, the three went to the New Park Pizzeria. While they were there, someone called the police because they were considered "suspicious looking" although they merely ordered and ate pizza. The police came and, finding that nothing untoward was happening, left again. When the three left the pizzeria, they again encountered a group of white teenagers (the original few had gone back to a party and recruited others as well as collected metal baseball bats and tree limbs). The three men ran in different directions to escape the white teenagers. Grimes escaped unscathed. Sandiford was attacked by one group while another chased Griffith who ran out onto the Belt Parkway and was hit and killed by a car. Even after witnessing Griffith's death (his body flew 125 feet along the

Parkway and his head was split open), the group chasing him then returned to Sandiford and continued to beat him. Sandiford eventually got away and met up with the police on the Parkway (they had been called by several witnesses in the neighborhood). The police treated Sandiford as a suspect, keeping him in the squad car for close to three hours just feet away from the body of his stepson, and keeping him without treatment for his injuries.

Rather than bringing the evidence to a grand jury, in an attempt to make the proceedings more transparent to the public and thereby forestall issues of perceived bias, DA John Santucci held an open hearing. Once Sandiford's (Alton Maddox) and Grimes's (C. Vernon Mason) lawyers became involved, the victims refused to cooperate with the DA's office until a special prosecutor was appointed. Because of the lack of victim cooperation, Judge Ernest Bianchi, the judge presiding over the open hearing, dropped all charges but that of reckless endangerment. Three defendants, Jon Lester, Jason Ladone, and Scott Kern had originally been charged with murder, second-degree murder, second-degree manslaughter, and assault in addition to the reckless endangerment. The Governor, Mario Cuomo, appointed Charles Hynes as special prosecutor for the case. Hynes was the Special Prosecutor for the State of New York and the head of an office established in 1972 to keep tabs on government corruption. A grand jury then indicted all 12 of those involved in the incident, six on serious charges that included second-degree murder, manslaughter in the second degree, attempted murder in the second degree, and assault in the first degree. These six included Lester, Kern, Ladone, Robert Riley, Michael Pirone, and Tommy Gucciardo. Riley eventually made a deal to testify against the others in return for lesser charges. The first trial began in 1987 and included Lester and Kern, charged with second-degree murder, and Ladone and Pirone, charged with second-degree manslaughter. Pirone, who was represented by Steven Murphy, known for his forceful and loud defenses, was eventually found not guilty of all charges. Scott Kern, Jason Ladone, and Jon Lester were found guilty of manslaughter in the second degree and assault.

The three victims in the Howard Beach incident were blamed by the press and the defense for being in the wrong place on the night of the attack. Both the police and the press immediately questioned their presence in Howard Beach, thus pulling some of the focus away from the crime and the perpetrators. The police, upon finding Cedric Sandiford wandering beaten and dazed, treated him as a suspect rather than a victim; the papers did the same, repeatedly questioning the statements made by Sandiford as to why he and his friends were even in Howard Beach and pointing out the fact that one of them carried a beeper (immediately creating him as a suspected drug dealer) and one carried a toy gun (thus creating a suspected robber). Sandiford's refusal to cooperate with authorities until a special prosecutor was named brought him in for more criticism and public condemnation. The use of drugs by the four black men and the criminal histories of at least two of them gave the press plenty of fodder for assigning to the victims some measure of guilt in their own beatings and the death of one. All four were cocaine users, and Michael Griffith was found to have some measure of cocaine in his body at the time of his death. Grimes had been convicted of a number of felonies including armed robbery as a juvenile, and Sandiford had a conviction for illegal possession of a weapon. Even though the story of the broken down car was verified by several sources, the question of why the blacks had ventured into this particular neighborhood kept being raised. The implication was that they had no right to be there.

The incident at Howard Beach clearly was racial in nature, and this was discussed at length in the press. The trial brought out the words spoken by Jon Lester to bring the white mob together: ''There's niggers on the boulevard, let's go fucking kill them!'' Many pointed to the high rate of robbery in the area, rising housing costs, fears of unemployment, fear of outsiders, particularly blacks, and the strong Italian roots of the neighborhood as explanations for the incident. Numerous articles pointed to the fear of black crime that existed in Howard Beach where assumptions were that to be black was equivalent to being criminal. The fact that the police were called simply because three black men were eating in a pizza place demonstrates the insular nature of the neighborhood and the assumptions about dark-skinned outsiders that were being made.

Other writers pointed out that fear of black crime was legitimate (albeit the usual victims were black as well), and it was the black community's responsibility to change. In many articles, the focus was pulled away from the facts (that white youths beat black men and caused the death of one) to justifications of the whites' behavior and a questioning of the victim status of the beaten blacks. One writer stated, ''The most fundamental unanswered question is what four black men from Brooklyn. . .were doing in Queens on that pre-Christmas Saturday evening'' (Breindel, 1987, p. 20). The arguments aimed at justifying the actions of the whites in defending their territory against the intrusion of three black males who represented the threat of black crime and whose business in Howard Beach on that evening was considered questionable at best.

On Sunday, the day after the attack on the men in Howard Beach, Al Sharpton led a rally against the New Park Pizzeria with about 20 demonstrators. He then called for a boycott of all New York pizza places. Sharpton, with the victims' attorneys, Mason and Maddox, arranged a number of protests to keep the Howard Beach attack in the public eye.

New Yorkers still remembered this case three years later when the Bensonhurst case added to the racial tensions in the city.

YUSUF HAWKINS AND BENSONHURST

On August 23, 1989, Yusuf Hawkins watched *Mississippi Burning,* a film about racially based murders in the South in 1964, with friends before going to look at a used car that his friend Claude Stanford had found in the paper. Claude wanted others to come with him so Yusuf, Claude, Troy Banner, and Luther Sylvester (a relative of Curtis Sylvester of the Howard Beach incident) took the subway to Bensonhurst, and then walked along the sidewalk towards the address where the used car was for sale. The four ran into group of young white men gathered on the sidewalk with baseball bats and golf clubs.

Keith Mondello, a 19 year old of Italian/Jewish background, had had some sort of relationship with Gina Feliciano, a high school dropout who lived with her mother over the corner store, across from the school playground. She was a drug user and crack addict known for her fights with her mother and others. Although they did not have an ongoing relationship, she was fond of Mondello. She brought black and Hispanic friends to the block, which was not looked upon kindly by the neighborhood. Mondello told her to stop bringing ''niggers and spics'' around or there would be trouble. August 23, 1989, was Gina's 18th birthday. She told Keith and Sal ''the Squid'' (one of the store's owners) that her black and Hispanic friends were coming to ''beat the shit out of all of yez'' (DeSantis, p. 59). The rumor was that she was bringing in 20 or so friends. Mondello, Sal, and others gathered a group together to combat them and armed themselves with baseball bats, a

favorite weapon of the neighborhood. Unknown to this mob, Gina, seeing the group gathering outside her apartment, called her friends and canceled. When Yusuf Hawkins and his friends arrived, they walked right into the middle of this tension. While some of the white group realized that the four young black men were not the ''right'' group, 19-year-old Joey Fama did not waste time asking questions—he ran up and shot Yusuf and then ran away. Yusuf was shot in the chest and died soon afterwards. The white mob scattered, leaving the other three young black men physically unharmed.

The Hawkins/Stewart family consisted of Moses Stewart, Diane Hawkins, and their three sons, Freddy, Yusuf, and Amir. Yusuf graduated from high school in June 1989. He was described by teachers and friends as a quiet, soft-spoken youth. He was not involved with gangs or drugs, and had applied and been accepted at Brooklyn's Transit School of Technology in hopes of becoming a subway motorman. His assailant, Joseph Fama, had been in a car accident when he was 3 and suffered brain damage that left him with some permanent disabilities. His IQ was reported to be 72. Fama's family purportedly had mob connections, and he often carried a gun. Fama, a want-to-be mobster, was fairly representative of the working class white youth in Bensonhurst.

> They are fiercely protective of their turf and will fight for their tiny fiefdoms with fists, feet, bats, knives, and even guns. The play-actors who aren't really certifiable criminals are sometimes the most dangerous in turf-war situations, because their sense of social insecurity makes them feel they have more to prove than the others, so they'll go the extra distance. (DeSantis, 1991, p. 46–47)

A BIAS CRIME

The NYPD Bias Incident Investigation Unit, headed by Inspector Paul Sanderson, was given the Bensonhurst case.

> In a report published for the National Institute of Justice, *Bias Crime and the Criminal Justice Response* (1989), bias crimes and hate groups are described as very much on the rise. The study found an increased frequency of incidents committed by loosely knit neighborhood groups, usually made up of young white males. (DeSantis, 1991, p. 86)

At the time of Hawkins's death (and Howard Beach), New York State had a discrimination statute that could mean extra prison time (an enhanced sentence) but little else to differentiate the treatment of a bias offender. Bias crimes, while often hard to identify, were crimes considered a threat to an entire group, not just the individual victim. Yusuf Hawkins's killing was the 314th case investigated by the NYPD Bias Unit in 1989. According to observers who compared the Bias Unit officers to the regular precinct detectives, there were at least some differences in how the two groups functioned in their interactions with witnesses and suspects in the Hawkins's case. Perceived to be more heavy handed, the precinct detectives were also acquainted with some of the families of those charged and were more sympathetic to the suspects than the Bias Unit appeared to be. Some of the precinct detectives even told family members that they would not have charged their son if it had been up to them. ''But a disingenuous approach by local investigators to cases where race is a factor was one reason the Bias Unit was formed to begin with'' (DeSantis, 1991, p. 126).

Differentiating between a bias crime and a nonbias crime can be difficult, particularly in an atmosphere of heightened racial tensions. In the aftermath of the Bensonhurst incident, crimes were committed in which black perpetrators would tell their white victims, ''This is for Bensonhurst/Howard Beach.'' Inspector Sanderson felt most of these attacks were not bias crimes as the crimes would have been committed anyway (robbery and larceny, for example).

> Some of the attacks that occurred in the wake of the Bensonhurst murder were investigated as bias incidents, but most were not, although some received a fair amount of media attention. According to Sanderson, the existence of a high-profile race-related case was a cheap excuse or justification for a crime that would probably have been committed anyway. (DeSantis, 1991, p. 128)

While it can be difficult for the Bias Unit to determine which crimes are legitimately bias crimes and which are not, it can be even harder for the general public to understand this distinction. Ruling a particular crime as a bias crime speaks to the motivation behind the crime and not necessarily to the specific details of the crime. Determining what emotion or motivation lies behind a crime can be a difficult and lengthy process. A recent Supreme Court ruling speaks to this issue, allowing stiffer punishments for a hate crime only if a jury is convinced beyond a reasonable doubt that hate was the motivation (*Apprendi v. New Jersey*). In addition to all the racial tensions, the Bensonhurst neighborhood made the job of the Bias Unit more difficult with their adherence to the code of silence. The police found it hard to get people to talk about their neighbors, particularly in a mob invested neighborhood such as Bensonhurst where people were afraid of repercussions if they talked. Numerous witnesses ended up in protective custody before the trial was over, and some reported receiving threatening phone calls. In 2005, Joseph D'Angelo, a witness in the case against mobster John Gotti (a resident of Bensonhurst), admitted that he had lied to police when asked about the killing of Yusuf Hawkins, and that he had also pressured a woman who knew many details about the killing not to talk to the police. ''It's part of the mob. That's what we do, we lie to the police.'' On August 23 1989, D'Angelo called his friend Joseph Serrano to Bensonhurst because of the supposed attack by blacks and Hispanics. Serrano was the one who brought Joey Fama with him to the gathering (Preston, 2005).

SHARPTON AND BENSONHURST

Mark Lucas from *WLIB,* a black radio station in New York, called Al Sharpton the morning after Hawkins was killed to ask him his opinion of the incident. This was the first that Sharpton had heard of the killing. Later, Moses Stewart called Sharpton to ask for advice given how much attention was being heaped on the family, and Sharpton became the family's advisor during the difficult times after Yusuf's death. Sharpton had led numerous Day of Outrage marches after the Howard Beach incident. He had also been involved in the Tawana Brawley turmoil, when an African American teenager accused six white men, including several police officers of rape. Now in his element as a vocal and often obstreperous activist, Sharpton led a number of marches through Bensonhurst. The first included more than 400 marchers with a major police presence to try to ensure no violence occurred. The white bystanders in Bensonhurst yelled racial epithets at the marchers and held up watermelons right next to others holding signs that claimed

Bensonhurst was not a racist neighborhood. There was a great deal of publicity regarding Bensonhurst's response after Hawkins was killed. As racial conflicts and tension erupted around the incident, the media presented the ugliness in print and on television. In a sense, the whole neighborhood was on trial, and it was certainly in the public eye.

A march to commemorate Huey Newton and Yusuf Hawkins drew 7500 marchers and resulted in rioting that left 23 police injured and 4 people arrested. Newton, a cofounder of the Black Panther Party for Self Defense and an early advocate of protecting black neighborhoods from police bias, had been shot and killed on August 12.

Labor Day weekend in Bensonhurst is the annual Feast of Santa Rosalia. Much like a street fair, this is an important event for the neighborhood. Sharpton planned a march to the Feast as marchers called for the arrest of 30 defendants and yelled their trademark ''No Justice. No Peace.'' Moses Stewart and Diane Hawkins wanted all those involved in their son's death to be arrested and stand trial. The marchers had a police escort but decided not to go into the Feast as there had been some threats that they would be assaulted with hot oil used by the vendors for cooking balls of dough known as zeppole.

> Bensonhurst's reactions to the marches made Sharpton's earlier branding of New York as the Birmingham of the North seem far from extremist rhetoric. The murder itself received national attention at the outset, but nowhere near the type of coverage given as a result of the marches. Stories appeared from New Jersey to Hong Kong, many with photographs of the white hecklers cursing those who said they came only to seek justice. (DeSantis, 1991, p. 167)

Those who rallied behind Al Sharpton, followed him numerous times through the Bensonhurst streets, proclaiming their right to walk in whatever neighborhood they chose. Sharpton continued to lead marches to Bensonhurst and other areas such as Canarsie (a Jewish and Italian neighborhood in the eastern part of Brooklyn that was home to increasing racial tensions as black Americans were moving in) to protest the way the trials were going and to protest racism and the continuing series of bias-related incidents in New York. He was stabbed by an Italian American, Michael Riccardi, in 1991 while leading a march to protest acquittals in the Bensonhurst case (Riccardi was convicted of first-degree assault and served eight years in prison) and was threatened at other marches, requiring police protection during these activities.

ACTING IN CONCERT

Because it is often difficult to determine who did what to whom with a mob attack such as those at Howard Beach and Bensonhurst as well as during the killing of Willie Turks in Gravesend, the initial prosecution in the Bensonhurst case, led by Elizabeth Holtzman, chose to argue the doctrine of ''acting in concert,'' which held that each person who is engaged in acts leading up to the death of a homicide victim, assuming that they share the same intent as the actual killer, is responsible for the end result. Holtzman's staff determined that any person who made a recognizable contribution to Hawkins's death would be charged with murder. Prosecuting the case by the doctrine of acting in concert would provide a way of including multiple defendants in the case and would also set the stage for establishing case law for future prosecutions of this type.

SHARPTON, MADDOX, AND MASON

Alfred Charles ''Al'' Sharpton, Jr., was born in 1954. A Pentecostal minister who started preaching at age 4, his many roles have included political activist, civil rights activist, founder of the National Youth Movement and the National Action Network, and 2004 candidate for President of the United States. Sharpton drew national attention to the Howard Beach and Bensonhurst cases among others, leading marches and publicly demanding justice for the black victims and prosecution for the white perpetrators. Sharpton handled publicity for Tawana Brawley, a 15-year-old black woman who claimed she was raped by six white men, some of whom were police officers, in 1987. Sharpton, Maddox, and Mason leveled many unfounded accusations during the Brawley case including labeling New York prosecutor Steven Pagones as a racist and rapist. The grand jury determined there was no evidence to support Brawley's claims, and Sharpton was fined for his role in the false accusations.

Alton Maddox was an attorney, suspended in 1990 after the Tawana Brawley case for hindering an ongoing investigation. Maddox cosponsored the 1983 Congressional Hearings on Police Brutality in NYC. He served as *pro bono* counsel for Michael Stewart's family, Michael Griffith's family, and Cedric Sandiford, and Yusuf Hawkins's family. He also was counsel for Michael Briscoe, the only accused in the Central Park Jogger case against whom the indictment was dismissed.

C. Vernon Mason, Sr., was a Civil rights lawyer who lost his law license in 1994 for a pattern of lying to clients and for fee gouging. Like Maddox and Sharpton, he was involved with a number of the 1980s bias crimes in New York City. He became a Baptist minister and now works inside the system rather than against it. He is now working with Brooklyn DA Charles Hynes to reduce gun violence in Brooklyn and is the codirector of Youth Turn.

> This was seen as especially important by some, since bias-related homicides often involved such concerted acts and there were few tested weapons at the disposal of prosecutors to win convictions where multiple parties are involved. (DeSantis, 1991, pp. 124–125)

When Charles Hynes took over the prosecution after the fall election, the question was raised as to whether this initial focus of the prosecution had hurt the case and made it more difficult to prosecute Joey Fama as the actual gunman. The acting in concert theory did not work out as the prosecutors hoped in the Hawkins case as the judge eventually dropped all charges but a lesser one against one defendant, and the juries found others guilty of lesser offenses rather than guilty of murder in concert. Joey Fama was eventually convicted of depraved-mind murder.

> Based on [Judge] Owens' explanation of acting in concert, they were able to convict on the second murder charge. No matter how many witnesses there had been, no matter how many people who saw the shooting might claim that they saw Joseph Fama fire the fatal rounds, as far as the criminal justice system was concerned Joseph Fama was not guilty of the actual murder, but had acted in concert with others to cause the death of Yusuf Hawkins. (DeSantis, 1991, p. 221)

However, while the jury found Fama guilty by the intent of the group, they found Mondello and others not guilty of any type of murder. This seems contradictory as the purpose behind the theory of acting in concert is to get at the intent of the group, rather than the individual. If the intent was enough to convict Joey Fama as acting in concert, it should also have carried over to the other major players—or else with whom was he acting in concert? In the Michael Stewart case, again with a number of defendants (in this case the transit police), the argument of group responsibility for an affirmative action (keeping a defendant in custody safe from harm) backfired as well and all the officers charged were acquitted. In Howard Beach where the defendants were held individually responsible, those responsible were found guilty. The Stewart/Hawkins family was not happy about the lack of charges and prosecution for the rest of the up to 30 youths involved in the events leading to Yusuf's murder, nor were they pleased with the end results of the cases where there were trials. They were firm believers in the idea of acting in concert, that all those who were present at Yusuf's death should be held responsible for his death.

Crimes committed by groups of people pose the problem of the need to charge crimes to individuals specifically enough to make them stick within legal definitions, but when the criminal result is a product of group thinking (the actions of a mob often stem from a mind-set created by the group dynamics, where the group has a ''mind of its own'') it is even harder to determine who is legally responsible for what actions. The end result can be that no one is found responsible even when someone is killed.

> Even when evidence is developed detailing an individual's participation amid the chaos of a mob, it can be much harder to fit his actions to the closely defined categories and degrees of criminal culpability than if he had committed a crime alone or as part of an extensively planned group action. (Fried, 1983)

Fama's guilt of depraved-mind murder held him responsible for his actions within the group rather than finding him specifically guilty of second degree murder. If Fama, the actual shooter, was only guilty by association with the group, the rest of those who were there that August night were even more removed from the actual killing. Defense attorneys argued individual innocence and pointed out that no one had ever been shot with a baseball bat.

THE TRIAL

Elizabeth Holtzman based the initial strategy in the case on the theory of acting in concert and tied this heavily to one witness, John Vento, who could describe in detail what had happened on that August night in Bensonhurst. Rather than concentrating on ensuring that Fama was held responsible, she aimed to charge as many as possible for the events. Unfortunately for the case, Vento disappeared, and when he returned, he was no longer willing to cooperate. He ended up indicted for murder himself. Holtzman's narrow dependence on Vento and her push to indict as many as possible ultimately damaged the case against the individuals who eventually went to trial.

Keith Mondello's parents hired Steven Murphy, the lawyer who had defended the one person acquitted of all charges in the Howard Beach killing, to defend their son. The grand jury indicted Keith Mondello and Pasquale Raucci on second degree murder. Eventually, in addition to Joey Fama, six were charged with murder from the Bensonhurst killing. They were Mondello, Raucci, Charles Stressler, James Patino, John Vento, and Joseph

Serrano. Another defendant, Steven Curreri, was charged with assault. Some in the police department as well as attorneys for the defendants felt that, with the exception of the charges against Fama, the charges brought in the case were the result of political pressure from the black community and political ambitions of the District Attorney and others. On the other hand, Sharpton, Yusuf's parents, and the vocal black community were calling for all 30 or so of those involved in the night's events to be charged. The judge presiding over the case was Thaddeus Owens, who was black. He was chosen by Matt Crossen, the chief administrator of New York's courts.

> . . .Crossen knew that all eyes would be on the Bensonhurst case and felt that Owens could handle it fairly. "There are rare cases in which public attention is so intense that the proceedings will create a lasting perception of the criminal justice system by the way the case is handled," he said. (DeSantis, 1991, p. 184)

Unfortunately for all, the change in lead from Holtzman to Hynes and the lack of credible witnesses contributed to a case that was not well handled. Witnesses who were fairly forthcoming to the grand jury suddenly seemed to have memory problems during the trial. Unlike the Howard Beach case, Hynes and his staff were unable to "turn" any of those charged into witnesses for the prosecution. The witnesses they did have—such as Gina Feliciano, a known liar—lacked credibility

Joey Fama was found not guilty of second-degree murder but guilty of depraved-mind murder (which carries the same sentence as second-degree murder). Mondello was not guilty of second-degree murder, depraved-mind murder, or first and second degree manslaughter. He was found guilty of first-degree riot, unlawful imprisonment, menacing, discrimination, and fourth-degree criminal possession of a weapon. Curreri and Patino were acquitted of all charges. Stressler and Serrano were found guilty of weapons charges only. Raucci was found guilty of assault, civil rights infringement, and false imprisonment. These were all set aside by Judge Owens, who found him guilty only of criminal possession of a baseball bat and sentenced him to probation. Vento was found not guilty of murder and was convicted only of the lesser charges of unlawful imprisonment, menacing, and riot. He received a sentence of four years.

THE POLITICAL ATMOSPHERE

Hawkins's murder happened during a time of great political significance in New York City with incumbent Ed Koch, a white man who had been mayor since 1978, running against David Dinkins, a black man and the current Manhattan Borough President, in the mayoral primary just a short time after the killing. While Koch spoke against the protest marchers, Dinkins made statements about how the racial climate of the city was set in City Hall. The full page ad taken out by a group of both Black and White business and labor leaders in response to the incident expressed their outrage at the killing and stated that "justice must be swift." The District Attorney at the time was Elizabeth Holtzman who was initially in charge of the investigation and prosecution until January 1990 at which point Charles Hynes, the newly elected DA, took over. Elizabeth Holtzman was running for City Comptroller, and her personal involvement in the case and her personal appearances in court (which were almost unheard of) were seen as a political ploy on her part. Both Holtzman and Hynes had experience dealing with bias crimes in the recent past. Holtzman's staff was involved in the prosecution of those accused of killing Willie

Turks while Hynes was the special prosecutor appointed for the Howard Beach incident. As Holtzman and Hynes were both well aware, their actions were very much in the public eye, and they needed to balance the demands of their different constituents while pursuing the best course to justice for Yusuf Hawkins. The Reverend Jesse Jackson, a black Civil Rights leader and 1988 Presidential candidate, came to Hawkins's wake, greatly angering Moses Stewart by implying that Yusuf's death could be the catalyst necessary to elect a black mayor in New York City. Dinkins attended the funeral as did Koch and Mario Cuomo, the governor at the time. Moses Stewart invited Louis Farrakhan, the controversial head of the Nation of Islam, an organization aimed at empowering black Americans, to the funeral and he came. Farrakhan has been accused of being anti-Semitic, anti-white, and anti-Christian among other things, and is seen as a divisive force by many. Over 1,000 mourners attended the funeral, spilling over outside the church, but the majority of white people there were politicians, the press, and police officers. Dinkins, who was running on a platform of healing New York's racial and ethnic differences, defeated Koch in the primary and then Giuliani in the November election to become New York's first black mayor.

The Bensonhurst case had many widespread political ramifications from the results of local elections to the list of those charged for Hawkins's murder to how the city handled the racial tensions surrounding the case. The Bensonhurst incident came at the end of a decade of bias cases and contributed to the federal legislation enacted in the early 1990s that required yearly tallies of bias events and increased sentences for those found guilty of bias crimes.

MEDIA RESPONSE

In both the Howard Beach and Bensonhurst events, black men ventured into predominantly white neighborhoods. In addition to describing the specific crimes that occurred, the print media used descriptions of various neighborhoods to provide contextual details and, more importantly, explanations of why the events happened as they did. The majority of descriptors applied to Bensonhurst included the notion of enclave and insularity. Described as a ''working-class neighborhood,'' a ''down-at-the-heels ethnic white neighborhood,'' it was pointed out repeatedly that Bensonhurst was like a transplant straight out of Italy, a foreign enclave in the middle of New York. Bensonhurst's ''specialized culture,'' which replicates the home country, was presented as a reason behind the actions of the young men involved in the crime. Those living in Bensonhurst possess a strong sense of turf that must be defended against outsiders. In addition, the papers pointed to the fear of white ethnics, in the then depressed job market, that they would be replaced by others, particularly blacks.

At a time when Reagan (the then current President) and Bush (George H.W. Bush, who was elected President following Reagan's two terms) were creating a fear of the black man and denigrating the black working force with statements about ''welfare queens'' and images of black youths on drugs, the already insecure white working class looked to young black males as the ultimate threat. In addition, the concern over a girl from the neighborhood dating black men put the threat on another front as well, and one with a long history of emotional responses. The clear racism of the neighborhood was thus described in mitigating terms by the press: it was ''understandable'' due to the insular and traditional nature of the ''enclave,'' because of the fear of economic insecurity by the working class

BIAS/HATE CRIME LEGISLATION

Bias Crime (from FBI Uniform Crime Reporting Handbook): a criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.

- Boston created the nation's first hate crimes unit in 1978. The New York City Police Department's bias unit was started in 1980. Chicago's bias crime unit has been an investigative unit since 1986. With twice Chicago's racial incidents, the NYPD requires all officers to take bias training; recruits get 12 hours of such training.
- Hate Crime Statistics Act of 1990: requires the Justice Department to acquire data on crimes that ''manifest prejudice based on race, religion, sexual orientation, or ethnicity,'' from law enforcement agencies across the country. Also requires publication of an annual summary of the findings. http://fbi.gov/ucr/ucr.htm
- Violent Crime Control and Law Enforcement Act of 1994: added the requirement that the FBI report on crimes based on ''disability.'' Also provided the directive that the United States Sentencing Commission provide a sentencing enhancement of ''not less than 3 offense levels for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes.'' This was implemented in 1995.
- Local Law Enforcement Hate Crimes Prevention Act of 2005, which passed as an amendment to H.R. 3132, the Children's Safety Act of 2005, expands the definition of hate crimes to include offenses involving actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability. The Act has been passed by the House and is currently in the Senate.
- In 1986, New York State had no hate/bias crimes law. The Hate Crimes Act of 2000 was originally drafted in response to the killing of Michael Griffith in Howard Beach. In part, the Act stated:

Crimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs.

population, because of the protectiveness over women, and because of the traditions of ''macho bonding exercises'' that create a mob out of a group of white teenagers. Gina Feliciano, the young woman who threatened to bring in blacks to ''kick some ass,'' almost more than Joseph Fama, was held responsible for the incident.

The press compared Hawkins's neighborhood to Bensonhurst; both were ''socially and exclusively homogenous places where outsiders automatically draw residents' attention'' (Kaufman, 1989, 26). The well-kept homes, flowers, and religious statues of Bensonhurst were contrasted with Hawkins's neighborhood.

> Down the street [from Hawkins's house] at the corner of Alabama Avenue, where sunflowers droop over the weeds of an empty lot and a burned-out building provides cover for drug transactions and the voices of LL Cool J and other rappers fill the air, a half-dozen neighborhood youths were tossing a basketball at a make-shift hoop on a telephone pole. (Farber, 1987, p. B12)

Although Hawkins himself was not a drug user, by implication he represented a neighborhood defined in the ultimately stereotypical terms by empty lots, drugs, rap music, and basketball.

The press worked hard at finding the reasons behind the incident. Their explanations had to do with neighborhoods and cultures, fears and insecurities rather than individual bad kids. Fama, as the triggerman, came in for the most personal explanation, and his history of brain damage and low IQ were held as the reasons for one slightly bad individual. The press seemed to remove any idea of individual responsibility from those involved except for that assigned Gina Feliciano, and pointed out that ''stereotypes and cultural precepts act to define young black men as dangerous, and therefore, somehow legitimate victims of assault'' (French, 1989, p. 31). In addition to blaming Gina Feliciano for starting the whole thing, time and again newspaper reports pointed out that the individual whites involved were not racist because this one had a black friend and that one had a black girlfriend.

The press pointed to a new generation of racism, the young white working class that had been wrenched by the economic dislocations of the 1980s, and who have no memory of the civil rights struggles of the 1960s and 1970s. The Reagan administration's arguments that white males were being mistreated, particularly in the work force, coupled with media portrayals that fueled old fears were creating negative feelings towards blacks in white ethnic areas such as Howard Beach and Bensonhurst. Many cited statistics on black involvement in crime, pointing to an understanding of why the neighborhoods' fear of blacks, particularly young black men, might be justified. All this in the face of neighborhood reaction from Bensonhurst that included screams of ''niggers go home,'' labels of ''mulignans'' (a corruption of the Italian for eggplants, a reference to black skin), and the waving of watermelons at black protesters marching through the neighborhood.

The more conservative press took to highlighting what they saw as black racism, particularly as personified by Al Sharpton. This version pointed out that blacks and Hispanics ''more and more, are making New York a frightening place to live'' (Anderson, 1990, p. 38). By justifying neighborhoods' fears of black crime, the press created an understanding in the public of why the white neighborhood reacted as it did to black intruders. It was also pointed out that black leaders refused to acknowledge the role of black crime in feeding white racism ''and the growing racism in the black community'' (Klein, 1989, p. 36). Some felt that ''black revolutionaries'' were leading the marches through Bensonhurst merely to incite violence. A more conservative analysis argued that Bensonhurst was not really a racial attack since it was primarily an argument over a woman. This was not true, and race was clearly a central element in the incident.

What was not mentioned in the typical write-ups on the case were the ironies in the posturing of Bensonhurst residents against the high rate of black crime and their own fears, against the backdrop of the involvement of many in the neighborhood in organized crime.

> While people who live on the quiet side streets complain about how crack-crazed blacks are ruining the city of New York, the guys in the suits map new strategies for smuggling drugs

> and guns into the five boroughs and how they will invest the profits into legitimate businesses. (DeSantis, 1991, p. 48)

The incident pushed race relations into the media with both Bensonhurst residents and the community of Yusuf Hawkins raising greater and larger problems than the killing of one black teenager. Chants of ''Howard Beach'' on one side were met with ''Central Park'' on the other. The killing of Hawkins and its aftermath were covered widely in the press across the country and in a variety of newspapers in New York City itself. In contrast to the coverage in the mainstream press (such as the *New York Times*), African Americans could get a different perspective on the incident from sources such as *The New York Amsterdam News.* The tone of the articles and the focus of stories was often quite different in the *Amsterdam News* with headlines such as ''Punks freed on bail,'' and ''Koch must resign.'' Hawkins and his friends were never taken to task for walking through Bensonhurst as they were in the mainstream press. A comparison of these different sources of news helps illustrates the distance found between the communities surrounding this incident.

ITALIAN AMERICANS

A century ago, Italian Americans were in much the same place as many of them considered black Americans in the 1980s, unwanted and looked on with suspicion and fear by the general public. Italian immigrants from the southern part of Italy began arriving in America in increasingly large numbers in the 1880s. Between 1900 and 1910, southern Italian immigrants represented the largest of the many groups coming to the United States.

Many of the new immigrants landed and stayed in American cities, forming Little Italies in part as a reflection of ethnic solidarity, in part because of the obvious language barrier, and in part as a reaction to the increasingly negative attitudes of native-born Americans towards the new immigrants from southern and eastern Europe. Immigrants from the north of Italy were considered to be similar in appearance and culture to the earlier northern European immigrants (French, German, and English, for example). These immigrants were accepted as enough ''like us'' as to present no real threat to American society. Those from the south of Italy, however, were felt to be very different both culturally and racially and were even categorized by some as belonging to a different (nonwhite or at least nonpure white) race. The geographical split was held to be responsible for numerous physical, character, and cultural deficiencies of the southern Italians. What lay behind the use of geography and climate as an explanation for cultural differences was a concern with the racial purity (i.e., ''whiteness'') of the Italians from the southern part of Italy. The complexions and physical makeup of the southern Italians led not only to assumptions about physical strength but were taken as an indication of a lack of moral and emotional strength as well.

Given the predominant beliefs about the ability of the Italians to assimilate into mainstream America, it is not surprising that they were one of the main targets of the movements to restrict immigration to the United States in the early twentieth century. In fact, given the pattern of Italian immigration, the immigration restriction acts of the 1920s affected the Italians as much, if not more, than any group.

The metaphor of an enclave or enclosed world within the larger world is both common and significant in current articles on Italian Americans. The concept of a ''Little Italy'' with its implications of separatism and ''tradition'' have continued since the early part

of the century. The many articles on the Bensonhurst case really brought these metaphors to the fore.

As the legal actions in the case developed, much was written on the conflicts between Italian Americans and African Americans. In defining the Italian American community, metaphors of an enclosed or isolated world were prevalent. One headline read, ''Bensonhurst: A Tough Code in Defense of a Closed World.'' The article went on to state, ''This is a closed insular world, this enclave in Brooklyn where Italian is as likely to be spoken as English, a world of tight knit families and fear and hostility toward the outside.'' The journalist repeatedly used metaphors of insulation, inside/outside polarities, and the idea of a contained and homogenous world. Terms such as close-knit, community solidarity, incursion, and the concept of ''defending the block'' added to the closed world metaphor (Kifner, 1989).

Where in the past the ''stagnation'' of Italian Americans in the Little Italy ''eddies'' was seen as a threat to American culture and an indication of the unassimilability of the southern Italian, journalists of today use metaphors of enclosed worlds to represent a ''traditional'' culture unchanged in many ways by time. The more positive attributes of the metaphor demonstrate the lack of threat posed by this particular ethnic group and serve to exoticize a group not normally considered exotic. Metaphors explicate truth relative to a particular conceptual system, and those who have the power to impose their metaphors on the culture have the ability to define what is considered to be true.

POPULAR CULTURE

The Bensonhurst incident and those involving Howard Beach and Michael Stewart were all significant enough to become part of the popular culture in America. Examples include the television movie *Howard Beach: Making the Case for Murder* made in 1989 about the events in Howard Beach, with Daniel Travanti as Charles Hynes, and a drama by playwright Wesley Brown, ''Life During Wartime,'' which was based on the case of Michael Stewart. In the play, Darryl Cummings, a young black graffiti artist is arrested in a subway station. He supposedly dies of a heart attack on the way to the police station. The play revolves around the news media, the victim's family, and the witnesses. The courtroom drama, ''Blind Faith,'' which was directed by Ernest Dickerson, describes a hate crime and the lack of justice that follows. Although the play was set mostly in 1957, it made an opening reference to the 1989 murder of Yusuf Hawkins. *Frontline,* a public affairs documentary on PBS, ran an episode entitled ''Seven Days in Bensonhurst'' (May 15, 1990), which was a look at how racial conflicts, political calculation, and the press and television impacted each other in the week following the death of Yusuf Hawkins. ''The impulses that carried a dozen Bensonhurst youths onto their streets with bats that terrible August night are on disturbing display'' (Goodman, 1990).

Movie director Spike Lee has used his art to comment on numerous bias cases.

> The idea for *Do the Right Thing* arose for me out of the Howard Beach incident. It was 1986, and a Black man was still being hunted down like a dog. Never mind *Mississippi Burning:* Nothing has changed in America, and you don't have to go down south to have a run-in with racist rednecks. They're here in Nueva York. (Lee, 1989, p. 118)

The movie takes place in the Bedford-Stuyvesant section of Brooklyn. Ironically, *Mississippi Burning* was the last film that Yusuf Hawkins watched. Lee wanted to show one block

in New York during the hottest day of the year and demonstrate how the heat can be the final straw for all the tensions and frustrations built up around race. The block included representatives of different groups—black, Korean, Puerto Rican, Italian. From his companion volume to the film he notes:

> Dec. 27, 1987: While I was in the grocery today I heard a radio newscast that two Black youths had been beaten up by a gang of white youths in Bensonhurst. The two Black kids were hospitalized. They were collecting bottles and cans when they got jumped. This happened on Christmas night.
>
> Yesterday [January 2, 1988] Black protestors led a march through Bensonhurst to protest recent acts of racially motivated violence. I watched it on the news. It could have been Birmingham or Selma, Alabama, in the sixties the way those Italian mobs were carrying on. It was frightening. (Lee, 1989, p. 46)

These Bensonhurst occurrences took place before the killing of Yusuf Hawkins in 1989. *Do the Right Thing* was intended to show that ''Black folks are tired of being killed.'' Lee planned from the beginning to make allusions to real life incidents. Radio Raheem's death is reminiscent of Michael Stewart's, substituting Raheem's radio for Stewart's graffiti. Raheem is killed by policemen using a choke hold on him during his arrest. Mookie throws a trash can through the window of the pizzeria yelling ''Howard Beach,'' and the crowd changes this cry to ''Coward Beach'' during the riot scene. Graffiti on a building in the movie reads ''Tawana Told the Truth.''

Another Lee film, *Jungle Fever,* is dedicated to the memory of Yusuf Hawkins. It is partly about race relations with a black man and a white (Italian American) woman having an affair, and all the ramifications that come from that union.

SINCE BENSONHURST

Ten years after Yusuf Hawkins was killed, Moses Stewart and Al Sharpton went back to the place in Bensonhurst where Yusuf was shot. Stewart pointed out places along the way, places where people had spit on him, pulled their pants down at him, held up watermelons to mock him, and yelled racial epithets at him. Stewart came to lay a wreath to mark the 10th anniversary of Yusuf's death. This time, only a few people came with him, and it was a very quiet affair. Changes have occurred in the Bensonhurst neighborhood since the 1989 incident. There are fewer Italians and a greater mix of other immigrant groups such as Greeks, Chinese, and Russians. A reporter spoke to three young Russian immigrants on the street. One, Yuri Zhukov, 18, told him that the Italians in Bensonhurst do not like black people.

> And in a way it's right because most black people are in jail. Right? They're all the drug dealers and murderers. I mean, it's not like we're prejudiced, but they should stay where they live. We don't want no problems. (Barstow, 1999)

As one immigrant group gives way to another, ignorance and prejudice about black Americans is what endures in the neighborhood. Earlier the same year, 1999, Keith Mondello met with Moses Stewart and Al Sharpton to apologize for his role in killing Yusuf Hawkins. Mondello was released May 1998 after eight years in prison. Mondello also wrote a three page letter to both of Yusuf's parents asking for forgiveness. Diane Hawkins



Figure 5.1 The Reverend Al Sharpton marches in a protest through the streets of Bensonhurst in New York, 1998. About 150 protested the parole of Keith Mondello, who was involved in the murder of Yusuf Hawkins. © AP Photo/Melanie Einzig.

responded by requesting the names of the other members of the mob that killed Yusuf in 1989 (''2 Sides Meet,'' 1999).

On June 29, 2005, a group of white men attacked three black men in Howard Beach, beating one with a baseball bat and fracturing his skull. The three blacks fled into nearby swampland and through the neighborhood in an attempt to escape. One, Glenn Moore, 22, tripped over a lawn sign, and the attackers beat him with a metal bat, stole his shoes and other belongings, and ripped an earring from his ear. He was sent to the hospital with head, back, and leg injuries. Police arrested 19-year-old Nicholas Minucci and charged him with assault in the first degree as a hate crime. Two others were arrested, Anthony Ench who pled guilty to lesser charges and Frankie Agostini who was given immunity in exchange for testifying against Minucci. This incident took place just blocks from the 1986 Howard Beach killing. ''What do you think you're doing in this neighborhood?'' In an eerie echo from 1986, the question of what three black men were doing in Howard Beach was raised again, and while the answer may not have been as innocent as in 1986 (two of the men reportedly were looking for a car to steal), at the time of the attack, no crime had been committed. According to the 2000 census, of the 8,734 residents of Howard Beach, only eight are black. Residents expressed some sympathy for the victim, ''But what was he doing here at three in the morning, robbing?'' Less sympathy was expressed for the white perpetrators than in the past. New York Mayor Bloomberg immediately contacted Al Sharpton for advice as well as to assure him that racial attacks would not be tolerated. A much calmer Sharpton is



Figure 5.2 Moses Stewart, right, gives an emotional account of the death of his son, Yusuf Hawkins, during a memorial service in Harlem, New York, 1999. The service marked the 10th anniversary of Hawkins's killing at the hands of a racially motivated mob in Bensonhurst. © AP Photo/Mitch Jacobson.

now looked on as an arbiter of racial strife rather than a provocateur. Minucci was found guilty of first- and second-degree robbery as a hate crime and was given a sentence of 15 years. The incident showed a much calmer New York in terms of race relations than in the 1980s.

Conclusion

The killing of Yusuf Hawkins came at the end of a decade that saw many bias cases gain increasing publicity in New York City and elsewhere. The cumulative effect of the cases that had gone before, the treatment of this particular case with overwhelming media attention, the role of Al Sharpton, Vernon Mason, and Alton Maddox, and those running for political office who hoped to use the racial tension to win an election all created an atmosphere of greatly increased racial tensions and contributed to the creation of bias legislation in the 1990s.

Many were unhappy with the results of the Bensonhurst trials, but it would have been impossible to heal the racial tensions with any verdict. The Hawkins killing came to represent so much more than the murder of one man by another. While black Americans felt that the white mob had been let off too easily, and that racism was a major issue in the case, others felt that too many indictments had been handed down in a case that was simply a killing of one man by another. There were major differences in the debates over the case depending on where the debate took place, on the streets and in political

discussions or in court where the details and responses had to fit within those prescribed by law. Al Sharpton expressed the issues well.

> "The symbolism of the case," he said, "and the substance of the case at some time begin fighting each other because, in the end, the evidence of the case is what you have to render a verdict on, and you still have to answer what the symbolism of the case is. And I don't know if you can get a verdict that will satisfy both. I don't know if that can ever be achieved in court." (Glaberson, 1991)

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6

Dr. Death: Jack Kevorkian and the Right-to-Die Debate

GIZA RODICK

On June 4, 1990, Janet Adkins faced death in the back of an old, rusty van, parked in a public campground, some 2,000 miles away from her home. She had hit a switch at the base of an odd-looking contraption that injected a lethal dose of potassium chloride into her bloodstream. ''Have a nice trip,'' said Jack Kevorkian, as she died. He then called the police.

This was the first of 130 assisted suicides that ''Dr. Death,'' as the media quickly dubbed Kevorkian, admits to have performed between 1990 and 1998. Since the premiere performance of his suicide machine, Jack Kevorkian has been both hailed as a maverick angel of mercy and derided as a merchant of death. In one way or another, he turned up the heat on the right-to-die debate and became the effigy of euthanasia in the United States.

Through three acquittals and a mistrial, the retired pathologist seemed unstoppable in his quest to assist those who wanted to die. He was finally convicted in 1998, for his role in the death of Thomas Youk.

The Doctor

Jack Kevorkian was born in May 1928, in Pontiac—a thriving auto industry town north of Detroit, Michigan. His parents, foreign refugees, had settled in the area after escaping from the Turkish during the Armenian genocide. As a child, he was a gifted student. As a teenager, he taught himself German and Japanese—''since the country was at war, he found it prudent to know the language of the enemy'' (Nicol and Wylie, 2006, p. 48).

Growing up, one of Kevorkian's passions was baseball. When he decided he wanted to be a sports announcer, his father ''felt it was his duty to steer his son towards college and the possibility of a job where you wore a tie and ordered men...around'' (Nicol and Wylie, 2006, p. 38). Kevorkian graduated among the top ten in his high school class, and enrolled in Civil Engineering at the University of Michigan in Ann Arbor. But he

found analytical geometry to be tedious. Kevorkian soon began to set his sights on becoming a doctor. In 1952, he graduated from the University of Michigan Medical School with a specialty in pathology.

Jack Kevorkian's intellectual interest in polemic death-related issues flourished during his medical residency years. At the time, the young intern carted along the hospital wards an electrocardiogram and a small camera, which he set up beside the beds of dying patients. He used the equipment to photograph their eyes at the exact moment of their death. By recording the changes in the retinas, Kevorkian's methodology would make possible to pinpoint exactly when a person died, and potentially assist pathologists and police in solving homicides and convicting perpetrators. Besides a reputation earned among the nurses as the ''doctor of death's death rounds'' (Nicol and Wylie, 2006, p. 67), the groundbreaking character of Kevorkian's research secured him a publication in the renowned *American Journal of Pathology* in 1956; ''It was a fine feather in the cap of a 28-year-old pathologist'' (Betzold, 1993, p. 07).

A few years later, Kevorkian embraced the first cause that would bring him some notoriety and permanently attach his name to controversy. Inspired by the ancient Greeks' practice of permitting medical experiments on criminals condemned to death, he presented a paper at the annual meeting of the American Society of Criminology, held in Washington, DC. There, he proposed that death row inmates be ''allowed the choice of submitting to anesthesia and medical experimentation, as a form of execution, in lieu of conventional methods'' then in place (Kevorkian, 1960, p. 10). If the convict volunteered, irreversible surgical anesthesia would be induced at the exact time set for execution. Once the experiments were completed, an executioner would administer a lethal dose of anesthesia, bringing about a painless death. Kevorkian reasoned that the practice would serve two purposes. First, it would aid in delivering a more humane death than the means prescribed by law at the time allowed for. Second, it would fulfill the utilitarian purpose of advancing the kind of medical knowledge that can be obtained only through research performed on living bodies.

The ethical implications of Kevorkian's scheme attracted the local and national media, and the divisive publicity embarrassed the hospital board where Kevorkian was an intern. When Kevorkian returned to Ann Arbor, he was asked to drop his campaign or leave. He left. Kevorkian found a job in his hometown's General Hospital, where he soon turned to yet another sensitive research topic: blood transfusion directly from cadavers to wounded soldiers, in order to alleviate the shortage of blood supply on the battlefield. The idea came after he and a colleague had successfully transfused two pints of blood withdrawn from a dead 12-year-old boy to a 41-year-old woman who was ''anemic and needed blood transfusions to build her up for an operation'' (*Time Magazine,* 1961). The two doctors hoped the successful transfusion would help decrease society's prejudice against using dead bodies' parts and eventually even organ transplants would become ordinary.

But Jack Kevorkian was yet to champion what would perhaps be his most controversial cause, and certainly the one that made him a dark American icon: his ''new ethical practice of assisted suicide'' (Kevorkian, 1991, p. 212). Throughout the 1980s, Kevorkian increasingly became interested in helping severely ill patients die. The topic had caught his attention during his intellectually fertile years as an intern, when he came across a middle-aged woman whose body was so severely ravaged by cancer that it seemed as though she ''was pleading for help and death at the same time'' (Kevorkian, 1991,

p. 188). From that moment on, he ''was sure that doctor assisted euthanasia and suicide are and always were ethical'' (Kevorkian, 1991, p. 188).

His mother's slow and excruciating death also left an indelible mark on Kevorkian. When her cancer was determined terminal, Kevorkian constantly pleaded to her doctors to increase the dosage of morphine in an attempt to manage her pain. The doctors declined, given the potential effects that upping the dose could cause: she would be comatose most of the time and would probably develop an addiction to the drug. Jack Kevorkian was ''astonished that no one seemed to consider the possibility that surrender was sometimes the best option'' (Nicol and Wylie, 2006, p. 115).

In 1988, Kevorkian read in a local Detroit paper about David Rivlin, a 38-year-old who had been paralyzed from the neck down since a surfing accident almost 20 years earlier. A spinal operation in 1986 forced Rivlin onto a respirator, bounding him to institutional care. Rivlin wanted to be disconnected from his respirator, and thus be allowed to die. Kevorkian visited Rivlin in the nursing home. To him, disconnecting Rivlin's life support system was a cruel way to die. Kevorkian was determined to ''find a better way to help people like Rivlin carry out their own wishes'' (Nicol and Wylie, 2006, p. 143). The solution he found was to build a suicide machine.

Creating the actual device was challenging; Kevorkian searched a variety of stores, garage sales, flea markets, and his ''own accumulated pile of useless junk for several knick-knacks that could possibly be used'' to build the prototype (Kevorkian, 1991, p. 209). After two failed contraptions, the final device was complete. Kevorkian dubbed



Figure 6.1 Dr. Jack Kevorkian poses with his "suicide machine" in Michigan, 1991. Kevorkian was released from prison in 2007 after serving more than eight years of a 10- to 25-year sentence in the death of a Michigan man. © AP Photo/Richard Sheinwald, file.

it "Mercitron": the mercy machine. The equipment was a simple metallic structure from which three fluid bottles hung: one for a saline solution, one for a sedative, and a third for potassium chloride. Each bottle was directly connected to the patient through a single intravenous line. A clock motor would allow each of the solutions to flow after the patient pressed the switch. The saline was to be used to keep the vein open, while the sedative would induce the patient into unconsciousness within 20 seconds. Last, the potassium chloride would stop the heart. Death would be "fast, absolutely painless—and self-induced" (Nicol and Wylie, 2006, p. 144).

The next step was to test the machine on a live subject. Kevorkian requested permission to try the device on a stray dog scheduled to be put down at a local animal shelter. He was repeatedly turned down by the public health department, the regional Humane Society, and other agencies. "Thoroughly frustrated," Kevorkian "exclaimed that it seemed as though [he] would have to use the device first to kill a doomed human being to prove that it is safe for killing a doomed animal" (Kevorkian, 1991, p. 210). And he was willing to do just that.

In September 1989, Kevorkian submitted a request to various outlets, including local newspapers and the Oakland County Medical Society Bulletin, to advertise his Mercitron. He was persistently rebuffed. The local media, however, found the idea newsworthy, "and when a TV station found out about the matter, Kevorkian and his suicide machine flashed into the living room of Detroiters for the first time" (Betzold, 1993, pp. 36–37). Two months later, *Newsweek* picked up the story, accurately foreseeing that "tempers [would] flare" over Kevorkian's new invention (Zeman, 1989). The controversy drew attention of many, including prospective "patients" who were willing to put the Mercitron to a real test for the first time.

The First Patient

In the fall of 1989, Kevorkian received a call from a man in Portland, Oregon, who had read the *Newsweek* piece. On the phone, Ron Adkins "calmly explained the tragic situation of his beloved wife" (Kevorkian, 1991, p. 221). Janet Adkins was 54 and was now suffering the initial stages of Alzheimer's disease. Aware of the slow and progressive deterioration that the disease involves, Adkins wished to die while she was still competent and able to be in charge of her actions.

Kevorkian would not hear again from the Adkinses until the spring of 1990. After that first phone call, Janet Adkins took part in an experimental trial using a newly developed drug. The treatment did not work. Adkins's condition worsened, and she was determined to end her life. Janet and Ron Adkins contacted Kevorkian again, after watching him on the *Phil Donahue Show*. Kevorkian reviewed Adkins's clinical records and telephoned her physician in Seattle, who adamantly "opposed her planned action and the concept of assisted suicide in general" (Kevorkian, 1991, p. 222). And, although Adkins was not terminally ill, Kevorkian decided to accept her as the first candidate for his Mercitron—"a qualified, justifiable candidate if not 'ideal'" (Kevorkian, 1991, p. 222).

The Adkinses and Kevorkian agreed to meet in Michigan, where at that time there was no statutory law against assisted suicide. Logistical arrangements had to be made, such as finding a suitable site. In his *Prescription: Medicide,* Kevorkian reports having engaged in a "Herculean effort to provide [Adkins with] a desirable, clinical setting," diligently inquiring "at different motels, funeral homes, churches of various denominations, rental office

buildings, clinics, doctors' offices for lease'' (Kevorkian, 1991, p. 223). Not surprisingly, he was shunned as soon as he candidly explained his purposes. His 1968 camper was, thus, the ''only remaining alternative'' (Kevorkian, 1991, pp. 223–224).

On June 2, 1990, Janet Adkins arrived in Romulus, Michigan, accompanied by her husband and Carroll Rehmke, a close friend. The trio was met in their motel room by Kevorkian and his two sisters, Margo Janus and Flora Holzheimer, on that Saturday afternoon. For the next 45 minutes, the purposes of the trip were discussed on a videotaped interview. Kevorkian was convinced that Adkins was not irrational or depressed. He handed out authorization forms, which he had previously prepared, ''signifying Janet's intent, determination and freedom of choice'' (Brovins and Oehmke, 1993, p. 24). The group had dinner together and agreed to meet again on Monday morning.

On June 4, Holzheimer and Janus drove Janet Adkins from her motel to Groveland Oaks Park, a remote campground near Holly, Michigan. Ron Adkins and Carroll Rehmke stayed behind. Kevorkian had arrived at the site earlier to set up the suicide device. After some delay, caused by an accidental tipping of thiopental—a powerful anesthetic that would sedate Adkins—Kevorkian tested the Mercitron and proceeded to hook Adkins up to the apparatus. He ''cut small holes in her nylon stockings at the ankles, attached electrodes to her ankles and wrists and covered her body with a light blanket'' (Kevorkian, 1991, p. 230). He inserted the IV into her veins, with some difficulty. They prayed. Kevorkian turned on the electrocardiogram and said, ''Now.'' She pressed the switch and whispered, as her eyes closed, ''Thank you, thank you'' (Kevorkian, 1991, p. 230). Adkins died six minutes after she activated the Mercitron (Brovins and Oehmke, 1993, p. 33).

Legal Crusade

When news of Adkins's death broke, vigorous criticism, as well as endorsement of Kevorkian's act, quickly ensued. The episode, after all, represented a complex conundrum—moral, ethical, and legal—unlikely to go unnoticed. The way Adkins died dealt with a powerful moral dilemma, the *euthanasia* taboo.

The term, from the Greek for ''good death,'' cannot be defined simply in its modern connotation (Ducharme, 2000). Generally, it ''refers to ending an individual's life for the relief of that individual's suffering'' (Meisel and Cerminara, 2004, p. 12-6). Arguably, euthanasia may be classified as passive or active. *Passive euthanasia,* that is, forgoing life-sustaining medical treatment, either by withholding or withdrawing the treatment, does not ordinarily entail criminal or civil liability if certain procedures and standards are followed. An example is David Rivlin's request to be disconnected from the respirator that kept him alive after his unsuccessful spinal operation; the withdrawal of his treatment would hasten his death as it would have happened if the life-support system had not been put in place.

On the other hand, in *active euthanasia,* also widely referred to as *mercy killing,* an individual's conduct, such as the administration of a lethal dose of medication with the intent to bring about death, is said to be the primary cause of death. Consequently, the individual who performed the act, ''regardless of whether the purpose is part of a palliative care plan to alleviate pain or the purpose is to end life, is in theory subject to criminal liability'' for murder or negligent homicide (Meisel and Cerminara, 2004, p. 12-9).

A third end-of-life decision-making practice, outlawed in most jurisdictions, is that of *assisted suicide*. In these circumstances, like in active euthanasia, the accused person provides the "instrumentality of death" (e.g., an overdose of barbiturates). The difference is that the individual wishing to die is who, in fact, "administers it to himself," thereby retaining complete and final control over whether and when his life will be ended (Meisel and Cerminara, 2004, p. 12-12).

Six months after Adkins died, Oakland County Prosecutor Richard Thompson charged Kevorkian with first degree murder. Thompson reasoned that Kevorkian "was the primary cause of Janet Adkins' death," and could not avoid criminal culpability by the clever use of a switch (Meehan, 1990). The prosecutor was wrong; on December 14, 1990, the murder charge was dropped, as District Judge Gerald McNally pointed out that Adkins, and not Kevorkian, had activated the Mercitron. The judge ruled, at the end of a two-day preliminary hearing, that Michigan had no law against suicide or assisting in it. The judge went further, calling on the Michigan Legislature to address the issues raised by Kevorkian, by providing "direction and regulation" on assisted suicide (Irwin, 1990).

In January 1991, Oakland County Assistant Prosecutor Michael Modelski filed a civil suit to stop Kevorkian from using the Mercitron. The four-day trial heard testimony from doctors who denounced Kevorkian's practices, as well as people who praised the



Figure 6.2 Jack Kevorkian and his attorney Michael Odette walk out of the Southfield police department with one of his "euthanasia devices," which was seized from him after an assisted suicide early in 1998. © AP Photo/Richard Sheinwald.

Mercitron and were willing to use it. In an attempt to defend Kevorkian's actions as compassionate, Geoffrey Fieger, who served as Kevorkian's loyal defense attorney throughout most of his crusade, called Sherry Miller to the stand. Miller, then 42 years old, was confined to a wheelchair by multiple sclerosis, a chronic and progressive illness that affects the central nervous system, ultimately rendering a person disabled. Five years after Miller's deterioration had set in, her husband divorced her, her children left to live with their father, and she had to move into her parents' house. On the stand, she was so debilitated that she was unable to lift her hand to take the oath. Miller testified to the ravages of the disease: ''I can't function as a human being. . . .I want the right to die'' (Urofsky, 2000, p. 69). But Fieger's legal strategy was ultimately ineffective, as Judge Alice Gilbert issued an injunction against Kevorkian's using his suicide machine. Later that year, the Michigan Board of Medicine suspended Kevorkian's license.

But neither action discouraged Kevorkian. In the fall of 1991, he assisted in the suicide of two other middle-aged women from Michigan: Sherry Miller, who had testified at his civil trial, and Marjorie Wantz. Wantz, 58 years old, suffered from excruciating pain resulting from a series of gynecological operations. She had attempted to kill herself three times before she decided to resort to the Mercitron (Brovins and Oehmke, 1993, p. 64).

On October 23, 1991, Kevorkian met with Miller and Wantz for their final appointment. The night before, the three had joined Miller's family and Wantz's husband to discuss, on tape, the planned death of the two women. It was then decided that the two deaths had to happen on the same day, given the increasing pressure that resulted from Adkins's death.

Kevorkian rented a rustic cabin at the Bald Mountain State Recreation Area, near his hometown. There, Sherry Miller and two of her friends joined Marjorie Wantz and her husband, Jack Kevorkian, and his sister Margo Janus to carry out the plan. Wantz was connected to the Mercitron and died as a result of the lethal drugs. Miller was fitted with a face mask through which she inhaled a lethal dose of carbon monoxide. Since his medical license had been suspended, it had become difficult for Kevorkian to obtain the prescription drugs used in the ''mercy machine.'' Carbon monoxide was cheap, widely available, and, as Kevorkian explained, ''in light complexioned people it often produces a rosy color that makes the victim look better as a corpse'' (1991, p. 193). About 7:00 that night, Jack Kevorkian called the Oakland County Sheriff's Department to report a ''double medicide'' (Nicol and Wylie, 2006, p. 167).

Four months later, prosecutors charged Kevorkian with murder for the deaths of Miller and Wantz, but, in the absence of a state law proscribing assisted suicide, the charges were

KEVORKIAN'S PATIENTS: A BRIEF PROFILE

A study of the 69 people who died with Kevorkian's help in Oakland County between 1990 and 1998 revealed that only 25 percent of his patients were terminally ill, and five of them had no physical problems (Roscoe et al., 2000, pp. 1735–6). Women were preponderantly more likely to seek his help: 71 percent of the patients were females. Ages varied between 21 and 89 years, and the majority of the people assisted by Kevorkian either were divorced or had never been married. Reacting to the report, Geoffrey Fieger, Kevorkian's longtime attorney, said that his client did not require those he assisted to be ''terminally ill,'' but to be ''interminably suffering'' (Nano, 2000).

again dropped. In his decision, Oakland County Circuit Judge David Breck, addressing Kevorkian, suggested that he should "stop counseling chronically ill patients who want to die, until legislative action is taken, because you may force the legislature to take hasty, and perhaps improvident, action" (Brown, 1992).

In December 1992, Governor John Engler signed legislation making assisted suicide a felony in Michigan, punishable by up to four years in prison and a $2,000 fine. In doing so, the governor remarked:

> I want to sign [this bill] today as a protest to what Mr. Kevorkian has done. The methods of Mr. Jack Kevorkian, and I stress "Mr." since his license to practice medicine has been suspended, are wrong because he has deliberately flouted the law and taken it upon himself to be his own judge, jury and executioner in Michigan. (Associated Press, 1992)

It was clear that the law had been crafted in an attempt to stop Kevorkian, whose tactics were becoming increasingly bolder. Just hours before the law was signed, 70-year-old Marguerite Tate, who suffered from Lou Gehrig's disease, and Marcella Lawrence, 67, who was also acutely ill, were found dead at Tate's home, after they inhaled carbon monoxide through masks. Tate and Lawrence had attended a news conference with Kevorkian 12 days before their death, to protest the legislation. They were the seventh and eighth women to die with Kevorkian's help.

The state's ban on doctor-assisted suicide was ruled unconstitutional in May 1993, on procedural grounds, by Wayne County Circuit Judge Cynthia Stephens. Michigan Attorney General Frank Kelley appealed the ruling and asked for an emergency stay of the decision, which would allow prosecutors again to charge people with a felony for aiding a suicide. The Michigan Court of Appeals granted Kelley's request and ordered the ban to remain in effect while the issue was being reviewed. While the stay was in force, Kevorkian was charged for his role in the death of his 17th patient, Thomas Hyde.

TRIAL 1: PATIENT 17

In April 1994, Kevorkian stood trial for the first time, for his involvement in the death of Thomas Hyde. Hyde, a landscape designer and construction worker, was diagnosed with Lou Gehrig's disease at the age of 29. In less than one year after his diagnosis, Hyde's disease was declared terminal.

On June 22, 1993, Hyde sent a letter to Kevorkian. Nine days later, the retired pathologist met with Hyde and his fiancée, Heidi Fernandez, at their home in Novi, Michigan. They discussed Hyde's situation for about 30 minutes in a videotaped interview. At the end of this first consultation, Kevorkian asked Hyde to sign a request, which attested to his will to have his "intolerable and interminable pain and/or suffering . . . ended in the most human, rapid and painless manner with the help of a competent medical professional" (Kirk and Sullivan, 1996).

On August 4, 1993, Kevorkian drove Hyde to Belle Isle in his 1968 rusting van. Shortly before 8:00 a.m., he parked the camper and placed a mask over Hyde's face. He then connected it to a tank of carbon monoxide with a plastic tube. Kevorkian used a paper clip to crimp the tube and tied a string from the clip to Hyde's left hand. "Are you sure?" Kevorkian asked. The 30-year-old Hyde muttered something that sounded like "I'm fine," and pulled the string, allowing the gas to trickle through the tube. Twenty minutes later,

unable to feel Hyde's pulse, Jack Kevorkian called Heidi Fernandez. He then summoned the police and his attorney, Geoffrey Fieger, to the site.

On August 17, 1993, charges against Kevorkian were brought by Assistant Prosecutor Timothy Kenny in Wayne County for violating Michigan's ban on assisted suicide, which was then under review by the state Court of Appeals. The trial began roughly eight months later. On its surface, the case against Kevorkian was clear-cut. The day after Hyde's death, Kevorkian held a news conference, during which he described his role in terms that clearly suggested he had violated the state's legislation: "I supplied all the necessary equipment. I connected the tubing to the tank. I put the mask over Mr. Hyde's face" (Walsh, 1994a). The law clearly prohibited anyone from knowingly providing the physical means or participating in the physical act by which a suicide is carried out.

But the complexity of the issues was made clear as soon as the legal proceedings began. Kevorkian's defense hoped to put the law itself on trial with a moving portrayal of the agony Hyde endured before his death. In his search for a sympathetic jury, Geoffrey Fieger had each of the 66 prospective jurors answer a lengthy questionnaire that attempted to capture their attitudes toward suicide, abortion, religion, and politics. Nine women and three men, five of whom had medical related jobs, were to decide Kevorkian's fate.

The defense won the first trial battle when Judge Thomas Jackson allowed the videotaped interview of Hyde to be shown to the jurors. Asked by Kevorkian about what he wanted, Hyde, who could barely speak due to his helpless condition, took almost a minute to utter the words, "I want to end this. I want to die" (Walsh, 1994a). The defense argued that death was the only way to end the suffering of patients like Hyde. Fieger began his case by calling to the stand Dr. Harold Klawans, a prominent neurologist from Chicago. The witness testified to the ravages of Lou Gehrig's disease, its poor prognosis, and the impossibility of even relieving its victims' discomfort. "Was there any other way to end his suffering?" the defense asked. "Not to my knowledge, no," the doctor replied, adding that Mr. Hyde was likely to have eventually choked to death on his own saliva (Associated Press, 1994).

The next witness called by Fieger was Kevorkian himself. He testified for three hours, challenging the facts as presented by the prosecution and claiming that Hyde had, in fact, died in an alley near his apartment, in Royal Oak, Oakland County, and then had been transported to Belle Isle, in Wayne County. The location was relevant, given that on the first day of the trial the defense had moved, unsuccessfully, to have the charges dismissed on a technicality: the death had supposedly happened in a county other than the one specified in the charges. Judge Jackson instructed the jurors that if they could not find beyond a reasonable doubt that the death had occurred in Wayne County, they would have to acquit Kevorkian. The jurors were not convinced, as it seemed more plausible that the landscape designer would have chosen to die in Belle Isle—a scenic park—instead of a dark alley. When asked by his attorney whether his intent was to cause death, Kevorkian compared his action to that of a surgeon who amputates the leg of a patient with cancer: "the purpose is to stop the cancer, not cut off the leg" (Prodis, 1994). The defense hoped to show that a loophole in the state law allowed doctors to prescribe medication to relieve suffering, even if its effect is to hasten death.

During cross-examination, assistant prosecutor Timothy Kenny tried to get Kevorkian to admit that he knew the carbon monoxide would cause Hyde's death. Kevorkian insisted, "I had a fairly good idea that he would die, but my expectation was that his suffering would end" (Margolick, 1994). Kenny then asked whether Kevorkian was aware of

the assisted suicide law and asked him whether he believed in the rule of law. ''I was aware of it before it passed,'' Kevorkian replied. ''Laws like that have been passed throughout history, mainly in the dark ages. . . . When your conscience says that law is immoral, you don't follow the law. That's what Gandhi said, too. And Gandhi got what I'm getting'' (Prodis, 1994).

The trial lasted roughly two weeks. On May 2, 1993, the jury, after deliberating for nearly eight hours over three days, acquitted Jack Kevorkian. Later that day, a few of the jurors ratified the defense's argument, pointing out that ''a key element in the . . . verdict was their conclusion that Kevorkian had acted to ease the suffering of 30-year-old Thomas Hyde and not necessarily to help him end his life'' (Walsh, 1994b).

Trials 2 and 3: Patients 19, 20, 2, and 3

Legal Background

The constitutionality of the state's ban on assisted suicide, under which Kevorkian had been tried for his role in Hyde's death, was under review by the Michigan Court of Appeals until its ruling only a few days after Kevorkian's acquittal. On May 10, 1994, Michigan's law against assisting in a suicide was invalidated on technical grounds by a three-judge panel (*Hobbins v. Attorney General*). In the decision, the court reasoned that the statute, in criminalizing assisted suicide while also creating a study commission, violated the State Constitution's prohibition against achieving more than one purpose in a single piece of legislation.

But the celebration by Kevorkian and his supporters was short-lived. In a separate decision issued on the same day (*People v. Kevorkian,* 1994a), the state Court of Appeals concluded that the lower court had erred in dismissing the murder charges against Kevorkian for the deaths of Sherry Miller and Marjorie Wantz, the second and third women to die in Kevorkian's presence. In a 2-1 ruling, the Court held that, even absent a specific statutory prohibition of assisted suicide, ''aiding a suicide falls within the common-law definition of murder'' (*People v. Kevorkian,* 1994a, p. 186).

Although the *crime of murder* has been classified and categorized by the Michigan Legislature, the *definition of murder* has been left to the common law. Under the common law, ''a murder conviction may be based on merely providing the means by which another commits suicide'' (*People v. Kevorkian,* 1994b, p. 488). The Court of Appeals reached its decision by relying mainly on a 1920 case, *People v. Roberts.* Roberts's wife was gravely ill and in great pain. She had attempted suicide previously, and now, acutely debilitated, she requested her husband to leave a glass of poison by her bedside. He agreed. She drank the mixture and died. Because Roberts deliberately provided his wife with the means through which she took her life, which she could have obtained in no other way by reason of her helpless condition, the court found that what Roberts did was murder under the common-law definition. To the court, Kevorkian's Mercitron and carbonic gas canisters were analogous to Robert's glass of poison.

The rulings were appealed, and in December of the same year, the Michigan Supreme Court upheld the constitutionality of the state's ban on assisted suicide, but rejected the definition of murder, as established in *Roberts.* The Court reasoned that ''only where there is probable cause to believe that death was the direct and natural result of a defendant's act'' can a person properly be charged with murder (*People v. Kevorkian,* 1994b, p. 494). However, ''where a defendant merely is involved in the events leading up to death, such

as providing the means, the proper charge is assisting in a suicide'' (*People v. Kevorkian,* 1994b, p. 445). The Court proceeded to explain that someone could be prosecuted for assisted suicide even without the Legislature enacting its ban in 1993. As ''its own species of crime,'' assisted suicide could be prosecuted as a common-law felony, punishable by up to five years in prison and a $10,000 fine (*People v. Kevorkian,* 1994b, p. 495).

On December 27, 1995, Oakland County Circuit Judge David Breck dismissed the murder charges against Kevorkian in the deaths of Sherry Miller and Marjorie Wantz, and then ordered him to face trial for assisting in their suicide, in accordance with the state's Supreme Court decision. Kevorkian's trial was set for April 1996.

In Court

Just a few weeks earlier, an Oakland County jury had again deliberated on Jack Kevorkian's assistance in the suicides of Merian Frederick and Dr. Ali Khalili—Kevorkian's 19th and 20th patients. There was little disagreement about the facts of these cases; both Frederick and Khalili were found in Kevorkian's apartment, in Royal Oak, Michigan. Each time, the police were called to the apartment and arrived to find Kevorkian standing by.

Frederick, a 72-year-old homemaker from Ann Arbor, was diagnosed with Lou Gehrig's disease a few years earlier. Although still lucid, her muscles had degenerated to the point that she could no longer speak, hold her head up, or use her computerized communication system. On October 22, 1993, she was driven to Kevorkian's apartment by her son and her pastor, and died there after inhaling carbon monoxide. A month later, Dr. Ali Khalili, 61, died in the same apartment, in the same manner. Dr. Khalili, a rehabilitation and pain-management specialist from Chicago, was diagnosed with bone cancer four years earlier. During his procedural videotaped interview, Kevorkian asked Khalili why he did not simply commit suicide on his own, since he could have easily prescribed the necessary drugs. ''Well, yeah, that's a good question,'' Dr. Khalili replied; ''Maybe I prefer that it be done by a professional person with the least chance of failure'' (*The New York Times,* 1996a).

On February 20, 1996, Kevorkian's trial for aiding in Khalili's and Frederick's suicides began. This time, he was being prosecuted under the state ban on assisted suicide, which was still in effect when the two died. Although the cases were again factually clear-cut, getting a conviction would once more prove to be a difficult task for the prosecution. John Skrzynski, the lead prosecutor, tried to characterize Kevorkian as a renegade scientist with a ghoulish agenda. Kevorkian, again on the stand, insisted that his aims were to ease pain and suffering, not to hasten death. In his closing arguments, Geoffrey Fieger urged the jury ''not to make a crime out of kindness and compassion'' (Associated Press, 1996). On March 8, 1996, after deliberating for eight and a half hours, the jury acquitted Kevorkian. Spectators in the courtroom of Judge Jessica Cooper broke into applause when the verdicts were read by the jury foreman, a United Methodist bishop.

Kevorkian was back in the courtroom two months later to be tried for his assistance in Sherry Miller and Marjorie Wantz's suicides. Geoffrey Fieger protested the 1994 Michigan Supreme Court decision, which provided the basis for his client's prosecution in these cases, characterizing it as ''medieval'' (*The New York Times,* 1996b). Kevorkian also expressed his contempt for the proceedings: on the first day of the trial, he wore colonial costume—tights, a white powdered wig, and big buckle shoes—as an objection for being tried under centuries-old common law. Perhaps the protests were justified. According to Robert Sedler, a professor of constitutional law at Wayne State University in Detroit, there

DID YOU KNOW?

LEGAL EFFORTS TO DECRIMINALIZE EUTHANASIA

Oregon is the only state in the United States that allows physician-assisted suicide, and it does so under stringent circumstances, limiting it to terminally ill patients who must sign at least three consent forms before lethal medications can be prescribed. The practice was legalized in November 1997, when Oregon voters approved the *Death with Dignity Act* for the second time. The *Act* was a citizen's initiative first passed by Oregon's voters in November 1994, with 51 percent in favor. Its implementation was delayed by a legal injunction, lifted by the 9th Circuit Court of Appeals on October 27, 1997. In November of that year, a measure asking Oregon voters to repeal the *Act* was placed on the general election ballot. No such attempt to overturn the will of the voters had been tried in Oregon since 1908. Voters rejected the measure by a margin of 60 percent to 40 percent, thus retaining Oregon's *Act*. As revealed in the *Eighth Annual Report on the Death with Dignity Act,* 39 physicians wrote a total of 64 prescriptions for lethal doses of medication in 2005; 38 patients died following ingestion of medications prescribed under provisions of the *Act*. The number of terminally ill patients using physician-assisted suicide has remained small, with about 1 in 800 deaths among Oregonians in 2005 resulting from legally prescribed lethal dosages (Niemeyer et al., 2006, p. 04).

In 2000, the Bush administration ''mounted an effort to block Oregon's doctors from prescribing lethal medications that were 'controlled substances' under federal law'' (Irons, 2006, p. 507). Attorney General John Ashcroft sued the state seeking to revoke the licenses of physicians who used these drugs to assist their patients' suicides. The case made its way to the U.S. Supreme Court, and, in 2006, the court upheld Oregon's law.

Voters in other states have also pondered the issue. In the November 1998 elections, voters in Michigan defeated a ballot measure to legalize doctor-assisted suicide by 70 percent. The initiative, which mirrored many of Oregon's aspects, would have superseded the state law banning assisted suicide, ultimately allowing doctors to prescribe lethal doses of medication on request from terminally ill patients. Jack Kevorkian publicly opposed the initiative, which he perceived as ''too restrictive'' (Wire Reports, 1998). Similar ballot measures were also defeated in Washington (1991), California (1992), and Maine (2000). Physician-assisted suicide has been legal in the Netherlands since 2001, and in Belgium since 2002. In Switzerland, euthanasia is outlawed, but ''altruistic assisted suicide by non-physicians is legal'' (Hurst and Mauron, 2003, p. 273).

had been no other common-law felony prosecution in Michigan in the twentieth century (Lessenberry, 1996).

The trial proceeded in a bitter and emotionally charged atmosphere. The videotaped interviews of Wantz and Miller were shown to the jurors, who had been previously instructed that the prosecution only needed to prove that Kevorkian knew that the person intended to commit suicide, that he provided the means by which the person killed herself and that he intended that such means be used to commit the suicide. Kevorkian then took

the stand, defiantly asserting that it was his duty, as a doctor, to ease the pain of the two Michigan women. Next, Sharon Welsh, Miller's lifelong friend, testified.

The prosecutor maintained an aggressive line of questioning, trying, unsuccessfully, to get her to say she knew that Kevorkian intended to illegally assist in a suicide. For the third time, a jury refused to convict Kevorkian. After the verdict, some of the jurors asked Kevorkian for his autograph (*St. Louis Post-Dispatch,* 1996).

TRIAL 4: PATIENT 45

By the summer of 1996, Jack Kevorkian had been present at 44 suicides. By then, state prosecutors had become reluctant even to bring charges against him, suggesting that further prosecutions would be a waste of their time and taxpayers' money (Filene, 1998, p. 191; Whiting, 2002, p. 33). In September, police raided a hotel room in a suburb of Detroit where Kevorkian was meeting with another prospective patient and confiscated various items, including a videotape that showed Kevorkian interviewing Loretta Peabody, a 54-year-old woman with advanced multiple sclerosis. Peabody had died a few days earlier at her home in Ionia, a rural area about 100 miles west of Detroit. At first, her death appeared to have happened naturally. The death certificate, signed by her family physician, listed her disease as the cause. No autopsy had been conducted, and her body had been cremated.

Ionia County Prosecutor Raymond Voet convened a grand jury, which indicted Kevorkian for assisting in Peabody's suicide and administering drugs without a medical license. As the proceedings began, public support for Kevorkian dwindled. Members of ''Not Dead Yet,'' a group of disabled opponents of euthanasia, protested outside the courthouse. ''Kevorkian is a crip-killer,'' said one of their posters (Christy, 1997, p. 19).[1]

The trial started without Kevorkian, whose request to be absent had been granted by Ionia Circuit Court Judge Charles Miel. In his opening statement, Geoffrey Fieger accused the prosecutor of harassing witnesses and altering evidence. He mentioned repeatedly that Kevorkian had been acquitted three times before, and he criticized the common law under which his client was charged. Arguing that Fieger's was ''the most outrageous, illegal opening statement [he'd] seen in [his] life,'' Voet requested a mistrial, which was granted by Judge Miel (Associated Press, 1997). On August 2, 1997, Voet dropped the case.

Kevorkian's pace accelerated in the subsequent years. As his number of ''patients'' rapidly rose, concentrated efforts to stop him were put in practice. On Friday, March 13, 1998, Kevorkian reached the 100 milestone; Waldo Herman, a 66-year-old man with lung cancer, died at his home in Kevorkian's presence. Herman's assisted suicide came only one day after the Michigan Legislature proposed another bill targeting Kevorkian.

In the summer of 1998, Kevorkian's utilitarian utopia had come full circle. Consistent with his rationale behind the idea of having doomed criminals volunteer for scientific experimentation, Kevorkian now had turned to organ retrieval as another practical choice in planned death. He thus harvested the kidneys of a man who committed suicide with his help, and offered them for transplant. The move stirred public, ethical, and legal outrage. The medical community denounced the practice. David Gorcyca, Oakland County Prosecutor, stated the possibility of charging Kevorkian with mutilation of a corpse, a felony in Michigan.

Concomitantly, Kevorkian's legal luck was rapidly waning. On November 4, 1998, he was convicted on two misdemeanor charges for a confrontation with police after he

dropped off a body at a hospital. He was fined $700. The verdict came one day after Geoffrey Fieger lost his Democratic bid for Michigan governor and voters rejected a measure that would have made Michigan the second state with legalized physician-assisted suicide.

TRIAL 5: WHO'S COUNTING?

After the misdemeanor convictions, Jack Kevorkian radicalized his agenda even further, as he pushed his eight-year campaign to legalize assisted suicide onto a whole new legal ground. Up until that moment, Kevorkian had ingeniously found a way to remain dissociated from the concrete act causing the death of his patients. That was the Mercitron's function: to provide the means for the patients' personal, private exercise of self-determination. Throughout every trial, Kevorkian had repeatedly claimed that his only purpose was to relieve pain and suffering, not to cause death.

But, near the end of 1998, Jack Kevorkian changed his modus operandi. On November 22, roughly 22 million people watched him insert a needle into Thomas Youk's right arm, thereby administering a fatal dose of potassium chloride to the 52-year-old man who suffered from Lou Gehrig's disease. Kevorkian had videotaped the procedure, and released the tape to CBS's *60 Minutes*. Calling for a ''showdown,'' Kevorkian demanded: ''I want to be prosecuted for euthanasia. I am going to prove that this is not a crime, ever, regardless of what words are written on paper'' (Belluck, 1998). His request was instantly fulfilled, as Oakland County Prosecutor David Gorcyca filed three charges against Kevorkian: deliverance of a controlled substance, violation of Michigan's assisted suicide law, and murder.

The choice of charging Jack Kevorkian with murder was a bold legal gamble made by the Oakland County prosecutors. In Michigan, when a person is charged with first-degree murder, the judge is mandated to instruct the jury that it can consider second-degree murder. In Kevorkian's fifth trial, Judge Jessica Cooper, at the prosecutors' request, advised the jury that it could even consider involuntary manslaughter. The ultimate goal appeared to be to stop Jack Kevorkian by any legal means, as jurors might be willing to convict him for a lesser charge.

Moreover, the murder charges entailed two other advantageous strategies for the prosecutors. If charged with a violation of the assisted suicide law, as in the past, Kevorkian would once more be allowed to present testimony about his role in ending people's pain and suffering. Thus, testimony by Youk's brother and wife, who were supportive of Kevorkian's act, would likely appeal to jurors' sympathy, perhaps as effectively as in Kevorkian's previous trials. In a murder trial, Judge Cooper ruled, such testimony would be inadmissible. Gorcyca then dropped the assisted suicide charge, and later explained his decision by pointing out that ''to overcome that kind of emotional testimony at a trial is almost impossible'' (Belluck, 1999a). Second, in a murder case, whether the person consented to being killed is legally irrelevant. Hence, the jurors were not to consider, in their decision, the fact that Youk had actually asked for Kevorkian's aid, which potentially upped the chances of getting a conviction.

The trial began in March 1999 and lasted less than a week. In what later proved to be a miscalculated move, Kevorkian fired his longtime defense attorney, Geoffrey Fieger, and chose to represent himself. In his 15-minutes-long opening statement, Kevorkian compared himself to an executioner or a soldier, and said that what he did to end the life of Thomas Youk was ''another form of excusable homicide'' (Walsh, 1999). To the

prosecutor, Kevorkian was more "like a medical hit man in the night with a bag of poison" (Tait, 1999). During the strikingly short trial, Kevorkian called no witnesses, presented no evidence, and fumbled most of his legal tactics. He often tried to compensate for his lack of legal skills by appealing to the jurors' emotions, arguing a defense of euthanasia, and trying to convince the jury that the state's law prohibiting assisted suicide was unjust. In his closing argument, he allegorically likened his crusade to cases in which unfair laws were ultimately changed, and invoked the civil rights struggle of Rosa Parks and Martin Luther King. The prosecutor used historical images of his own, alluding to the Nazi claims that the killing of Jews and other minorities was a form of euthanasia.

In the end, it was a different, perhaps more literal image that seemed to be most eloquent: the *60 Minutes* tape. After deliberating for 13 hours, seven women and five men found Kevorkian guilty of second-degree murder. Commenting on the decision, one juror told reporters that he perceived Kevorkian to be telling the jury: "Here's the tape. Now make a decision as to whether assisted suicide is going to go on . . . What it came down to was the evidence proved itself" (Belluck, 1999b).

Judge Jessica Cooper allowed Kevorkian to remain free until his scheduled sentencing, despite prosecutors' remarks that Kevorkian previously had assisted in ending patients' lives while awaiting trial on assisted suicide charges. On April 13, 1999, 70-year-old Jack Kevorkian was sentenced to 10 to 25 years in prison. In her statement, Judge Cooper explained that the trial had not been about the political or moral correctness of euthanasia. Addressing Kevorkian, the judge added: "You had the audacity to go on national television, show the world what you did and dare the legal system to stop you. Well, sir, consider yourself stopped" (Associated Press, 1999).

In November 2001, the Michigan Court of Appeals affirmed Kevorkian's murder conviction. A few months later, the state's Supreme Court refused in a 6-1 decision to hear Kevorkian's request for a new trial.

JACK KEVORKIAN IN CONTEXT: LEGAL AND HISTORICAL LANDSCAPES

As bioethicist Arthur Caplan suggested, Jack Kevorkian "will be remembered as the central figure who made America grapple with the question of assisted suicide and not allow them to turn away" (Kirk and Sullivan, 1996). But perhaps the central aspect of the debate is the body of legal cases decided prior to and around the time of Kevorkian's actions, which discussed issues ranging from a person's wish to refuse life-sustaining treatment or to have those treatments withdrawn, to the quandary of medical assistance for terminally ill patients willing to end insufferable lives.

This series of decisions, nonetheless, were not produced in a sociohistorical vacuum, as concerns about the issue had flourished decades earlier. In the 1930s, groups in England and in the United States had promoted legalization of euthanasia, in its active and passive forms. After World War II, though, and the disclosure of the Nazi extermination policy, "the word 'euthanasia' had only one meaning: extermination of innocent people" (Filene, 1998, p. 185).

In the late 1960s, the debate was revived, following a revolutionary milestone in medical and legal history: the new definition of "brain death" by an ad hoc committee of the Harvard Medical School. In the following decades, a succession of legal measures and judicial decisions sealed the importance of the topic, as it delineated the boundaries of a "right-to-die."

The notion of a ''right-to-die'' first burst into national prominence in 1976, when, in a unanimous decision, the New Jersey Supreme Court permitted the parents of Karen Ann Quinlan, a 22-year-old who had been comatose for months, to have her respirator removed. In *Quinlan,* the state court, basing its decision upon common-law rulings against unwanted touching and on the recently enunciated right to privacy as expressed in *Griswold v. Connecticut* (1965), declared that no ''interest of the state could compel Karen to endure the unendurable, only to vegetate a few measurable months'' (*In re Quinlan,* 1976, p. 39). Later that year, California passed the first right-to-die law in the United States, allowing for terminally ill patients to direct their doctors to withdraw or withhold treatments that served only to postpone death. Eventually, all 50 states enacted legislation regularizing the procedure and allowing the existence of either a living will or the patient's clearly established wishes to be determinative. Through the 1980s, the conflict persisted, finding its way to state courts, ultimately achieving higher instances and drawing sparse public attention, as was the case most notably in California, Massachusetts, and New Jersey. And, by 1994, approximately 100 right-to-die cases had entered state courts and 80 percent of all superior state court rulings had cited *Quinlan* as a legal precedent (Gailey, 2003, p. 53).

The U.S. Supreme Court's justices first dealt with the right-to-die issue in 1990, in a case from Missouri, virtually identical to *Quinlan.* Nancy Cruzan was 25 years old when she was injured in an automobile accident and left in a persistent vegetative state. After four years in that condition, her parents requested the doctors to remove her life-sustaining feeding tube. The doctors refused, citing a Missouri law that required ''clear and convincing'' evidence that a person in a situation such as Cruzan's would have wanted to be taken off life support. The high burden prescribed by the Missourian law was denounced by legal experts and bioethicists, who argued it made it practically impossible for incompetent persons to have their life support ended.

Nancy Cruzan's parents sued the hospital and the Missouri Department of Health, offering as evidence a statement their daughter had made to a friend that ''she would not wish to continue her life unless she could live at least halfway normally'' (Irons, 1999, p. 503). The trial court ruled in their favor, but the decision was later reversed by the state's high court, which held that the friend's account did not meet the state's ''clear and convincing'' standard. The case was ultimately heard by the Supreme Court and, in *Cruzan v. Director, Missouri Department of Health,* the Court held that a competent person has a constitutionally protected right to refuse lifesaving hydration and nutrition. But the Court ruled that this right was balanced by the state's interest in preserving life, and Missouri's evidentiary rule was not an undue burden on such right. Nancy Cruzan's case was remanded, and after three more of Nancy's acquaintances came forward with statements that she would not want to be kept alive by respirator or force-feeding, a judge allowed the removal of her life support. She died 12 days later.

A month after *Cruzan's* ruling, the Patient Self-Determination Act was introduced in Congress, which would require hospitals to inform patients about their right to make advance directives. A month before the landmark decision, Jack Kevorkian had been present at the suicide of his first patient. Though technically dissimilar, these events illustrate in some measure society's anxieties and confusions about modern dying that were incipient in the 1980s and patently erupted in the 1990s. For example, the 1980s and early 1990s saw a sharp increase in suicide rates among Americans over the age of 65, as well as among young men infected with HIV (Filene, 1998, p. 187). Furthermore, by the mid-

1990s, the Hemlock Society, a right-to-die organization, had over 55,000 members. Janet Adkins—the first patient to use the Mercitron—was one of them. Its founder's suicide manual, *Final Exit: The Practicalities of Self-Deliverance and Assisted Suicide,* had made *The New York Times'* best-sellers list, and remained there for 18 weeks. Among the readers was Marjorie Wantz—also one of Kevorkian's patients.

Concurrently, discussions about providing compassionate death were burgeoning in public medical forums as well. The reputable *Journal of the American Medical Association* published, in 1988, an account written by an anonymous gynecologist who administered a fatal dose of morphine to a terminally ill patient. That same year, another highly regarded periodical, the *New England Journal of Medicine* (*NEJM*), published a statement by ten doctors from leading medical schools and hospitals defending assisted suicide of terminally ill patients. At least indirectly, Jack Kevorkian enjoyed some validation by the medical community. A 1995 poll of Michigan doctors found 56 percent in favor of legalizing assisted suicide (Filene, 1998, p. 195). *NEJM*'s executive editor, Dr. Marcia Angell, commenting on Kevorkian's role in Adkins's suicide, pointed out that, although it has ''its bizarre aspects,'' Kevorkian's act ''underscored a very real problem, that we now have technical capacity to maintain life past where it has any meaning or pleasure for the person living it'' (Lewin, 1990).

Doctors', patients', and families' resolutions to this ''very real problem'' quite often involved physicians tacitly honoring the requests of their acutely ill patients. Long before Kevorkian's Mercitron was used, doctors were prescribing drugs to hopelessly ill patients, perhaps, as historian Peter Filene gracefully put it, ''with a pointed comment that more than so-and-so-many at a time would be fatal'' (1998, p. 193). The fact is that Jack Kevorkian's assisted suicides were novel only in their style: they were brazen, highly publicized, and crudely engineered. This combination warranted him a merciless treatment by the media, particularly in the first three years of his crusade. Kevorkian was the target of scathing character assaults, often portrayed as ''a lonely monster,'' a ''mad scientist,'' ''a walking advertisement for designer death'' (Gailey, 2003, pp. 91–92). As *Herald Sun's* reporter Michelangelo Rucci noted, Kevorkian's ''warped character'' made him ''the ideal guest on a television show'' (1991). And that helped him use the media as the main venue —an undeniably powerful one—to publicize his cause.

In a stark contrast was the media's depiction—and wide acceptance by the bioethics community—of another physician, Dr. Timothy Quill, an internist in Rochester, New York. Quill, like Kevorkian, publicly discussed his role in assisting a patient, ''Diane'' (a pseudonym), to commit suicide. But, unlike Kevorkian, he did so in a different forum, the prestigious *New England Journal of Medicine* (*NEJM*). Also differently from Kevorkian, who barely knew his patients, Quill had been Diane's physician for several years prior to her leukemia diagnosis. Finally, Diane, unlike many of Kevorkian's patients, was terminally ill. After an arduous investigation of death records, Monroe County officials were able to find a case that matched the doctor's description. New York, as several other states, by then had a ban on physician-assisted suicide. Criminal charges were brought against Quill, but a grand jury refused to indict him.

In 1994, three years after the publication of his revealing article, Quill and other doctors launched a legal attack against the ban under which local prosecutors had tried to indict him. On the West Coast, a similar battle was being fought by Dr. Harold Glucksberg, who, also joined by other physicians, three gravely ill patients, and a nonprofit right-to-die organization called *Compassion in Dying,* challenged the constitutionality of

a Washington statute that made assisting in one's suicide a felony, punishable with a harsh prison sentence and a heavy fine. The two cases eventually were decided in the physicians' favor by the Ninth and Second Court of Appeals, and ultimately made their way up to the U.S. Supreme Court.

Simply put, Quill and others argued that it was unreasonable to allow physicians to invite death by withdrawing life-sustaining treatment, while proscribing more active means. In legal terms, they claimed that the ban violated the 14th Amendment's Equal Protection Clause, in that it was a discrimination against dying patients that a few could decide to die by having a respirator or a feeding tube removed, while others, who were terminally ill but not dependent on life support, could not. Glucksberg et al.'s claims were tripartite: the patients argued that they had a constitutionally protected liberty interest under the 14th Amendment's Due Process Clause to secure physician assistance for suicide without undue governmental interference; the doctors claimed that the Equal Protection Clause safeguarded their right to practice medicine in accordance with their best professional judgment; and the right-to-die activists claimed that terminally ill patients had a right to receive assistance from organizations such as *Compassion In Dying.*

On June 26, 1997, a few days after Kevorkian's fourth trial was invalidated, the U.S. Supreme Court handed down a decision in the companion cases of *Washington v. Glucksberg* and *Vacco v. Quill,* ruling that there is no constitutional right to assisted suicide, and that neither ban violated the Due Process Clause. The court maintained that all competent persons have a right to refuse lifesaving treatments, but that this right is not the same as suicide—a distinction long recognized by both the medical and the legal professions. The court reasoned that there is a difference between *letting* a patient die, that is allowing nature to take its course, and *making* that patient die. But the ruling did not mean a permanent closure of the issues, as the court noted that the discussion should be held in a different forum, that is, ''the arena of public debate and legislative action'' (*Washington v. Glucksberg,* 1997, p. 720). The decision, then, handed the dilemma back to the states, and, as Chief Justice William Rehnquist noted in the principal opinion, ''Throughout the nation, Americans are engaged in an earnest and profound debate about the morality, legality and practicality of physician-assisted suicide. Our holding permits this debate to continue as it should in a democratic society'' (*Washington v. Glucksberg,* 1997, p. 735).

Central to such debate are the notions that end-of-life decisions such as physician-assisted suicide (and, to a lesser degree, living wills and advance directives) allow for a final exercise of autonomy, a death with dignity, and maintenance of a life with ''quality'' until the very end. Those opposing the practice point out that, as a matter of public policy, doctor-assisted suicide may be accompanied by serious social risks, as cost-driven decisions can push caregivers into encouraging patients to choose death. There is also a concern that a few groups of people, such as middle-aged women, may be more likely to seek physicians' assistance.

In one way or another, the debate is likely to continue, as signaled by the intense media coverage of the sad case of Terri Schiavo, a 41-year-old brain-damaged woman from Florida. Schiavo became the latest centerpiece of a national right-to-die battle, as her parents fought to keep her connected to a feeding tube, despite various court rulings that she would have wished otherwise. In his first full interview since his conviction, Jack Kevorkian told reporter Rita Cosby that he would have considered Schiavo as a potential patient (MSNBC Interactive, 2005). Kevorkian was released from prison in 2007, and is in ill health. The former pathologist has a serious case of hepatitis C, contracted during his

experiments with blood transfusions from cadavers. *You Don't Know Jack,* a film about Kevorkian's life, will be released in 2007. Ironically, movie actor Ben Kingsley, best known for his awarded role as Gandhi, will play Dr. Death.

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NOTE

1. Activist groups such as the "Not Dead Yet" often referred to Kevorkian as "Just A Crip Killer" (JACK). The acronym was used to highlight the potential slippery slope aspect of legalizing euthanasia. One of the arguments put forth by opponents of euthanasia and/or physician-assisted suicide in general and by disabled activists in particular is that implicit in such practices is the acceptance that certain lives are simply not worth living. Although this attitude may, in early stages, concern itself only with the severely and/or terminally ill, anti-euthanasia advocates argue that this category may gradually be enlarged to encompass the socially unproductive, the racially or ethnically unwanted, the physically or mentally disabled, and so on. In Kevorkian's case, as the first sidebar, "Kevorkian's Patients: A Brief Profile," shows, the majority of his patients indeed were not terminally ill.

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7

Tailhook: How the Media Helped Sink the "Mother of All Hooks"[1]

HOLLY WELKER

The 35th Annual Tailhook Symposium started out like it had every other year: dinners, sporting events, educational panels, and an awards presentation. The planned functions were followed by the renowned parties, which involved heavy drinking and sexually promiscuous behavior. As in previous years, high ranking officials celebrated alongside officers, and, if not participating in the sexual assaults and property damage, they had knowledge of such happenings. Although the ''Symposium's Reputation'' was well known, only minimal steps were taken by the Navy to curb the destructive behaviors that occurred at the Tailhook conventions. This changed dramatically in 1991 when a female officer's complaints led to the Naval Investigative Service's (NIS) and the Navy Inspector General's investigation. The initial investigation yielded little information and response as only one high ranking officer was relieved of his command. Many, including the officer who had initiated the complaint, concluded that the response was an attempt to sweep the scandal under the rug so she went to the media with her story. The Navy thus turned the investigation over to the Department of Defense Inspector General. This investigation led to resignations and discipline by the Navy, but there were never any convictions. The Tailhook investigations were much more important in that they directly intersected society's large discussions about sexual harassment and women in the workplace.

Tailhook 1991

Since the mid-1980s, the stories of heavy drinking, sexual activities, and misconduct occurring at the annual Tailhook Symposium had been spreading to more naval officials, members of the government, and the public. While the convention offered a myriad of events, the parties were the most popular attractions. Over 5,000 people, 4,000 of them naval officers, took part in the three-day Tailhook Symposium, which was held at the Las Vegas Hilton Hotel from September 5 to 7, 1991 (PBS, 1996). Those in attendance

THE TAILHOOK ASSOCIATION

The Tailhook Association is a private, nonprofit organization whose members are active and retired Navy and Marine Corps aviators and defense contractors. Named after the hooks on Navy planes that catch on aircraft carrier cables in order to stop, the Tailhook conventions started as a reunion in 1956. The annual conventions developed into a forum on sea-based aviation and had a great deal of support from the Navy. The Navy provided the association with free office space, organized the annual convention events and speakers, and provided transportation for many attendees. The Tailhook Association suffered criticism, lost a lawsuit to a victim, and settled out of court with four other victims, but has managed to stay alive. The association continues its annual meetings, publishes a journal, *The Hook,* and has restored its ties to the Navy. As recently as 2002, the Tailhook Association referred to the events of Tailhook 91 as ''alleged misconduct,'' and asserted that the investigations resulted in unjust consequences for officers (Lewis, 2002).

included active duty and reserve Navy and Marine Corps aviation officers, retired officers, civilian employees, defense contractors, and members of the general public. One of the major topics discussed during the convention was the role of women in the armed forces. The push for equal opportunity and the large number of women deployed in the recent Persian Gulf War had many believing the Navy, as well as other branches of the armed forces, was close to allowing women to participate in combat (McMichael, 1997). This was not welcomed by most of the men at the Tailhook Association or in the armed forces. The Navy also saw the 1991 convention as an avenue for rebuilding their reputation. In 1989, the explosion aboard the *USS Iowa,* which killed several naval officers, and the problematic investigation that followed brought negative attention to the Navy. In 1990, there had been reports of naval officials covering up the sexual assaults of female cadets in hazing rituals and civilians at the Naval Academy in Annapolis, Maryland.

THE PARTIES

The president of the Tailhook Association in 1991 was Captain Frederick Ludwig. Because of a stream of allegations of sexual assault and misconduct, Captain Ludwig attempted to prevent such misconduct from occurring at the 1991 convention. Captain Ludwig sent a letter to all Tailhook Association members outlining what behaviors were inappropriate, and he set up round-the-clock security teams (Vistica, 1997). The security teams were mainly composed of hotel security, although there were some Tailhook Association members.

The Tailhook Association reserved hospitality suites for Navy and Marine squadrons, which is where most of the socializing occurred during the convention (Office of the Inspector General, 1993). Most of the parties, and the sexual and behavioral misconduct, occurred on the third floor of the hotel where there were 17 Navy squadron suites, 4 Marine Corps suites, and 1 suite of a deactivated Marine Corps squadron (Office of the Inspector General, 1993). It was typical that the alcohol consumption would start in the afternoon and continue until early the next morning. There were civilians, particularly women, who would come to the convention just for the parties. The squadrons paid for

THE *U.S.S IOWA*

In April 1989, the *U.S.S. Iowa* was participating in an exercise in the Caribbean. The first guns fired without a problem, but the second guns fired and immediately there was an explosion on the ship. The ship lost 47 crewmen in the explosion, and NIS immediately opened an investigation. A month into the investigation, information came to light that led the Navy to publicly blame the explosion on one sailor, Clayton Hartwig. Hartwig was alleged to be involved in a homosexual affair with another sailor, Kendall Truitt, and as a result of Truitt ending the relationship, Hartwig constructed a detonator and caused the explosion on the ship. Truitt has adamantly denied a romantic relationship with Hartwig, claiming they were just friends. The Navy's blame of the explosion on Hartwig was strongly questioned and disputed as an attempt for the Navy to cover up for itself. On the day of the explosion, the *U.S.S. Iowa* was not working with a full or well-trained crew. Crew members had complained about problems with the guns and with leaks and loose gun powder on the ship that could cause a fire. Congress forced the Navy to reopen the investigation in 1991, and it was concluded that Hartwig, who was a last minute addition to the crew that day, had not caused the explosion. The Navy publicly apologized to the Hartwig family for their mistake. During this time, the Navy was also dealing with the scandal of female hazing at the Annapolis Naval Academy. In December 1989, student Gwen Dreyer was physically taken from her room by two male midshipmen and handcuffed to a urinal. Men exposed themselves, acted like they were going to urinate on her, and photographed the incident. Dreyer was released and informed her father, a Navy reservist, who demanded the Navy take action. Two of the midshipmen received demerits, and the others were given written warnings. When Dreyer's father demanded more, Admiral Joseph Prueher threatened to go public with the pictures of his daughter chained to the urinal. Months later, Dreyer's father was approached by the media and told the story of his daughter's assault and Prueher's actions. During this time a midshipman at the academy raped a civilian on the academy grounds, and it was discovered that students had broken into an office and stolen an exam. The Navy admonished Prueher and ordered him to take a strong stance against sexual harassment at the academy.

the rooms and the alcohol, but the Tailhook Association was responsible for any damages to the hotel. Squadrons were responsible for how the suites would be utilized during the convention. Suites were used for meetings, socializing, recruitment, and entertainment.

There were many traditions for the parties, and the 1991 convention was no exception; by some officers' reports this convention was "tamer" in comparison to previous years (Office of the Inspector General, 1993). The Rhino Room was one of the convention's famed traditions. A squadron had on display a large paper mache rhinoceros with a large penis that dispensed alcohol. Most officers reported it was voluntary for women to drink from the rhinoceros, but some women reported being physically restrained and verbally harassed for refusing to drink (PBS, 1996). The "Fightertown" suite had the reputation for flaunting women wearing minimum clothing, showing pornographic movies, hiring strippers, and allowing revelers to slurp alcohol from their navels. Another tradition was

the leg shaving suite. Two officers would shave a woman's legs and sometimes pubic areas. Many of the other suites provided alcohol, hired strippers, participated in exhibitionist acts, and had consensual sex acts occurring. Many people admitted the parties got rowdier each night, and by the last evening of the convention waitresses were refusing to work in the suites because of the sexual harassment and sexual assaults they had experienced (PBS, 1996).

The third floor is also where the infamous Gauntlet took place. The Gauntlet would occur at about 10:30 p.m. every evening of the convention (PBS, 1996). The Gauntlet consisted of about 200 men who would line the hallway of the third floor hospitality suites and would fondle, grab, pinch, and otherwise sexually touch women who walked through the hallway. Both the NIS and the Office of the Inspector General's investigations determined many women would voluntarily walk The Gauntlet, laughing, smiling, and walking the hallway several times a night (Office of the Inspector General, 1993), but several women claimed they were forced into The Gauntlet. These women reported they were not only groped but also bitten, and had their clothing forcibly removed. Women reported asking the men to stop, and asking for help and being ignored by officers and security team members (Office of the Inspector General, 1993).

At the end of the convention, property damage for the third floor of the hotel totaled $23,000 (Office of the Inspector General, 1993). It is estimated well over $33,500 was spent on alcohol (Office of the Inspector General, 1993). The security teams also responded to several fights between officers, incidents of vandalism, and the glass window of an upper floor room being pushed out by people pressing their bare buttocks against the glass and causing the glass to fall onto the head of a woman below. Security teams and officers reported finding women half-dressed, intoxicated, semiconscious, and crying in hallways and outside of the hotel (Office of the Inspector General, 1993; McMichael, 1997; Vistica, 1997). Security officers reported three separate incidents of sexual assault, but did not pursue any of them per the women's request or because the women could not or would not identify their attackers (Office of the Inspector General, 1993). On Sunday morning, Lieutenant Paula Coughlin would make the first official report of sexual assault.

LIEUTENANT PAULA COUGHLIN

Paula Coughlin entered the Navy in 1984, and finished at the top of her helicopter class in 1987 (Vistica, 1997). Coughlin was ambitious—she wanted a career in the Navy and started to rise in the ranks by becoming an aide to the rear admiral at Pax River, Maryland. She traveled to the 1991 Tailhook Symposium with her boss, Rear Admiral Jack Snyder. Coughlin had been to Tailhook conventions before, and was aware of the heavy drinking and sexual behaviors that commonly occurred. On the last night of the conference, September 7, Coughlin entered the third floor of the Las Vegas Hilton Hotel. Coughlin was searching for a friend as she walked down the crowded hallway when she was bumped by a large man. She began to hear shouts of ''Admiral's aide,'' and men started to try and pull off her clothes and grope her entire body (Jolidon, 1992). Coughlin fought back, screaming at her attackers and attempting to escape, and even biting one man. Coughlin feared she would be gang-raped (Vistica, 1997). Coughlin saw a captain and asked him for help, but he just grabbed her breasts. Coughlin finally escaped and found her friend. They returned to the hallway, but Coughlin was disoriented and unable to identify anyone (Vistica, 1997).

The next morning, Coughlin had breakfast with her boss, Rear Admiral Jack Snyder. Coughlin informed Admiral Snyder of what had happened to her the night before, and he stated he would write a letter to his supervisor and highest-ranking naval aviator, Vice Admiral Richard Dunleavy, and would call the president of the Tailhook Association, Captain Ludwig (McMichael, 1997). When after a few weeks Coughlin realized Admiral Snyder had not done anything, she thought Snyder was blowing her off so she wrote a letter herself to Vice Admiral Dunleavy (McMichael, 1997). Snyder does not recall Coughlin telling him about her assault, but after hearing about it a few weeks later from the grapevine he talked to Coughlin and hand-delivered a letter from her and himself to Vice Admiral Dunleavy (McMichael, 1997).

Although her allegations opened the investigations, many questioned her behavior at the convention. Many officers interviewed placed Coughlin not only at the parties, but consensually participating in drinking and having her legs shaved. One of the officers eventually charged would claim he shaved Coughlin's legs two nights in a row at the 1991 convention. Coughlin was unable to name her attackers, but looked through photographs in an attempt to discover who had assaulted her. Coughlin identified a man through photographs as one of her attackers, but it later turned out he was not even at the convention. Coughlin identified another Marine, Captain Gregory Bonam, who would later face a court-martial for assaulting her.

The Investigation

On October 11, 1991, the same day the Naval Investigative Services (NIS) opened their investigation into Lieutenant Coughlin's allegations of sexual assault at the 1991 Tailhook Symposium, all of the Tailhook suite commanders received a letter from Captain Ludwig (McMichael, 1997). The letter started out on a positive note, how the 1991 convention had indeed been the "Mother of all Hooks," in terms of attendance and participation (PBS, 1996). Captain Ludwig went on to say he was upset by some of the behaviors exhibited by officers at the convention. He discussed the amount of property damaged, the five reports he had received from women who were verbally and physically abused and sexually molested, and his concerns about the Gauntlet (McMichael, 1997).

At the end of October 1991, almost no progress had been made into the Tailhook investigation. Lieutenant Coughlin's allegations were not considered serious and not a priority for NIS (Vistica, 1997). Word of Coughlin's allegations and details of the Tailhook 1991 convention parties about to be exposed in the media is what spurred action from the Navy. On the same day the *Union Tribune* broke the story, the Secretary of the Navy, H.L. Garrett changed the course of the Tailhook investigation. After Senator John McCain's comments about the allegations and the Navy's lack of response, Garrett announced NIS agents would begin a vigorous investigation into the sexual abuse allegations and the Navy Inspector General (Navy-IG) would investigate noncriminal activities that were Navy violations (Vistica, 1997). Garrett also issued a letter to Captain Ludwig cutting any and all of the Navy's ties to the Tailhook Association. Interviews took place over a four month period, ending with a 2,000 page report on the investigation being released at the end of April 1992.

One of the first people interviewed was Lieutenant Coughlin's supervisor, whom she claimed she revealed her sexual assault to the morning after it occurred. Admiral Snyder was interviewed by Vice Admiral Jeremy Boorda concerning what he knew, when he knew

it, and what he had done about it. On November 4, 1991, Admiral Snyder was relieved of his command due to his slow reaction to Coughlin's allegations. This was the only interview that had immediate consequences.

The Navy's internal investigation was problematic for several reasons. First, the NIS and the Navy-IG were not collaborating in their investigations. The Navy-IG's recommendation for a broad investigation into Tailhook and the Navy was rejected, and Navy-IG investigators had to go through NIS to gain permission for interviews of some officers (McMichael, 1997). The goal of the investigation was to find out who had assaulted Lieutenant Coughlin, not discover all of what had transpired at the convention. Second, the officers being interviewed were not cooperating with the investigation. Squadrons were closing ranks and refused to talk to investigators and denying they had seen any misconduct occur at the convention. Some officers would admit that misconduct occurred but would claim it was all consensual or that there were very few nonconsensual acts. A third problem with the investigation was the limited amount of time and resources put into the investigation. There was only one Navy-IG attorney working on the investigation, and the agents were told they had to turn in their reports by the end of March 1992, regardless of whether or not they had completed all of their interviews and followed up on leads. A final problem with the investigation was that many high ranking officers who had attended the convention or were identified at being at the parties by other officers were not interviewed about their involvement and/or knowledge about the misconduct and sexual activities. Through other interviews, it had come to light that the Secretary of the Navy, H.L. Garrett, had been in the Rhino Room at the 1991 convention. Investigators decided not to interview Garrett and did not include the interviews that placed Garrett at the parties in the report (Officer of the Inspector General, 1993).

Approximately 1,500 Marine Corps and Navy officers were interviewed in an investigation that cost over $1 million (Vistica, 1997). There were 26 female victims identified, but only two suspects and not much evidence (Vistica, 1997). Both Congress and the press were outraged by the lack of information in the report and what appeared as a Navy cover-up of the events at Tailhook 1991. Many wanted further investigation into the matter, but the Navy chose only to reexamine the interviews for more suspects and have the Department of Defense Inspector General (DOD-IG) investigate the interviews missing from the report. The Navy's review of the interviews determined there were 383 cases of officers who had violated military code either by their inappropriate behavior at the Tailhook convention or their lack of cooperation with the investigation. The Navy referred 70 officers to their command admirals with instructions for the admirals to determine the appropriate disciplinary action for each officer (Vistica, 1997). As more of the investigation's failings came to light, the Navy attempted to increase the number of disciplinary cases. Seventy people, almost all junior officers, were recommended for discipline for either misconduct or obstruction of the investigation (Vistica, 1997). With threats by Congress to begin independent hearings into the matter, the Navy turned the Tailhook investigation over to the DOD-IG in June 1992. By the end of June 1992, Navy Secretary H.L. Garrett would be forced to resign. Shortly after that, Vice Admiral Dunleavy, who had received the letters from Coughlin and Snyder about the misconduct at Tailhook, was reduced in rank, and he resigned from the Navy.

In September 1992, the DOD-IG released an initial report stating the Navy's internal investigation had the appearance of a cover-up because of the majority of officers' denial of misconduct occurring or refusal to be specific in what occurred at the convention in

1991. The report also laid the blame for the inadequate investigations on the senior officers in charge of the investigation (Office of the Inspector General, 1992). The report also stated the Navy had intentionally chosen not to interview senior officers about their participation in inappropriate behaviors at Tailhook 1991. After the release of this report, the new Navy Secretary, Sean O'Keefe, publicly criticized the three senior officers who were in charge of the Navy's internal investigation (Healy, 1992). Two of the admirals resigned and the other admiral was reassigned.

In April 1993, the DOD-IG released the second part of their investigation. The investigation included: interviewing 2,900 officers and civilians who had been at the convention, collecting photographs to be used for identification of assailants by victims and witnesses and as evidence of the events of the convention, polygraph testing, obtaining subpoenas, operating undercover, tape recording conversations, giving immunity to officers in order to gain their information on other officers, participating in searches and surveillance, and protecting confidential informants (Office of the Inspector General, 1993). The investigation uncovered sexual assaults as well as the consensual sexual activities that had been occurring at the Tailhook conventions since the late 1980s. The initial interview reports had less than 100 officers to be charged, so the DOD-IG went back through the interviews to find more officers to charge before issuing their report. The DOD-IG report identified 83 women and 7 men who had been assaulted while at the 1991 convention. It should be noted that 5 of the women identified, while admitting to being touched or groped, denied they were victims (Kammer, 1994). The male victims were all naval officers. The majority of female victims were civilians, but over 20 of the victims were officers; the rest of the victims were wives of officers and government officials. The assaults included verbal abuse, pinching and biting the buttocks, sexual groping, and forcefully removing clothes. Some of the victims reported they had been sexually assaulted in previous years at Tailhook, while others stated they had no idea what would happen to them when they entered the third floor.

Discipline and Punishment

The report identified 140 suspects, all but three were males, who were referred back to the Navy for disciplinary action for sexual assault, indecent exposure, conduct unbecoming of an officer, and lying under oath (PBS, 1996). The Pentagon received referrals on 119 Navy officers and 21 Marine Corps officers (PBS, 1996). After more than $3 million was spent on investigations, not a single case went to trial. Most of the Marine Corps officers either had their cases dismissed due to lack of evidence or were cleared of the charges against them. The officers who were punished were not court-martialed, but were punished by the Marine Corps with fines and varying degrees of sanctions on their careers. Half of the Navy officers' cases were also dismissed due to lack of evidence. There were about 40 officers who agreed to face charges before the admiral's mast, an internal, nonjudicial hearing where the officers were cleared of the charges or were punished to varying degrees with verbal admonishments, monetary fines, and/or the addition of letters about the incident to their personnel files, which affected their careers in the Navy (Donnelly, 1994). All of the cases that went to mast were for inappropriate conduct at the convention and obstruction of the investigation; there was no punishment of officers charged with sexual assaults. Two of the three female Navy officers, who were referred for participating in leg shaving, had their charges dropped. The third female officer, Ensign Elizabeth Warnick, had initially told investigators she was gang-raped, but later admitted to making up the story in order

MAST HEARINGS

''Mast'' is the name given to the naval hearings for nonjudicial punishment of disciplinary offenses. Each branch of the United States military has procedures for nonjudicial punishment, and each branch has different names for the hearings. In the Navy, mast may also be referred to by the commanding officer's rank, captain's or admiral's mast. Mast hearings are not trials, but proceedings where the officer is informed of charges against him and evidence and witnesses are presented to prove the charges. The officer is informed of his or her rights and may also call witnesses and present evidence in his or her own defense. At the conclusion of mast, the commanding officer may dismiss the charges or impose a range of punishments. Nonjudicial punishments include: verbal and/or written admonishment, loss of wages, reduction in rank, restriction to base or ship, restriction of activities on base or ship, extra duties, and correctional custody (Navy, 2007). An officer may refuse mast, thereby requesting a court-martial. Officers who are on assignment may not challenge mast but, like all officers, may appeal their nonjudicial punishment.

to hide that she had allowed men to take body shots out of her navel and had participated in sex with two male officers at the convention (Donnelly, 1994). The charges against Warnick were not pursued, and the Navy punished her with only a verbal admonishment.

Five officers refused to go to the mast and were court-martialed; three of them were charged with assault while the others faced noncriminal charges. One of the officers eventually accepted an admiral's mast hearing and was given a monetary fine; the other four had the charges against them dropped. The defense offered up by the officers is that they had seen their superior officers at the parties and even if they were not participating, they knew of the consensual behavior and assaults that occurred. The most highly publicized case was that of Marine Captain Gregory Bonam, whom Coughlin had picked out of a photographed lineup as one of the men who assaulted her. The charges against him were dropped because of lack of evidence, but his career was damaged.

All of the charges surrounding the Tailhook scandal had been dealt with in some way by February 1994. The Navy judge, William T. Vest Jr., who dropped the charges against the four court-martialed officers, stated it had become clear that the Chief of Navy Operations, Admiral Frank Kelso II, had witnessed the parties and inappropriate behavior occurring at the convention and had not intervened. Not only that, Vest Jr. stated he believed Kelso had manipulated the investigation and the disciplinary process in order to keep his involvement and knowledge of the incidents hidden (Lacayo, 1994). The Navy Judge also felt other high-ranking officials were to blame for not intervening at the convention and for not supporting the investigations into the allegations.

High ranking officers who were not charged, but were implicated through interviews that revealed their presence in suites, their knowledge of inappropriate behavior, and their action or inaction following the convention, received the following punishments: letters of censure, unofficial letters of admonishment, and either loss of rank or holds on promotions. Admiral Kelso announced his early retirement in April 1992, stating he hoped it would put an end to the Tailhook scandal (Vistica, 1997). By that time, 14 admirals and over 300 Navy aviators had their careers affected by the scandal (PBS, 1996).

There are many opinions as to why the investigation led to few charges and no convictions. The initial internal investigation by the Navy yielded little information and delayed a proper investigation. The DOD-IG's investigation, while more thorough, did not result

in any substantial evidence. DOD-IG investigators made several errors: they used inappropriate tactics to pressure officers into talking to them, they did not read officers the Miranda warning prior to the interviews, and they gave numerous officers immunity in order to get their information on other officers (McMichael, 1997). A deputy inspector general for the Pentagon who was in charge of the DOD-IG investigation, Derek Vander Schaaf, lays most of the blame at the officers who he believes refused to disclose information they knew (Lacoyo, 1994). Victims' being unable to identify who assaulted them was also a problem in the investigation.

Impact of the Media

No one, not even the Navy, denies the impact the media had on the Tailhook scandal. The media's discovery of the allegations of assault and misconduct is what pushed the Navy into making the initial investigation a priority. Reporters were quick to find problems with the Navy's investigations and were instrumental in the Navy's decision to allow an outside investigation by the DOD-IG. The Navy was continually concerned about information being leaked to the press and how the Navy was being presented in the press. The demands for information led the Navy to an unprecedented event, the publishing of a book (Violanti, 1996). *The Tailhook Report: The Official Inquiry into the Events of Tailhook '91* did not include the names of the accused or the victims, but did include the events that took place at the convention in great detail. The media coverage of the Tailhook scandal began in late 1991 and continued steadily into the mid-1990s, with hundreds of stories appearing in newspapers, in magazines, and on television.



Figure 7.1 Paula Coughlin speaks with the press outside the courtroom after winning her case for sexual harassment, 1994. © J. Gurzinski/Corbis Sygma.

The Tailhook scandal was leaked to the press on October 25, 1991, by a Navy captain who was a confidential source to Gregory Vistica, a reporter with the *San Diego-Union Tribune* (Vistica, 1997). The source provided Vistica with enough information for him to begin his own investigation. Within three days, Vistica had identified two civilian victims, had spoken to Lieutenant Paula Coughlin, and had a copy of Captain Ludwig's letter admitting to the Gauntlet, sexual assaults, and inappropriate behaviors that had occurred at the annual convention. Lieutenant Coughlin initially did not want to be identified, but agreed to tell Vistica about her assault in the Gauntlet; however, she insisted on remaining anonymous (Vistica, 1997). Vistica's first story on the Tailhook scandal hit the newsstands on October 29, 1991. Senator John McCain read the story and presented the information, as well as his demand for an investigation, to the Senate the same day.

There was a media frenzy when the Navy Inspector General's report was released at the end of April 1992. The report had no suspects and a small number of victims. The press believed the Navy was attempting to cover up the scandal and protect their officers. Reporters discovered there were several pages missing from the report and, most importantly, the pages missing were the ones placing Navy Secretary Garrett in the suites at the convention. Garrett had denied attending any parties or witnessing any inappropriate behavior, and the Navy had stood behind him in their comments to the press (Vistica, 1997). In an attempt to minimize the appearance of a Navy cover-up, a story was leaked to the press with Garrett admitting to being in a suite, but he continued to deny he saw any wrongdoing. When the press released this story in June 1992 along with the information about the pages missing from the report, the Navy was once again forced to make a move by turning the investigation of the scandal over to the Department of Defense Inspector General. The Navy's missteps during the internal investigation had both Congress and the press demanding an outside agency investigate not only the events of Tailhook but also the initial investigation into it to determine if the Navy was trying to protect high ranking officers and the Navy itself from responsibility. Even with their acquiescence to an outside investigation, things would get worse for the Navy.

On June 25, 1992, frustrated with the lack of progress in the investigation, Lieutenant Paula Coughlin went public with her assault. That morning her story and picture were in *The Washington Post* and that evening she appeared on ABC's *World News Tonight.* Coughlin went on to give other interviews, and the press would label her the whistleblower of the scandal even though it was Captain Ludwig's letter to suite commanders about the Gauntlet and the sexual assaults that had occurred at Tailhook 1991 that was the first real evidence given to the press. In the two months prior to Coughlin coming forward, there were 176 stories on Tailhook in the Nexis news archive; in the two months after Coughlin began giving interviews there were 995 stories on Tailhook (Hanson, 2002). Coughlin put a face to the Tailhook scandal, and the increased media coverage put even more pressure on the Navy to find out what had happened and why.

Once the DOD-IG's report was released and allegations of Coughlin's participation in drinking and leg shaving at Tailhook came to light, Coughlin was criticized by some media outlets. Navy aviators spread rumors about Coughlin's sexual promiscuity and her participation in activities at Tailhook. Coughlin admitted to having a married officer spend the night in her room at Tailhook, but claimed there was no relationship (Vistica, 1997). Reports of Coughlin voluntarily having her legs shaved two nights in a row at the convention and her signing the shirt of the officer who shaved her legs with: ''You made me see God. The Paulster.'' led some to doubt her credibility and her claims of being

victimized. In addition, this led to questions as to why she was not charged for inappropriate conduct while the man who shaved her legs was (Donnelly, 1993; Grace 2002). Even with Coughlin's admitted reputation for partying, she remained a victim and hero in most of the media outlets. Coughlin was applauded for her bravery and was named one of the People of the Year by *New Woman* magazine and one of *Glamour* magazine's Women of the Year in 1992. In 1995, Coughlin's story was depicted in the made-for-television movie, *She Stood Alone: The Tailhook Scandal.*

Many see the media as one of the chief factors in spurring the investigations into the Tailhook scandal and, consequently, the Navy's and other armed forces' changes in policy and procedure. Some criticize the media's attention of Tailhook because it, along with the media attention of other sex scandals, receives much more attention than the positive impact and events that women in the military experience (Gibbons, 2004). The focus of new stories was the sex, not the strides women were making in the armed forces. This allowed for stories stating women did not belong in combat or the armed forces because of the problems their existence was causing. News stories on the victims have been criticized for reinforcing the sexist stereotypes women are already suffering from by repeatedly labeling them as victims and how they need rescued (Hanson, 2002). News stories have also been criticized for portraying the male officers as victims (Kasinsky, 1998). Many articles discussed the ruined careers of male officers who were identified as suspects, but never charged. The Navy was seen as overreacting to incident and trying to placate feminists and Congress (Donnelly, 1994).

The media coverage of Tailhook, while questioning the actions of the Navy, was not objective. According to a study that examined over 600 stories on Tailhook from mainstream newspapers that were printed between 1991 and 1995, over 90 percent of the stories came from official government sources, and only when the victims contacted the press to have their stories told did the media report from their perspective (Kasinsky, 1998). Negative attention has also been given to the official reports on the Tailhook scandal. The Navy's publication of their investigations has seemingly stated that sexual harassment and assault will not be tolerated, but has undercut their own message. Referrals to the Navy as "he" many times, the statement of a senior officer saying Coughlin provoked her sexual assault by using the word "fuck," referring to some women as "sluts" and "whore," blaming the victims and women at the convention because they consumed alcohol or participated in some of the parties, and minimizing the role of male officers as spectators send the message the Navy is not taking a zero tolerance stand on sexual harassment (Violanti, 1996).

AFTER THE SCANDAL

In February 1994, Coughlin announced she would be resigning from the Navy, stating it was a result of both her assault at the 1991 Tailhook Symposium and the psychological abuse she suffered since by fellow officers (Marshall, 1994). In early September 1994, Coughlin's lawsuit against the Tailhook Association was settled out of court for $400,000 (McMichael, 1997). Coughlin also filed a lawsuit against the Las Vegas Hilton and the Hilton Corporation. The case went to trial and Hilton attempted to put Coughlin and her alleged participation in events at the convention on trial. The jury felt the hotel had provided insufficient security for such a large convention (Holden, 1994). After some appeals, she was eventually awarded $5.2 million dollars in damages. The Tailhook

Association and Hilton were sued by eight other women, and settled out of court. The scandal would have long-term effects for all of those involved and the armed services.

Tailhook not only ended the careers of many Navy and Marine Corps officers, but it is also blamed for the Chief of Naval Operations suicide in 1996. Admiral Jeremy Mike Boorda had been an investigator for the Navy's internal investigation into Tailhook. He replaced Admiral Kelso and was charged with rebuilding the Navy's reputation. Boorda faced many obstacles to this charge: new charges of sexual harassment, cheating and drug use at the Annapolis Naval Academy, and other Navy officers' upset at Boorda's denial of support for a promotion of an admiral who had failed to reinstate a female who had filed sexual harassment charges and was dismissed from flight school (Zoglin, 1996). Boorda was upset that the Tailhook scandal was frequently cited in the press, and when reporters asked to interview him about two of his medals that did not appear to have been earned, Boorda shot himself. The officers who remained in the Navy and Marine Corps faced obstacles in their military careers.

A consequence for all Navy and Marine Corps officers who attended the 1991 Tailhook Symposium was Tailhook Certification. Every time an officer was nominated for a promotion, a letter with the DOD-IG's information on the officer's Tailhook activities was added to his or her file, and it was reviewed. In the five years following the conference, eight naval officers were denied promotion based on their involvement at Tailhook 1991 (Eisman, 1996). In 1996, the Senate agreed to modify the Tailhook Certification by reviewing officers only at their first promotion nomination. After the officers have passed this initial review, they would no longer be held up in future promotions.

Tailhook not only affected the Navy and Marine Corps officers who were involved in the investigation and charges after Tailhook 1991, but it had far-reaching effects in the Navy and other branches of the armed forces. The Navy established services for sexual assault victims and mandatory sexual harassment training for all officers and enlistees. On a larger scale, the military has strengthened their sexual harassment policies and implemented educational programs to reduce unplanned pregnancies and sexual assaults. Also, the Department of Veterans Affairs provides treatment for victims of sexual trauma (Department of Defense, 2003).

The military began to examine the role of females in combat and to open positions to female officers that had previously been open only to male officers. It was thought Tailhook would be the final push needed for women to be allowed in combat, but women were not assigned to combat squads in the Navy until 1994 (PBS, 1996). Other branches of the armed services have also allowed women to participate in direct combat, but women are still banned from some special forces and cannot serve on submarines. While the role of women in the armed forces has expanded, their victimization has not diminished. In 1994, the Government Accounting Office found over half of the women in the Naval Academy, half the women in the Air Force Academy, and 76 percent of the women in the U.S. Military Academy were facing recurring sexual harassment (Francke, 1997). A survey of officers in 1996 found that over half of the female officers in each branch of the armed forces had experienced sexual harassment within the past year (McMichael, 1997).

While these scandals have been dealt with more effectively, in a manner more open with the public and with better investigations, there are still problems with incidents rarely leading to court-martials, female officers rarely being pursued for their offenses, and

the arbitrary enforcement of adultery violations (O'Neill, 1998). Female officers face many barriers in the procedure for alleging harassment or assault, and many women fear the ramifications to their relationships with their fellow officers and their military careers (Department of Defense, 2003). In 1994, four female officers testified to the U.S. House of Representatives about the negative consequences of their filing reports of sexual harassment. The women discussed how they were investigated by the military instead of their accusers, their experiences of being treated poorly after they made allegations, and how their allegations negatively affected their military careers (Schmitt, 1994). Most agree with Secretary of the Navy Sean O'Keefe's assertion that Tailhook and other incidents of sexual harassment and assault are the outcome of a military culture. This culture appears to be based in machismo and sexism. Others see Tailhook as a result of the men's fear at realizing their culture was going to be changed by the ever increasing number of women in the armed forces and their expanding participation in combat (Zimmerman, 1995).

The Tailhook Association canceled the 1992 convention, but restarted the conventions in 1993. For the first few years, the conventions were small, but Tailhook was eventually able to regain corporate sponsorship and increase the number of attendees. In 1999 the Navy reported they were willing to consider restoring their support of Tailhook. The Navy sent three officials to the 1999 convention, and after the successful convention the Navy declared it would be resuming their support of the annual Tailhook conventions in 2000. The first year of the Navy's support of Tailhook a couple who were at the same hotel where the annual Tailhook Symposium was taking place alleged they were verbally harassed and the woman was inappropriately touched by naval officers. The Navy immediately launched an investigation, which was ended shortly afterwards once the couple refused to sign a complaint after security video of the alleged incident was found and there was no evidence to support the allegation. This convention was the first convention post-Tailhook where the Navy was once again supporting the convention.

The Tailhook scandal took place over 15 years ago, and while the key people involved are no longer in the public eye, whenever there are discussions of women in the armed forces, Tailhook is mentioned. Other sex scandals have occurred in all branches of the armed forces, yet few have led to criminal convictions. It seems that while the culture has been identified as the source of sexual harassment and sexual assault in the military, the steps taken have failed to stop the problem.

There are numerous articles, books, and other forms of media on the Tailhook scandal. Gregory Vistica, who was the first person to report on the Tailhook Scandal, wrote *Fall from Glory: The Men Who Sank the Navy*. While this book includes other scandals and problems the Navy has suffered, much of the book is about Tailhook and provides detail into the Navy's actions, media coverage of the scandal, and information from the numerous interviews with key people involved in the Tailhook scandal. William McMichael's book, *The Mother of All Hooks: The Story of the U.S. Navy's Tailhook Scandal,* offers readers insight from officers at the Tailhook convention and those involved in the investigations. The Office of the Inspector General's book on the report, *The Tailhook report: The official inquiry into the events of Tailhook '91*, provides the methods of the investigation, the events of Tailhook 1991 in great detail, and some insight into what led to the events at the convention and problems with the investigations.

SUGGESTIONS FOR FURTHER READING

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NOTE

1. The phrase "Mother of all Hooks" was used by Captain Frederick Ludwig, President of the Tailhook Association, in his letter to Navy aviation squadron leaders as a follow-up to the 1991 convention. The letter can be found at http://www.pbs.org/wgbh/pages/frontline/shows/navy/tailhook/letter2.html

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8

The Rodney King Beating Trial: A Landmark for Reform

SHELLEY L. SCHLIEF

A fire needs oxygen. . .From the very beginning, the oxygen that has given life to the Rodney King story is television.

—J. Alter (1992, p. 43)

On March 4, 1991, at 10:15 p.m., a local Los Angeles television station, KTLA, aired a 68 second video clip known commonly as the ''Holliday videotape,'' named after the maker of the video, George Holliday. The videotape showed a black man, Rodney Glenn King, being beaten by four white Los Angeles police officers. Because KTLA had an affiliation agreement with CNN, the video was shown simultaneously at 1:15 a.m. at CNN's Atlanta headquarters. Shortly after viewing the video, CNN producers obtained a microwave feed of the KTLA tape and began airing it in the early morning hours of March 5, 1991. By Wednesday, March 6, the video became the focus of Los Angeles media and received more attention than the just-ended Persian Gulf War (Cannon, 1997, pp. 22–23). Additionally, CNN gave the video national and international exposure; CNN aired the story everywhere it was syndicated. The Holliday videotape, in a very short period of time, had made Rodney King a household name around the world.

The media exposure that the Holliday videotape received was the sole driving force behind the investigation and trials that would follow. Had there been no video, this probably would have been just another quiet, unreported incident of police misconduct. Instead, the beating of King would prove to be the most shocking footage of police brutality ever seen on television. In addition, the video would provide the evidence needed to incite investigations of police brutality across the United States, as police chiefs in at least ten other police departments recognized that excessive force was pervasive across the country (Independent Commission on the Los Angeles Police Department, 1991). Hence,

the videotaped beating of King was a landmark in the history of law enforcement, and the basis for police reform across the nation.

THE INCIDENT

On the evening of March 2, 1991, King and two of his friends, Bryant "Pooh" Allen and Freddie Helms, sat in King's wife's car in Altadena County, California, and drank 40-ounce bottles of Olde English 800 (Skolnick and Fyfe, 1994). After a few hours, with King driving, they left Altadena County on Interstate 210, also known as the Foothill Freeway. King was intoxicated and also on parole from a two-year prison term for robbery.

At 12:30 a.m., a husband-and-wife team of the California Highway Patrol (CHP), Troopers Timothy and Melanie Singer, observed King's 1988 white, two-door Hyundai driving behind them at a high speed. The Singers exited Interstate 210 at the Sunland Boulevard off-ramp, and they returned to the freeway behind King's Hyundai. Melanie Singer, who was driving, observed King's car speed to be between 110 and 115 miles per hour. The troopers initiated a traffic stop on the freeway with red lights and sirens, and they ordered King to pull over through a loudspeaker. King ignored the warnings and continued off an exit ramp. Timothy Singer radioed for help. A car from the Los Angeles Unified School District (LAUSD) was the first to aid the troopers by joining the pursuit. Units from the Los Angeles Police Department (LAPD) also joined the chase (one operated by Laurence Powell and Timothy Wind), as well as an LAPD helicopter. King continued to drive recklessly for about eight miles, reaching up to 85 miles per hour on residential streets and running a red light, in which he nearly caused an accident. Shortly after, King came to a stop in front of the Hansen Dam Park, at the intersection of Osborne Street and Foothill Boulevard.

Timothy Singer ordered the occupants to exit out of the vehicle and to lie facedown on the ground, with their legs spread and arms behind their backs. Allen and Helms complied, but King remained in the car. Timothy Singer quickly handcuffed Allen and Helms; both offered no resistance. He then continued to order King out of the car until King finally exited. Two more LAPD cars arrived, one with Officers Theodore Briseno and Roland Solano, the other with Sergeant Stacey Koon. After King exited, Melanie Singer described him as smiling and watched him wave to the helicopter overhead. Timothy Singer ordered King to show his hands and back away from the car. King moved away from the car and put his hands on his buttocks, causing Melanie Singer and the other officers to suspect he was going for a gun. Instead, Melanie Singer testified that "he grabbed his right buttock with his right hand and he shook it at me" (Alter and Palumbo, 1992). Singer drew her weapon and directed King to move his hands away from his buttocks and lie down. King complied, and she moved toward him with her gun drawn in an attempt to handcuff him. When she was within five or six feet of King, Koon ordered her to stop and that he would handle the situation. Koon feared that, by moving toward him, she increased the likelihood that shots would be fired: "She was going to shoot Rodney King or he was going to take her gun away and shoot her" (Koon and Deitz, 1992, p. 34).

Sergeant Koon and the other LAPD officers involved took notice of King's erratic behavior, which included dancing around, talking gibberish, and swaying back and forth. Additionally, King was glistening with sweat and it was a cool night, leading the officers to believe that King was drunk and "dusted" or under the influence of PCP (Koon and Deitz,

1992). Any individual suspected of using PCP is feared by the police because of its effects of making a person impervious to pain and giving them superhuman strength. Koon also observed that King was ''buffed out,'' with a large muscular upper body. He concluded that King was probably an ex-convict who had developed his muscles working out with prison weights.

Koon ordered King to lie flat on the ground with his hands behind his back. King got on his hands and knees, but he did not lie down. Koon ordered the officers watching King—Powell, Wind, Briseno, and Solano—to holster their weapons, and surround King in order to ''swarm'' him. Swarming the suspect is a level 3 on the LAPD use of force chart, and this is the first level in which there is contact with the suspect. Swarming is taking the suspect to the ground (Koon and Deitz, 1992). Powell and Briseno grabbed King's arms, while Wind and Solano took his legs. Powell placed his knee into King's back as he attempted to handcuff his left wrist. Then, in a swift motion, King threw his arms out, and Powell and Briseno flew off King. Because of the strength King exhibited, which provided further evidence of the possibility of King on PCP, Koon ordered Wind and Solano to step back. Koon continued to shout at King to lie down, but when he failed to listen, Koon fired his 50,000-volt Taser (Tom A Swift Electric Rifle), which was the next level of force, level 4. The Taser darts hit King in the back. Normally, a Taser would drop a person and subdue him or her so that he or she could be handcuffed, but King fell to his knees and rose again. He turned toward Koon, who reactivated the Taser and fired again. The darts hit King in the chest. King groaned and collapsed, but once again came to his feet.

It was at this time that George Holliday began filming his infamous tape from his bedroom terrace. The incident was occurring about 90 feet away. By this time, the officers had been ordered by Koon to have their PR 24 metal batons in hand, level 5. The first scene on the tape would display one of the most disputed actions; after King rose, it appears as though he charges toward Powell. Powell (who later claimed he had no room or time to swing) swung to protect himself and hit King on the right side of his head or collarbone. Melanie Singer, Briseno, and Wind would state it was a head blow, and Koon and Powell believed contact was made at the collarbone. The tape was blurred. Powell's blow knocked King to the ground, and he would not reach his feet again for the duration of the tape. During the blurry beginning seconds of the tape, which was cut from the segment KTLA aired, an undetermined number of blows are delivered to King. Once the tape comes into focus, no blows are being delivered to King. For the duration of the tape, the officers would alternate between beating and pausing. Officer Briseno is seen restraining Powell, by pushing his baton arm away from King. About 15 seconds later, King appeared to rise again, and Powell delivered more blows. King continued to roll around on the ground and never got facedown with his arms extended and legs spread. Powell and Wind continued to deliver baton blows and kicks. Blows were delivered first to the chest region and later to the lower extremities. Pauses by the officers are seen throughout the tape, as they assess the force they have used. It is clear that Wind took the time to evaluate King's condition, but the pauses that Powell took lasted only a second or two. For 20 seconds, Powell can be seen hitting King repeatedly in the lower extremities—one blow causing a fracture to King's leg. King then rolls over onto his back and Powell strikes him in the chest. Eight seconds later, Powell reaches for his handcuffs. Two seconds later, Briseno comes in and appears to stomp King with his foot, in the upper shoulder area. King moves in response to the blow, which causes Powell to deliver five to seven baton blows and Wind to deliver four baton blows and six kicks. Koon hears King plead ''Please stop'' and orders his

officers to jump him. Shortly after, King was handcuffed and hog-tied (cuffed at the ankles with both sets of handcuffs cuffed together). During the course of the videotape, an average viewer would see King receive 56 blows of the metal baton and six kicks to his entire body (Alpert, Smith, and Watters, 1992). Later analysis during King's suit against the City of Los Angeles would demonstrate that King received only 33 blows and that 23 did not make contact.

Before 1 a.m., Sergeant Koon typed a message into his car's on-board computer: ''U (meaning 'You,' the lieutenant) just had a big-time use of force. TASED and beat suspect of CHP pursuit. 'Big Time'" (Koon and Deitz, 1992). He waited for Lieutenant Patrick Conway to arrive and assess the situation, but he did not. Koon returned to the station to get a new Taser and inform Conway about the incident. Koon would then leave for the hospital to check on King's condition.

Shortly before Koon left, Allen and Helms were released at the scene, and Officer Powell radioed the fire department for a rescue ambulance at Foothill and Osborne:

Powell: (laugh) They should know better than to run. They're going to pay a price when they do that.

FD: What type of incident would you say this is?

Powell: It's a. . . it's a. . . battery, he got beat up.

FD: Okay, by assailants unknown?

Powell: Ah, well. . . sort of.

FD: Okay, any other information as to his injuries, anything at all?

Powell: Nope. (Owens and Browning, 1994, pp. xvii–xviii)

Powell also talked about the incident on his car's onboard computer to Officer Corina Smith, who was patrolling in another area of the city.

Powell: Oops.

Smith: Oops what?

Powell: I haven't beaten anyone this bad in a long time.

Smith: Oh, not again. Why for you do that? I thought you agreed to chill out for awhile. What did he do?

Powell: I think he was dusted. . . many broken bones later. (Cannon, 1997, p. 38)

Officer Smith was making a reference to an incident that she and Powell were involved in on October 1, 1990. They had been accused of using excessive force on a handcuffed suspect. Sergeant Koon investigated the incident, but the suspect later dropped the accusations. These brief statements would represent only a few of the comments that would haunt Powell during the trials of the officers.

Of the 25 (some report 23) officers who were present at the scene over the course of the incident, Officer Briseno was the only known officer to criticize the incident. He stated to Solano shortly afterwards, ''Sarge really fucked up out there tonight'' (Cannon, 1997, p. 37).

RODNEY GLENN[1] KING—BIOGRAPHY

Rodney Glenn King was born in Sacramento, CA, on April 2, 1965. When King was an infant, he moved with his family to Altadena, a section of Pasadena in Southern California. His father and grandfather worked various construction jobs and as a young boy King would often help out. King went by his middle name, Glenn, which changed after March 3, 1991, when the media addressed him as ''Rodney.''

At John Muir High School in Pasadena, King enjoyed participating in a variety of sports, especially baseball. He cared little for school work, and often avoided classes. Although he participated in special education classes for a learning disability, he failed to finish school and dropped out in eleventh grade. While incarcerated, King was found to have an IQ of 86, indicating at the age of 25 he had the average skills of a third grader (Deitz, 1996). He eventually earned his high school equivalency degree years later (CNN Staff, 2001).

A history of alcoholism by King and his father, as well as an unstable relationship history with women (three children from three different women) may have contributed to his involvement in criminal acts. King's first incident with the law occurred on July 27, 1987, when his wife at the time, Denatta King, called the Los Angeles County Sheriff's Department with allegations of domestic abuse. She later dropped the charges. Between this incident and his robbery conviction in November 1989, King was arrested two more times for domestic abuse and cited for soliciting a prostitute. King was on parole for the robbery charge the night he would become a symbol of police brutality on March 3, 1991.

King has tried to live a normal life, albeit unsuccessfully. With the $3.8 million settlement, he founded rap label Straight Alta-Pazz Recording Company, which went nowhere. The majority of the money went to legal fees and child support. In 1995, King reported that he had only $500,000 left (Deitz, 1996). Throughout his troubles, King has remained positive throughout his ''recovery''[2] and has considered writing a book and developing a youth foundation (CNN Staff, 2001).

NOTES

1. Police reports misspelled Glenn by leaving off the second ''n,'' and subsequently official records maintained the new spelling (Owens & Browning, 1994).
2. In an interview with Ed Gordon (March 3, 2006), King stated, ''I'm recovering. . . it's the healing part, you know?''

King was taken to Pacifica Hospital, where Dr. Antonio Mancia, who told Sergeant Koon that King had ingested PCP and had superficial lacerations, was the first to take a cursory look at King. After Koon had left, Powell and Wind took over and Dr. David Giannettoa thoroughly examined King around 6:30 a.m. He found a right leg fracture, multiple facial fractures, numerous bruises, and contusions. A urinary analysis showed that there was no PCP in King's system, but the results were inconclusive due to the high alkaline content of King's urine, which masks the presence of PCP. Three other doctors

would also examine King. After King was treated, he was taken to the police station by Officers Powell and Wind for booking.[1]

THE INITIAL REACTION

On the Monday after the incident, both King's brother Paul and Holliday attempted to file complaints with the LAPD but did not succeed. Paul King went to the Foothill station to file a complaint about his brother being beaten. He was forced to wait for a couple of hours, and once it seemed as though he was finally going to be able to file a written complaint, the sergeant who was "helping" him became more interested in Paul King's arrest record. King's brother even informed the sergeant of the possibility of a videotape, but the sergeant did not seem to care. He was essentially forced to leave the station, and he was never given the opportunity to fill out a complaint form.

Holliday telephoned the Foothill station in an attempt to give his videotape to the police. He told the desk officer he had witnessed the incident and then asked about the motorist's condition. The desk officer informed Holliday that the information could not be released and did not ask any questions about what Holliday had seen. Once off the phone, a discouraged Holliday tried a different tactic, one that would prove to be infallible: television.

The first LAPD personnel to view the tape were senior officers located in downtown Los Angeles at LAPD headquarters; KTLA had dropped off a copy of the video shortly after receiving it. Immediately, an investigation began. Police Chief Daryl Gates was out of town, and Assistant Chief Robert Vernon was in charge. Investigators were still trying to identify the officers on the videotape when it first aired on KTLA at 10:15 p.m. on March 4. Chief Gates arrived in Los Angeles around midnight, but he did not view the tape until the next morning. Once he viewed the tape, he stated that it made him physically ill but refrained from making snap judgments. Los Angeles Mayor Tom Bradley, a former police officer, said the beating was "shocking and outrageous" and promised "swift prosecution" (Coffey, 1992, p. 35). Additionally, President George Bush was also appalled by what he saw, and the FBI launched an investigation on March 5.

Reaction to the tape was swift and sharp. Those who saw the tape had a hard time forgetting the brutality that King endured, especially the public. The tape had provided tangible evidence of brutality and racism. Most of the residents of South Central Los Angeles were not surprised by what they saw. Such incidences were considered to be commonplace. A March 10 poll, taken by the *Los Angeles Times,* found that 92 percent surveyed believed the officers used excessive force against Rodney King (Skolnick and Fyfe, 1993, pp. 15–16). Additionally, two-thirds of those polled thought that police brutality was common. Although initial reactions of anger and repulsion were present, some members of the African American community thought that some good may come of the incident —now the public might believe that police often beat or harassed African Americans and the incident brought a sense of unity; "the savage beating of King has inspired Los Angeles' Black community to speak with one voice" (*Los Angeles Sentinel,* 1991, as cited in Jacobs, 1996, p. 1251).

Issues surrounding the incident of police brutality, indictment, and rioting are not a first in Los Angeles history. Other incidents include the "Sleepy Lagoon" incident in the 1940s that demonstrated concerns about discrimination towards Latinos; the Furman Tapes of the 1970s, which led the LAPD to develop a policy against spying on citizens;

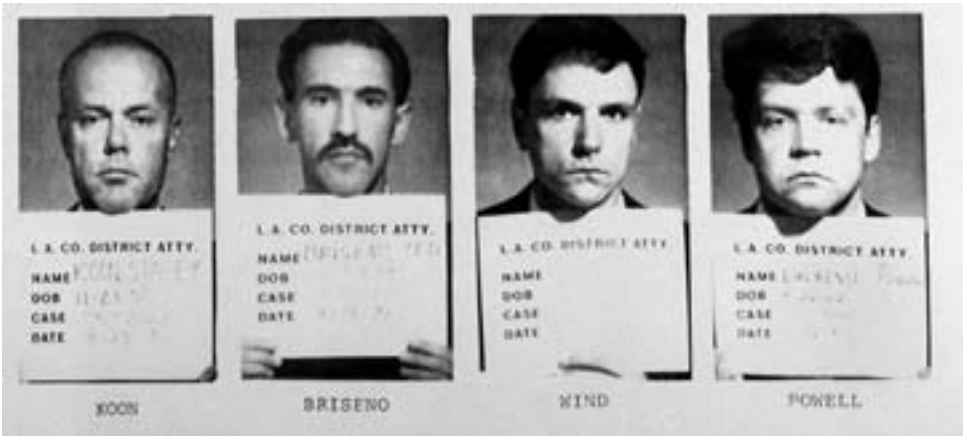


Figure 8.1 The four police officers indicted for brutalizing black motorist Rodney King in a videotaped attack are shown in these mug shots, 1991. From left: Stacey C. Koon, Theodore J. Briseno, Timothy E. Wind, and Laurence Powell. © AP Photo.

Eulia Love's death in 1979 from an officer's gun; and the Watts riots of 1965, which led to the creation of the McCone Commission.

The widespread coverage of the Holliday videotape brought about swift action against Officers Koon, Powell, Wind, and Briseno. On March 6, Rodney King was released from jail due to insufficient evidence. On March 7, Chief Gates announced that the officers involved in the King beating would be prosecuted. The next day, District Attorney Ira Reiner announced that he would seek indictment against the four officers. Additionally, Chief Gates suspended 15 officers who were present at the scene. On March 11, a grand jury watched the videotape and listened to testimony from King (who later would not testify at the state trial) and others, as District Attorney Terry White sought indictments against Officers Koon, Powell, Wind, and Briseno. White succeeded on March 14.[2]

THE SIMI VALLEY STATE TRIAL

Attorneys for the four officers immediately filed a motion for a change in venue from Los Angeles County. They feared that the publicity of the tape would infect the jury pool and would lead to a biased trial. On March 16, trial Judge Bernard Kamins denied the defense motion, but his decision was appealed. On July 23, 1991, the California Court of Appeals unanimously granted the change of venue motion. Additionally, Judge Kamins was removed from the case because of bias. The case was reassigned to Judge Stanley Weisberg. On November 22, Weisberg met with all the attorneys to determine an appropriate venue. There were three choices: Ventura County, Orange County, and Alameda County. Alameda would have been ideal for the prosecution because the majority of the population of its largest city, Oakland, is black. On the other hand, Ventura was ideal for the defense due to the predominately white conservative population. However, both Michael Stone (Powell's lawyer) and John Barnett (Briseno's lawyer) voted for Orange County, which seemed to be a fair compromise. Orange County was the preferred site for the trial. Unfortunately, there were no courtrooms available, so Judge Weisberg chose Ventura, because Alameda was "inconvenient and costly" (Cannon, 1997, p. 180).

Even better news came to the defense attorneys with the selection of Simi Valley—the community in which the trial would take place—and with the selection of the jury. The announcement of the transfer to Simi Valley brought about immediate objections from prosecutors as well as the NAACP. Their fear was that an all-white panel, which would favor police officers, would hear the case (''Town, Too, Feels Eyes of Nation,'' 1992). The town was the epitome of white conservatism, with only 1.5 percent of the city's black population residing there. Additionally, there is a large contingent of law enforcement officers who live in the community as well as in the neighboring community of Thousand Oaks.

Jury selection began on February 5, 1992, and it was understood by both sides that the jury's composition would be critical to the outcome of the trial. The jury pool consisted of 260 people (almost all of whom had seen the Holliday video), including only six blacks, five of whom were uninterested in serving in a community they felt hostility from on a daily basis. Stone, Powell's defense attorney, used a peremptory challenge to strike the only black who was willing to serve as a juror. District Attorney White stated that he ''remember[ed] thinking as we were rating these jurors that we were going to lose this case'' (Cannon, 1997, p. 187). On March 2, 1992, the jury was selected and consisted of six males and six females, ten whites, one Hispanic, and one Filipino-American.



Figure 8.2 Rodney King shows the bruises he sustained at the hands of four Los Angeles police officers in this 1991 file photo. © AP Photo/Kevork Djansezian, File.

Unfortunately, the media failed to report the significance of the jury's composition. The media stated that there were no blacks on the jury but that was all that was mentioned about the jury. There was never any analysis of the pro-law enforcement jury, and the significance that it could play in the outcome. Black community leaders, who closely watched the case, knew that the jury was going to affect the outcome in a way in which the public was unprepared for. It was predicted that riots, like the Watts riots of 1965, would most surely happen again.

The trial began on March 5, 1992, with Chief District Attorney White's opening statement. He showed the Holliday video in its entirety—close to three minutes—not just the small segments that had been aired on various news networks (Owens and Browning, 1994). Over the course of the trial, the jurors would see the video numerous times, and the video was broken down frame by frame.

Opening statements by the four defense attorneys revealed different defense strategies. Darryl Mounger, Koon's attorney, was the first to open. Sergeant Koon was faced with the most numerous charges, including assault with a deadly weapon, assault under color of authority, filing a false police report, and accessory after the fact to a felony (Koon and Deitz, 1992). The main aspect of Mounger's opening statement was that King was actually in control of the beating—not Koon. He argued that King, at any time, could have chosen to follow orders, but he had failed to do so. Stone, Powell's attorney, also took the same direction. Officer Powell was charged with assault with a deadly weapon with great bodily enhancement, assault under color of authority with great bodily enhancement, and filing a false report (Koon and Deitz, 1992). Stone had the most difficult case because Powell was the one in the video shown applying the most beatings to King. Paul DePasquale, Wind's attorney, used inexperience as a defense: Wind had been with the LAPD for only four months, and he had no experience dealing with suspects who were under the influence of PCP. Wind was a police officer in Kansas for seven years before transferring to Los Angeles. The attorney for Officer Briseno, John Barnett, focused on Officer Powell's excessive behavior and how Briseno was the only officer shown to intercede in the beating. Both officers Wind and Briseno were charged with assault with a deadly weapon and assault under color of authority (Koon and Deitz, 1992, pp. 120–121).

The first two witnesses called for the prosecution were George Holliday and Bryant Allen. Holliday was the first witness, and he basically testified that he had shot the video. Additionally, it was a chance for the prosecution to show the videotape once again. Allen was called next, but he had helped the defense more than the prosecution. He had trouble understanding the questions and had not witnessed the beating because he was handcuffed at the time. When the defense cross-examined him about the chase, Allen said that King was acting ''strange'' and not listening to Allen's pleas to stop.

The next day, Melanie Singer was called to the stand. She was the prosecutor's star witness because King was not going to testify due to his mental state at the time of the incident (drunk and badly beaten). Additionally, King's attorneys had thought that he had suffered enough and should not have to be retraumatized by testifying. Singer claimed the blow to King's head caused a laceration the length of his ear to his chin but that laceration did not appear in any of the photos taken of King after the incident. Her testimony was also diminished when she claimed that Powell struck King four or five more times in the head after the first blow, which did not appear on the videotape.

The media had been present for the first two days of trial. Daily news conferences were being conducted during the lunch hour, and after the day ended, the prosecution and defense summed up their sides for the media. Judge Weisberg did not like the idea of trying the case in the media, so he banned the news conferences. Unfortunately, this led inevitably to misleading media coverage of the case.

Timothy Singer was also called to the stand, but his testimony focused around the blow to King's head and how it is against CHP policy to strike the head. Subsequent testimony consisted of the doctors who treated King to explain the extent of his injuries, but testimony from the doctors revealed that it was inconclusive on telling how the injuries were sustained.

Prosecutors next focused on Powell's callousness with the King incident and with prior incidents. They were essentially attacking his character. Chief White called two emergency room nurses who had treated King, Carol Edwards and Lawrence Davis, who testified about a conversation that took place between King and Powell. Edwards

claimed that Powell said, ''we played a little hard ball tonight . . . we won and you lost'' (Alter and Palumbo, 1992). Davis also said he heard a similar conversation about ''playing a game'' and also added that Powell said, ''we hit quite a few home runs'' (Alter and Palumbo, 1992). On cross-examination, Stone suggested that perhaps they had heard another officer having the conversation with King. The prosecution rested their case on March 17.

The first witness for the defense was Catherine Bosak, a paramedic with the Los Angeles Fire Department. She was the first to attend to King's injuries, and she testified that they were minor, including the broken cheekbone. The next witness was LAPD Officer Susan Clemmer, who was at the scene shortly after the incident ended. She also accompanied Officer Wind and King in the ambulance. She said that King repeatedly laughed, spit blood, and said ''fuck you'' as he lay handcuffed on the ground. He continued spitting blood on her in the ambulance. She said King appeared to be alert but was acting in a bizarre manner. The last witness to be called before the defendants was LAPD Officer David Love, the only black officer present for the incident. Love testified that he arrived to see Taser wires in King, and he believed that the force may have been excessive. There were some discrepancies, however, between his grand jury testimony and his state trial testimony. Love concluded that the video had influenced his memory of the event and created details that he had not originally seen during the event.

Koon was the first of the defendants to take the stand. Wind and DePasquale, his attorney, had decided two days before he was scheduled to take the stand that he would not because much of the trial had not focused on Wind's behavior. Sergeant Koon provided strong testimony. In addition to explaining step by step the incident, which he took full responsibility for, he explained the LAPD's policy on escalating use of force. The one contrary piece of testimony was Koon's belief that Powell had not hit King in the face but that as King went to the ground he fell on his face. Koon repeated that the use of force applied the early morning of March 3, 1991, on Rodney King was appropriate and controlled. His concern for escalation came through in his objection to Melanie Singer bringing a gun into the situation, as well as his adamant testimony that he would not have drawn a weapon but would have instead applied a choke hold himself if taking the last step of the use of force chart (level 6, use of deadly force) had been necessary. As of 1982, choke holds were not approved of by the LAPD.

Veteran LAPD officer Sergeant Charles Duke provided the next testimony. Duke demonstrated in a frame-by-frame analysis how Koon properly escalated the use of force. He said that all of the 56 swings were justified and were appropriate within policies and procedures. Additionally, former LAPD Captain Robert Michael took the stand after Duke, and he testified about the proper uses of escalation and de-escalation techniques that were employed at the scene. He stated that the ''officers were following the rules'' based on the suspect's behavior. District Attorney White was unable to shake either witness.

Next to testify were Officers Powell and Briseno, both of whom gave some leverage to the prosecution, but not enough to win the case. Powell's testimony was plagued with a number of contradictions. At first, Powell stated that he had no time to react when King was charging at him and was not able to swing. However, after more questioning from his lawyer, Powell stated that, ''I didn't have time to react I was starting to swing'' (Alter and Palumbo, 1992). It was unclear if Powell was in the process of swinging or if King just ''fell'' into the baton. Especially troubling was Powell's testimony during cross-examination by White. Earlier in the evening, Powell had gone out on a call to a

disturbance at a black household, and afterwards, he had typed into his onboard computer in his patrol car that "it was right out of *Gorillas in the Mist*" (Alter and Palumbo, 1992).

White: Okay, now this call that involved these [blacks] was in a jungle?

Powell: In what?

White: A jungle.

Powell: No.

White: Was it at the zoo?

Powell: No.

White: Were there any gorillas around?

Powell: I didn't see any...

White: But you referred to that call as right out of *Gorillas in the Mist*?

Powell: Yes...

White: Okay...did you see anything regarding *Gorillas in the Mist* while you were at that location?

Powell: Did I see anything?

White: Yes.

Powell: No.

Additionally during cross-examination, Powell first said that he was doing what Koon had told him to do, but he later said, "everybody out there was responsible for their own actions" (Alter and Palumbo, 1992).

Officer Briseno also helped the prosecution more than the defense. From his lawyer's opening statement, it was clear that Briseno was not in the same mind-set as his fellow officers, or so he would convey it that way. He testified that he thought Powell "was out of control" and pointed out that in one part of the tape he tried to stop Powell from swinging his baton (although at that time Koon had just fired a Taser and was thought to be warning Powell to not touch King). He stated, "Every time he moved, they hit him ....I didn't understand" (Alter and Palumbo, 1992). The only use of force shown on the video by Briseno is a single stomp to the shoulder area of King. Briseno testified that he was not trying to hurt or punish King, but he was trying to help King by pushing him down so he would stop moving. It was also interesting that Briseno had delivered the stomp when no batons are being swung, and while Powell had been getting ready to handcuff King under the assumption that it was safe to do so. Unfortunately, Briseno's plan backfired because the force of the kick caused King to move and gave Officers Powell and Wind a signal that he needed more baton blows and that King was still dangerous.

District Attorney White called LAPD Commander Michael Bostic, who was also head of the use of force review board, as part of his rebuttal. Bostic testified about the use of escalation and de-escalation just as Captain Robert Michael, and he dissected the videotape for the jurors. Instead of justifying all use of force, Bostic testified that the force applied after Briseno stomped King was excessive and should have never been applied.

After cross-examination, it was revealed that Bostic had no field experience with the use of force, and he had never had to apply the techniques while out in the field.

Closing arguments were similar to the opening arguments, with the exception of White's. District Attorney White delivered a much more passionate closing, where at one point he walked over to Powell and stuck his finger in his face exclaiming, "This is the man . . . and look at him. This man laughed" (Alter and Palumbo, 1992). After an objection from Stone, Judge Weisberg ordered White back to his podium.

After 35 days of testimony from 54 witnesses, the jury began deliberations. They deliberated for seven days, with the main focus being on Powell. To the public, who had only gotten tiny glimpses of what was going on inside the courtroom but who knew what they had seen on the video, it was an open and shut case. The officers were guilty. At 3:15 p.m. on April 29, 1992, the clerk announced the jury's verdicts. The defendants were found not guilty on all charges except for one: the jury was hung on Officer Powell's charge of assault with a deadly weapon. The jury did not think that the prosecution proved beyond a reasonable doubt that the officers were criminal. The anger generated by the verdict was intense.

THE RIOTS

About a year after the media "wallpapered"[3] the Holliday videotape into various media for the world to see, a television news helicopter would film another brutal incident that would symbolize the riots of South Central Los Angeles in 1992. At 6:46 p.m., at the intersection of Normandie and Florence, a trucker driver by the name of Reginald Denny was pulled from his 18-wheeler onto the street by a group of black men. Henry Watson held Denny's head down with his foot as another man kicked him in his stomach. Another man hurled a piece of medical equipment that had been taken from a looted vehicle just minutes before at Denny's head and then hit him three times with a claw hammer. The most vicious attack came from Damian Williams. Williams had smashed a block of concrete on Denny's head and then proceeded to do a victory dance around a now unconscious Denny. Anthony Brown spit on Denny as he walked away with Williams. As Denny lay helpless in the street, various other men hurled liquor bottles at him, and a local drug user rummaged through his pockets. Eventually, two local residents who were watching what was happening came to Denny's rescue. Denny made it to the hospital just in time to save his life (Coffey, 1992).

The brutal beating of Denny was publicized like the King video, and it was usually shown in conjunction with the Holliday video. Many commentators and activists drew parallels between the incidents, but the assailants should not be equated. King had refused to listen to police commands after a high-speed chase, and many attempts were made to take King into custody before force was applied. Denny was a victim and did nothing to deserve the injuries (which were more severe than King's) that were inflicted by some local gang members.

Before the beating of Reginald Denny, there was an incident that occurred 62 minutes after the verdicts were announced and can be considered the official beginning of the riots. Five black male youths entered a Korean-owned liquor and deli store at Florence and Dalton Avenues; each took bottles of malt liquor. The son of the store owner had tried to prevent them from taking the booze, and one of the men smashed a bottle on his head, while

TIMELINE

1991

March 4 (12:30 a.m.)	Rodney Glenn King leads members of the CHP, LAUSD, and LAPD on a high speed chase, which leads to King being beaten by officers.
March 4 (10:15 p.m.)	Los Angeles news station KTLA airs ''Holliday videotape,'' which is simultaneously aired on CNN Atlanta (1:15 a.m.) and subsequently aired worldwide.
March 6	King is released from jail due to insufficient evidence.
March 8	Police Chief Darryl Gates suspends 15 officers present at the scene. The District Attorney seeks indictments against four officers: Stacey Koon, Theodore Briseno, Laurence Powell, and Timothy Wind, which are granted six days later.
July 23	California Court of Appeals grants change of venue motion. Judge Bernard Kamins is removed because of bias and replaced by Judge Stanley Weisberg.

1992

March 5	Simi Valley trial begins.
April 29 (3:15 p.m.)	Court clerk announces the jury's verdict—the four defendants are found not guilty on all charges, except one, which resulted in a deadlocked vote.
April 29 (4:17 p.m.)	The Los Angeles riots begin.
May 1	President George Bush announces that there will be a Federal investigation into the violation of King's civil rights.
May 4 (5:15 p.m.)	Mayor Tom Bradley lifts citywide curfew signaling the end of the riots. The riots would be the worst civil disturbance of the century with 56 dead, over 2,000 injured, almost $1 billion in damage, and almost 8,000 arrested.

1993

March 1	Federal civil rights trial begins.
March 9	King testifies for the first time.
April 17	Jury acquits Wind and Briseno, but finds Koon and Powell guilty of violating King's civil rights.
August 4	Judge John Davies sentences Koon and Powell to 30 months in a federal correctional facility.

1994

April 19	King is awarded $3.8 million in a civil suit against the City of Los Angeles.
April 22	King participates in a civil suit against the four officers but receives $0 in compensation on June 1.

1995

December 14	Koon and Powell are released after serving their sentences.

two others shattered the store's front windows with their bottles. One of the youths shouted, "This is for Rodney King!" (Cannon, 1997, p. 281).

Two hours after watching the verdicts from his office, Mayor Bradley appeared on television and described the verdicts as "senseless." He stated, "I was speechless when I heard the verdict. Today the jury told the world that what we saw with our own eyes is not a crime" (Coffey, 1992, p. 45). He continued by saying, "today the system failed us" (Mydans, 1992, p. 7). The mayor's words gave a city that was succumbing to violence justification. Bradley was speaking on behalf of those frustrated with months of tension since the Holliday videotape aired, and he had contributed to the mayhem that would persist over the course of the next five days.

Police Chief Gates, who was a field commander during the Watts riots, stated that the LAPD would be ready if it happened again and "would stop it the first night" (Cannon, 1997, p. 263). But Gates was not prepared. The LAPD was preoccupied with Gates's pending retirement in June, and by the time the riots had begun, it was apparent to news crews flying overhead and to patrol officers within the area that there was not enough manpower to control what was happening. Street violence, looting, and fires broke out all over South Central Los Angeles. No one was safe from rioters. The first shooting occurred at 8:15 p.m., at a Korean-owned swap meet at the corner of Vernon and Vermont. Louis Watson Fleming was helping two elderly women when he was hit in the head by a bullet.

By 9 p.m., every police officer in the city had been ordered to report for duty, and Mayor Bradley had declared a local state of emergency and ordered a citywide curfew. Within minutes, Governor Pete Wilson called on the National Guard to activate 2,000 reservists. Although extra manpower was called in, mobilization took longer than expected. By midnight, 1,790 officers had reached their command posts and were still awaiting orders on what to do (Cannon, 1997). Additionally, the first contingent of the National Guard was not deployed on the streets until midafternoon the next day (Reinhold, 1992). Because of the lack of a police force, many fires were left unattended because there were not enough fire engines, and members of the fire department were being attacked by rioters. There were barely enough officers able to control an attempted overturn of the Parker Center—police headquarters in downtown Los Angeles.

By late afternoon on May 1, forty-eight hours after the verdict was announced, 38 people were dead. Of these, 15 were black. The media reported that 1,419 people were injured, 4,000 had been arrested, and the fire department had responded to 3,767 calls associated with riot-related fires (Koon and Deitz, 1992). Also on this day, Rodney King addressed the city, surrounded by 100 reporters, begging for peace saying his infamous words, "Can we all get along?" (Owens & Browning, 1994).

Monday, May 4, at 5:15 p.m. signaled the end of the riots when Mayor Bradley lifted the citywide curfew. Once the riots had ended, 54 people had been killed, including 26 blacks. This was the biggest death toll in an American civil disturbance since 1863. Over 2,000 people, including 60 firemen, had been injured. Over $900 million in property damage was done from looting and fires, including 862 incinerated buildings and homes. In all, over 7,000 people were arrested. The Los Angeles riots of 1992 had earned the title of the "worst riots of the century" (Coffey, 1992, p. 49).

During the rioting, and not long after the verdicts were announced, President Bush and Attorney General William Barr began the process of bringing federal charges against the four LAPD police officers. In a televised address to the nation on May 1, President Bush announced that he had begun the process of filing charges against the officers for violating

Rodney King's civil rights to bring some calm to a disturbed public. On August 4, the grand jury returned indictments against the four officers. Officers Powell, Wind, and Briseno were charged with violating King's Fourth Amendment protection against unreasonable arrest, and Sergeant Koon was charged with violating King's 14th Amendment rights for failing to restrain his officers.

THE FEDERAL CIVIL RIGHTS TRIAL

The decision to try the four officers in federal court after their acquittal in state court brought large debate among the public, media, and courts on the issue of double jeopardy. The Fifth Amendment of the U.S. Constitution protects citizens from double jeopardy, which is protection from being tried for the same offense twice (Woods, 1994). Many people and the media thought that the federal trial was in violation of the officers' Fifth Amendment rights. Additionally, a Gallup poll found that 30 percent of state judges and 10 percent of federal judges thought the second trial constituted double jeopardy (Hengstler, 1993). However, the majority of the judges polled clearly thought that the federal trial was not a violation of the double jeopardy because of the dual sovereignty expectation based on an earlier court decision, *United States v. Koon, Powell, Wind, and Briseno.* The Court decided that the state and federal government are separate bodies, and a single offense can violate the sovereignties of both bodies. Therefore, the four officers could be tried for their offense where the act occurred (state) and in federal court because the act is considered a violation against the United States (King's civil rights).

The U.S. Department of Justice assembled a ''dream team'' of four prosecutors to try the case. Steven Clymer would serve as lead prosecutor. At the time, he was considered to be the best trial lawyer in the U.S. Attorney's Office in Los Angeles. Jury selection began on February 3, 1993, in District Judge John Davies's courtroom. Judge Davies sent out ''invitations'' to 6,000 residents of seven different counties in Southern California. He was vague in his description of the case, and only about 380 responded. Of those, only 333 actually showed up on the first day of jury selection. Each juror was given an extensive questionnaire asking about his or her attitudes on a variety of topics, including police misconduct and interracial marriages (Cannon, 1997). Unlike the Simi Valley jury, the federal jury was racially mixed, including two blacks. The defense had attempted to remove one black juror because she was overheard criticizing the treatment of the defense during their questioning of other potential black jurors. Judge Davies denied the motion to remove her from the jury. Although it was a media frenzy outside the courthouse, no media were allowed in the courtroom, which is typical of federal trials.

The prosecution team was prepared to win this trial. Clymer made sure to exclude witnesses he thought were weak during the state trial, and he brought in a number of witnesses who proved to be more capable. The first witnesses to be called were two civilian witnesses, Dorothy Gibson and Robert Hill, who lived in the same apartment complex as George Holliday. Upon cross-examination of Gibson, defense attorneys found that there were discrepancies between what she told investigators and her testimony, which led the attorneys to conclude that the videotape had influenced what she remembered. Other civilian witnesses were brought in to make the case more human to the jury.

Additionally, the prosecution brought in a number of new experts on the use of force and medical examiners. Most important of the experts was LAPD Sergeant Mark Conta. Conta had been brought in to testify about the proper use of force and to evaluate the

videotape. Conta excelled where Commander Bostic failed—he had 17 years of experience as a patrol officer. As Conta walked the jury though the videotape, he stated that the defendants had acted in a lawful manner until King was lying on the ground. According to LAPD policy, it was unlawful to strike a man who was on the ground. He also stated that Sergeant Koon was violating policy because he had failed to intervene. Upon cross-examination, the defense was able to refute some of Conta's testimony because all but Wind had not received the same academy training that was currently in place.

The next two witnesses testified about King's injuries. Dr. Charles Aronburg, an ophthalmologist who treated King, took the stand first. He described King as suffering from a broken right cheekbone, damage to the eye socket, and extensive sinus damage. Aronburg also concluded, through bad cross-examination, that King's injuries were caused by blows to the head from batons. The second witness, Dr. Stanley Cohn, a neurologist who also examined King after the beating, testified that he found evidence of memory loss, which was key to the prosecution's case. Any contradictory testimony provided by King would be supported by medical evidence.

The most important testimony came from King himself. More media showed up on March 9, 1993, than any other day of the trial. When King took the stand, he was able to erase the images of a dangerous and erratic criminal that the defense had painted in the minds of the Simi Valley jurors. On the stand, King was seen not as a liar, but as a man who was either too drunk or confused to remember the events of the night of March 3, 1991. In the Simi Valley trial, the defendants had claimed they were in fear; however, now King had the opportunity to show the jurors that he feared for his life. King also introduced the issue of race, where it had not been addressed at Simi Valley. He testified that the officers were chanting at him as they were beating him, calling him either ''killer'' or ''nigger'' (Cannon, 1997, p. 426). When questioned which name he thought he was being called, he simply stated he was unsure. When defense attorney Stone was asked about King's testimony, he stated, ''He looked good. He was very mild-mannered and polite and thoughtful. All of these things spell credibility to me'' (Mydans, 1993, p. A1).

The defense strategy was not nearly as effective during this trial. Two different attorneys, Ira Salzman and Harland Braun, represented Koon and Briseno, respectively. Once again the defense relied on Koon as their key witness, but, unlike the first trial, Koon displayed emotion. Some of the jurors thought that Koon came off as ''cocky'' but also respectable for consistently standing by what he did. Powell, still represented by Stone, chose not to testify; he had just finished his retrial for the state charge of assault with a deadly weapon and was exhausted. To compensate for Powell not testifying, Stone focused on King's facial injuries and called Carley Ward, a biomedical engineer, to testify on King's injuries. She concluded that the injuries were caused by a fall. The defense also made the mistake of recalling Melanie Singer to the stand. Singer had already been humiliated in the first trial and made even more noticeable contradictions than before. Braun did not fair so well either. After examining the evidence, he pushed for a unified defense among the officers. He thought it best to minimize the differences between the officers' testimonies. Briseno decided not to testify, so Clymer asked the court if they could show Briseno's testimony at Simi Valley. Judge Davies granted their request. Of course this did not favor well, as Briseno's testimony before was clearly not unified with the other officers. By this point, there was little hope for the defense.

On April 10, 1993, the jury began deliberations. Deliberations were later reported to have been highly stressful, with three of the jurors heavily leaning toward convictions.

RODNEY KING: POP CULTURE ICON?

The name ''Rodney King'' has turned into a popular phrase in American culture. It has been used to refer to any type of physical assault, and even has been used to describe verbal abuse.[1] The phrase has also been used as a verb to describe a physical beating. For example, in a rap song by D12 entitled *Fight Music* (2001) they refer to a beating by stating, ''And any nigga lookin too hard, We Rodney King-in him.'' Victims and incidents of police brutality across the country as well as in other parts of the world have been likened to ''another Rodney King.'' The Holliday footage and riots have been referenced in a number of motion pictures,[2] songs,[3] and television shows,[4] some of which were parodies. Additionally, *Grand Theft Auto: San Andreas* (2004), a popular video game, involves a crooked police officer who is acquitted, which then leads to riots in the city. It is clear that the term ''Rodney King'' has become a symbol of police brutality and other forms of assault referenced throughout all types of media.

NOTES

1. *''Philadelphia 5'' arrest like ''Christian Rodney King.''* Strom, R. (2005).
2. *The LA Riots Spectacular* (2005), *Malcom X* (1992), *American History X* (1998), *Jingle All the Way* (1996), *Dark Blue* (2002), *Three Kings* (1999), *Bad Santa* (2003), *Ride* (1998), *Bastards of the Party* (2005), *And You Don't Stop: 30 Years of Hip-Hop* (2004), *Airheads* (1994), *Don't Be A Menace in South Central While Drinking Juice in the Hood* (1996), *Tupac: Resurrection* (2003), and *Twilight: Los Angeles* (2000). *Sources:* Internet Movie Database [http://www.imdb.com/] and Wikipedia, The Free Encyclopedia [http://en.wikipedia.org/]
3. Sublime's ''April 29, 1992 (Miami)'' (1996); Ice Cube's ''Alive on Arrival'' (1991), ''Wicked'' (1992), ''Steady Mobbin'' (1991), ''We Had to Tear The Muthaf***a Up'' (1992); Body Count's ''Cop Killer'' (1992); Ben Harper's ''Like a King'' (1994); Ministry's video for '' N.W.O.'' (1992); Easy-E's ''Neighborhood Sniper'' (1992), and ''Nutz on Ya Chin'' (1995); The Boo Radley's ''Rodney King'' (1993); Willie D's ''F*** Rodney King'' (1992); Run D.M.C.'s ''Down With the King'' (1993); Dog Eat Dog's ''Who's the King?'' (1994); 2Pac's ''Souljah's Revenge'' (1993), and ''Souljah's Story'' (1991); 8Ball & MJG's ''You Don't Want Drama'' (2004); Lloyd Bank's ''Playboy'' (2006); South Park Mexican's ''Reminisce'' (1999); Dr. Dre's ''The Day the Niggaz Took Over'' (1992); Black Eyed Peas' ''Say Goodbye'' (1998); etc. *Sources:* Wikipedia, The Free Encyclopedia [http://en.wikipedia.org/], LyricsDomain [http://www.lyricsdomain.com/search/], and Lyrics Mania [http://www.lyricsmania.com/]
4. *My Name is Earl*'s ''Y2K'' (2006, March 23); *The Office*'s ''The Merger'' (2006, November 16); *Boston Legal*'s ''Tortured Souls'' (2005, February 20); *L.A. Law*'s ''There Goes the Judge'' (1991, May 2), and ''LA Lawless'' (1992, October 22); *Family Guy*'s ''Brian Goes to Hollywood'' (2001, July 18); *South Park*'s ''Big Gay Al's Big Gay Boat Ride'' (1997, September 3); and *The Boondock*'s ''Granddad's Fight'' (2005, November 27) and ''The Block is Hot'' (2006, March 12). *Sources:* Wikipedia, The Free Encyclopedia [http://en.wikipedia.org/], and CNET Networks Inc. [http://www.tv.com/]

Arguing ensued and some name-calling took place. After six days of deliberation, the jury came back with its verdicts. Judge Davies decided to postpone the announcement of the verdicts until the morning, in the event they would produce a similar reaction to the verdicts of Simi Valley. At 7 a.m., the next day, the clerk read the verdicts. The jury acquitted

Wind and Briseno but found Koon and Powell guilty. Although it was not a sweeping victory for the public, it was enough to keep the streets of Los Angeles quiet.

Judgment

On August 4, 1993, Judge Davies sentenced Powell and Koon to 30 months in a federal correctional camp. Shortly after, the U.S. Department of Justice announced that the sentence was too light and that it would appeal the sentence. The case was sent to the Ninth Circuit Court of Appeals, and the court ruled that the sentences by Judge Davies were too lenient and sent the case back for resentencing. On September 28, 1995, the U.S. Supreme Court decided to hear Koon and Powell's appeal of the Ninth Circuit Court of Appeals's decision of sending the case back to Judge Davies. On June 13, 1996, the U.S. Supreme Court reversed the Ninth Circuit Court's decision and upheld the sentences of Judge Davies on most points, with the exception of two errors. Finally, on September 26, 1996, Judge Davies refused to extend the 30-month sentence, which effectively ended the case (Cannon, 1997).

In October 1993, Koon and Powell began serving their sentences in separate federal work camps. On October 16, 1995, Koon was moved to the Rubidoux halfway house, where he served the rest of his time. During the Thanksgiving holiday, an armed black man broke into the halfway house and demanded to see Koon. He blatantly stated that he was going to kill Koon, but fortunately Koon was home for the holiday. The armed man was later gunned down in a police shoot-out (Deitz, 1996). By the time their federal case was settled, Koon and Powell had already been released from serving their sentences in December 1995.

Conclusion

The trials discussed were not the only two Rodney King was involved in. King also filed two civil suits—one against the City of Los Angeles and another against Officers Koon, Powell, Briseno, and Wind. He won a settlement from his first suit against the City of Los Angeles on April 19, 1994. The jury awarded King $3.8 million in damages. Shortly after, on April 22, 1994, a civil suit before Judge Davies against the officers began. King asked for $15 million in damages, but the jury awarded King no monetary compensation in damages on June 1, 1994.

Rodney King has not been able to escape the press and will continue to make headlines as long as he maintains interactions with the police. After the incident on March 3, 1991, King has interacted with the police on at least nine different occasions. He has had three violations for driving under the influence of alcohol and three incidents involving domestic assault. For most of the incidents, charges were reduced or he was acquitted. One of his latest involvements with law enforcement involved his arrest for indecent exposure and the use of PCP (Cannon, 1997).

As mentioned previously, the King incident changed the way police departments across the United States regarded their police forces, particularly in terms of police reform. Prevalence in use of force had not been measured until after the King incident, and now many police departments collect information on incidents involving use of force. Additionally, in 1996 both the Bureau of Justice Statistics and International Association of Chiefs of Police started an ongoing nationwide collection of data on use of force (Adams et al., 1999).

Specifically for Los Angeles, criticisms of the LAPD were substantial. In response to the publicity and scandal surrounding the beating of King, Mayor Bradley developed the Christopher Commission (Independent Commission on the Los Angeles Police Department, 1991). Warren Christopher, senior staff member of the McCone Commission, was to lead the investigation into the causes and contributions of the use of excessive force. The Christopher Commission found that there were a number of officers who continuously misused force and ignored the LAPD's written policies and guidelines regarding use of force. In addition, these ''problem'' officers were well known throughout the department (Independent Commission on the Los Angeles Police Department, 1991). Some of the suggested reforms by the Christopher Commission and the Kolts Commission (which reviewed the Los Angeles Sheriff's Department) have become law (Bandes, 1999). A connection between the findings of misconduct within the LAPD to other police departments was highlighted in the media, which prompted various types of reform and prevention strategies across the United States. Changes to federal law include the 1994 Violent Crime Control and Law Enforcement Act, which gave the Justice Department's Civil Rights Division authority to investigate local law enforcement agencies and bring forth civil action if a pattern of police misconduct was established. At least 11 cities have had action brought against them (Anderson, 2003).

One popular prevention measure was the development of what is now known as the ''early warning system.''[4] Police departments monitor civilian and internal complaints, use of force reports, and other disciplinary measures such as absenteeism generated by individual officers. Officers who exhibit warning signs by exceeding limits set by the disciplinary measures can be targeted for various interventions before their behavior becomes out of control. These systems have been implemented in many police departments nationwide.

Not only did the King incident affect police departments, but it led to a movement of civilians policing the police. Copwatch (originally started in 1990 in Berkley, CA) is a voluntary organization that monitors police actions, sometimes through the use of videotape, and advocates for more accountable law enforcement practices. Since the King beating, many more Copwatch-like organizations have sprung up across the country, some of which are more radical than the original and have advocated interfering with police actions. Copwatch.com (not endorsed by the original Copwatch) is a Web site that posts information about officers who have allegedly participated in misconduct and has created controversy due to the personal information posted on individual officers. There are also many other Web sites that have provided similar information on police misconduct, and a few have called for citizens to organize in protest (Schanlaub, 2005).

Perhaps the most influential result is the use of videotape to police the police. In the documentary, *Seeing Is Believing: Handicams, Human Rights, and The News* (2002), the producers attribute the King incident as the creator of the ''Handicam Revolution.'' Prior to the beating captured by Holliday, camcorders were used sporadically by human rights activists to film prison conditions, but after the world saw the Holliday video there was a shift in how media is used today. The public has increasingly become more involved in controlling the media by submitting personal footage in place of news coverage. This was very clear on September 11, 2001, when the horrors of the terrorism attack on the towers of the World Trade Center were witnessed by the nation because of the use of private footage. Singer Peter Gabriel realized the impact of the Holliday videotape on human rights activism and created Witness, which puts camcorders in the hands of activists

around the world so they can capture evidence of abuse that can be shown to the world in order to prevent further abuse. Through the use of the Internet it has been even easier for the public to show footage of abuse. On November 10, 2006, Cop Watch LA posted a video of an alleged gang member being punched in the face by members of the LAPD on a popular broadcasting Web site, known as YouTube.com (Veiga, 2006). The footage, recorded by a cell phone camera, prompted an FBI investigation, and once again demonstrated to the world just how powerful one person can be with a video recorder.

The Holliday videotape,[5] the Denny news coverage, Rodney King, and the officers involved will be forever embedded within the media. The media fueled the events surrounding this case and have impacted society in ways that people never imagined. The impact the case had on the future of policing, race relations, the American public, the media, and the courts was immense, and it will forever remain a prime example of police brutality tried through the media and society at large.

SUGGESTIONS FOR FURTHER READING

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NOTES

1. The chronology of events was abstracted from media and trial reports.
2. Sequence of events taken from various sources but also found in Cannon (1997).
3. CNN executive vice president Ed Turner stated, "Television used the [Holliday] videotape like wallpaper" (Cannon, 1997, p. 21).
4. For further information see Walker, Alpert, & Kenney (2000).
5. George Holliday has now mass produced (for purchase) his famous footage of the King beating entitled, *Rodney King Beating Video* (2006), perhaps to make back some of the money he lost by giving it away. He attempted to sue television stations for airing the footage without his permission, but the litigations were dismissed (Owens & Browning, 1994).

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9

Representing O.J.: The Trial of the Twentieth Century

GREGG BARAK

Ten years after Orenthal James Simpson was accused of and charged with the June 12, 1994, double homicide of Nicole Brown Simpson and Ronald Lyle Goldman, he is found living in an affluent suburb of Miami as a single parent with his and Nicole's teenage kids, 18-year-old daughter Sydney and 15-year-old son Justin. Living very comfortably off his NFL pension and retired from any other noticeable income (because of legal obligations to pay monetary damages to various surviving family members), O.J. claims that he has essentially become a full-time father. When he is not engaged in parental activities, he can be found on one of the nearby public golf courses playing a round of 18 or more with his buddies. Between these two very ordinary behaviors, Simpson also maintains that he has little time or interest in pursuing any serious long-term relationships with women.

In October 1995, O.J. Simpson was found criminally not guilty by a nonrepresentative jury of his peers. In February 1997, he was found civilly liable for the wrongful deaths of both Nicole Brown Simpson and Ronald Goldman, and he was ordered by another jury —not of his peers—to pay the victims' survivors $33.5 million. Nevertheless, O.J. has thus far avoided making any payments to the victims' survivors, as he often, but not always, avers when asked about the killings: ''I didn't commit the crime, and I don't think these people deserve anything. I'm not putting myself in a position of having to give them anything'' (Deutsch, 2003, p. 2). However, in a 1998 *Esquire* magazine cover story with a flattering picture of O.J., he was quoted as saying, ''Let's say I committed this crime . . . even if I did this, it would have been because I loved her very much, right?'' (Leibovich, 1998, p. 2). At other times, Simpson seemed to be in a state of denial about the Brown and Goldman affair or in a defensive mode that justified his anger or rage against a changed Nicole who was no longer the person that he had once loved (French, 1996).

Despite the fact that there were polls that showed a black and white racial polarity with respect to guilt and innocence, the majority of people—black, white, yellow, and brown—thought Simpson was guilty of the brutal slayings before and after the trial. Meanwhile, O.J. has continued to retain his celebrity status, tabloid popularity, and commercial appeal. In April 2003, for example, in response to what the BBC News referred to as a

"row" over a proposed new reality show (13 episodes) based on the everyday life of O.J. Simpson, he was quoted from his Miami home in a telephoned interview with the Associated Press as saying: "I have no plans in any way to do a reality show even though people have approached me about it. There are no plans in the Simpson family to have any cameras coming in our house" ("Simpson Show," 2003, p. 2). During that same interview, Simpson also stated that he was considering the possibility of becoming a news commentator on actor Robert Blake's trial for murdering his wife, Bonny Lee Bakley, in Los Angeles in May 2001. Though declining to specifically identify any of the television outlets that had contacted him, O.J. did have this to say: "I'd love to do it. I think I have a lot of insight. I don't know if he's guilty or not but I know there's no such thing anymore as innocent until proven guilty" ("Simpson Show," 2003, p. 1).

Notwithstanding his infamous reputation in ethical and cultural circles alike, as exemplified by the persistent telling of O.J. jokes on and off camera and by the ongoing sketches of the narcissistic and indefatigable Simpson some ten years after the live broadcast of the "low speed" chase of the white Ford Bronco by the Los Angeles Police Department (LAPD) on Interstate 405, he remains a newsworthy story. In part, this mediated reality is a result of Simpson's continued run-ins with the law, involving incidents of both domestic and community conflict, if not necessarily aggravated acts of violence. For example, between the time that Simpson and his two kids moved to Florida in early 2000 and January 2002, the police had responded three times to reported disturbances between O.J. and his on-and-off girlfriend, Christie Prody, and on at least one other occasion to a call from daughter Sydney who asked the police to assist her in what she termed "an abuse thing" ("Daughter Calls Police," 2002, p. 1). In 2001, O.J. also made news when he was arrested—he had turned himself in and was immediately released on bail—for an alleged "road rage" incident that involved a relatively brief up-close and personal dispute with another driver outside their vehicles while Simpson's kids sat in the car urging their dad to "let it go" ("Out of Proportion," 2001).

In part, the mediated consumption of O.J. as a football and motion picture star and as a disgraced iconic celebrity results from his resilient personality and to a popular appeal that has born him numerous witnesses and fans alike. In 2001 and 2002, for example, there were Simpson's successful public appearances at a series of hip-hop concerts with such stars as Wyclef Jean, Lil' Mo, Noreaga, and Foxy Brown. The appearances were staged and promoted for both personal and commercial reasons. Commenting on the crowds' reactions to the appearance of O.J. at these concerts, Spiderboy founder Norman Pardo said, "When O.J. stepped on stage it was unbelievable, the crowd went crazy chanting his name 'O.J. O.J. O.J.'" ("Simpson Show," 2003, p. 1). While Simpson works on the restoration of his public image, his marketability still seems to exist, as evidenced on eBay, the online marketplace.

All along, the story of O.J. Simpson has been much more than simply a story of two trials—one criminal and one civil—for the murder and wrongful deaths of two people. It was also before, during, and after the contested media and legal battles that a mass-mediated public trial required popular verdicts on the historical and contemporary practices of criminal justice, especially as these pertain to relations of race, class, and gender in the United States. In short, the images associated with the murders and trials of O.J. Simpson were represented not only by cameras in the courtroom and by the legal maneuvers of attorneys for the state and the defense, but those images were (and still are)

representative of the larger legal, social, and economic representations of a deconstructed criminal justice system and the ongoing struggle for justice for all in America.

From another vantage point, the infatuation and captivation of the O.J. phenomena—past and present—has had as much to do with society as it has with him. As Patt Morrison, a *Los Angeles Times* columnist, wrote in a commentary reflecting on the Simpson matter five years after the murders: ''Future social historians will be engrossed not by the case, but by how we were mesmerized by it. When they write it, perhaps for the 50th anniversary, we won't be the audience any more; we'll be just another ring in the circus'' (1999, p. 2). Morrison's conclusions may help to prove the point that in the ''present'' of the postmodern future, the hyperreality of mass communications has been, for some time, busy bridging the real and the imaginary systems of justice where those in society find themselves assuming multiple roles or becoming simultaneously perpetrators and victims, prosecutors and defenders, judges and juries, and witnesses and spectators.

MASS-MEDIATED APPEAL

Assessing the ''mass appeal'' or the popularity and unpopularity of O.J. is more art than science. Nevertheless, the lasting but fading fascination with O.J. Simpson stems from many sources. During the summer of 2003, an Internet search for Simpson and other celebrities—famous and infamous—yielded the following results: First, O.J. was the fourth most notorious case with 210,000 hits. Cases with more hits included Osama Bin Laden, which received 919,000 hits; Michael Jackson, the pop music icon and alleged child molester, received 2,690,000 hits; and Mike Tyson received 263,000 hits. Second—with number of hits in parentheses—in fifth, sixth, seventh, eighth, and ninth place, respectively, were Charlie Manson (82,700), Timothy McVeigh (81,900), Richard Speck (51,700), Adolf Hitler (65,800), and Jeffrey Dahmer (24,000). Third, for a bit more perspective, Mahatma Gandhi received 23,400 hits and Martin Luther King, Jr., received 1,040,000.

Another indicator of Simpson's mass appeal was on February 4, 1997, the evening in which the verdict in the civil trial was being announced, and when MSNBC chose to broadcast the verdict live over President Clinton's State of the Union Address to the nation. As Nate Gehl, community producer at MSNBC, pointed out the next day in defense of MSNBC's decision, the traffic at the Simpson chat room was four times higher than that of the presidential speech (CNET News, 1997). A similar kind of ratings decision was made back in June 1994; the coverage of a live NBA championship final game broke away to go live to the Ford Bronco chase that involved O.J. and the LAPD. More generally, Morrison of the *Los Angeles Times* noted:

> For two years, we binged and purged, gorging on O.J. and deploring ourselves for it. Websites and chat rooms talked of nothing else. It came up at birthday parties, in airport bars and doctors' waiting rooms. What with coffee-cart chats and wall-to-wall break-room TV coverage, employers figure O.J. cost them $40 billion in lost productivity. Even the Oscars couldn't draw a media crowd like this did: Every news agency short of Guns & Ammo wanted a piece of it, and if it had been a gun instead of a knife, they'd have been there too. (Morrison, 1999, p. 1)

The O.J. Simpson case was certainly not the first famous trial involving lethal or nonlethal violence that had garnished public preoccupation. Similarly, descriptions of other

JUDGE O.J. COM

In the summer of 2006 there appeared a new O.J. Simpson trial related Web site, http://www.judgeoj.com. More than 12 years after the murders of Nicole Brown Simpson and Ronald Lyle Goldman and the subsequent criminal and civil trials of O.J., public fascination still persists. At this new Web site, which made *NBC*'s morning news on August 7, 2006, visitors get to be on the jury and to interact with other jury members, to view some four years or 80 hours of private footage of O.J. ''with his guard down and ego working overtime,'' and to cast their vote on Simpson's guilt or innocence. According to the *NBC* news report, O.J. was aware of the times that he was being filmed; however, he is now planning to file a lawsuit for the purposes of removing the Web site.

At the Web site it provides a phone number and an email address to contact them. I tried the phone number and left my name and number per the instructions of the recording on August 7. I also sent an email to swflainfo@earthlink.net on August 8. Unfortunately, they never responded so I was unable to find out either how many hits the Web site was receiving or how visitors were voting on Simpson's guilt or innocence.

The purpose of the Web site is clear: ''to show the general public a side of O.J. Simpson he has carefully tried to conceal for years...not to reopen the case.'' More from the mission statement: ''Everyone has their own opinions of the O.J. Simpson murder trial,'' but now ''you can decide what type of man he really is. A misunderstood victim of the most horrible of circumstances or one of the most cold-hearted calculating sociopaths in modern times.'' Finally, ''we do not make the decisions for you; we bring the footage of O.J. and his words, you decide.''

Talking as if judgeoj.com was some kind of court of public opinion, free of lawyers arguing about morality versus legality, without high priced defense attorneys finding legal loopholes, or overzealous prosecutors manipulating the system, the Web site is treated as ''a nation of well-informed people who become the jurors and judges who make their own decisions based on the evidence presented to them.''

The slight of hand here is that while no new or old evidence pertaining to O.J.'s guilt or innocence is presented, one is supposed to nevertheless decide whether or not Simpson did the double murders, based on four years of footage and commentary by the ''Juice,'' several years after the episode. In other words, the ''court of public opinion'' is invited to peek into the private life of Simpson and, based on these videotapes, decide legally if O.J. was guilty or not. It is an absurd proposition, but it is also a Web site that hopes to commercialize on the exploitation of O.J. Simpson as a celebrity outlaw of infamous fame and fortune. Samples of this voyeurism include O.J. talking about cocaine use in the 1980s, reflecting on how low he had sunk, and thanking Jesus as three women simultaneously lap dance him. Interestingly, the lap-dancing scene was there shortly after the *NBC* news report, but by 2:00 PM EST, it had been taken down from the site.

famous trials found in this two-volume set have also been referred to with the phrase ''trial of the century.'' However, the coverage of all the other famous trials of the twentieth century—alone or combined—pales in comparison with the coverage afforded the Simpson trials, especially the criminal trial with its nine months of live broadcasts from the courthouse. In short, for any trial to refer to itself as the ''trial of century,'' after the trial

of O.J., is a hyperbole at least and wishful thinking at best. After all, nothing about the O.J. case was too trivial to address or to elevate to the realm of high culture:

> People who would never dream of opening a tabloid could step clear of the trial's noisome tawdriness by speaking loftily of the semiotics of Marcia Clark's hair and Johnnie Cochran's ties, of Kato Kaelin as the echt Angelino, of the Brown sisters, in their morning-black Lycra and crucifix jewelry and artificially perfect California breasts, as a modern-day Greek chorus. (Morrison, 1999, p. 1)

When people characterize the O.J. criminal trial as the trial of the century, they do so less in terms of hyperbole and more in terms of spectacle. That is, it was no exaggeration to say that the morality plays surrounding the case were exhibited for the entire world to view as an object of wonderment. Court TV, with some 24 million subscribers at the time of the first (criminal) trial, provided gavel-to-gavel coverage. CNN provided more than 600 hours of trial coverage, attracting an audience about five times the size of its normal viewership. At the moment that the jury verdict of not guilty was read out loud in a court of law, there were an estimated 150 million Americans watching it live, breaking all previous television viewing records. From the very beginning of the trial, not only did newspapers and magazines feature daily and weekly updates on the legal procedures and anything else associated with O.J. Simpson, but radio and television talk shows did the same, some even converting their programs to full-time Simpson analysis such as *Rivera Live* on CNBC (Barak, 1996). Publishing houses were also not out of the loop, as more than 50 books were printed between the time of Simpson's arrest for the double murder in 1994 and the jury verdict in the civil case in 1997. A play, a couple of docudramas, and at least two made-for-television movies, not to mention books on tape, also appeared over the course of the next seven years.

In addition, there were hundreds of attorneys taking to the television and radio airwaves as part of an exploding cottage industry of mediated trial experts. In exchange for their legal knowledge, these attorneys received, if not large monetary compensation in most instances, exposure and fame that they would hopefully cash in on at some later date. During the first trial, networks such as ABC, NBC, and CBS were paying their legal experts as much as $3,000 and $4,000 per day; meanwhile, local television stations were paying no more than $500 a day. Many of these legal commentators offered their insights free of charge (Prodis, 1995). There were also several legal pundits who carved out ongoing careers as full-time network commentators. Some of those who became familiar faces as armchair analysts at the time still serve the networks and Court TV in such capacities—to name but a few, Greta Van Susteren, Leslie Abramson, Dan Abrams, James Curtis, and Victoria Toensing.

All this mass-mediated appeal was not some kind of conspiracy in the making. On the contrary, the O.J. phenomenon was not only a product of a synergistically coming together of certain noteworthy and newsworthy elements that provided both a "shelf life" and "dramatic appeal," but it was also a technological coming together of real-time simultaneous live broadcasts. Propelled by television cameras in the courtroom and the Internet outside of the courtroom, multiple voices and attitudes were expressed of both "pro" and "anti" establishment views on everyday aspects of the U.S. criminal justice system. Voices of conformity and voices of dissent could be heard as people expressed their views on issues of class, race, gender, sexuality, domestic violence, and social, if not cultural, control.

These issues were each represented in the relationships of both the double homicide of Nicole Simpson and Ronald Goldman and in the privileged treatment of Orenthal James Simpson throughout his ordeal and adjudication by the state. The circumstances of the case combined with Simpson's long history as a media star and celebrity—first, as a running back at the University of Southern California (USC) and winner of the highly coveted Heisman Trophy for college football player of the year 1968 and, later, as an all-pro running back for the Buffalo Bills and an NFL Hall of Fame inductee in 1985. During his years as a professional football player, O.J. became a pitchman for various companies, most notably for Hertz car rental agency with its successful television ad campaign, starring O.J. dressed in a business suit running through airports and leaping over chairs and luggage as he dashes to make his connecting flight. Toward the end of his professional football career, O.J. started making films. After retiring from the NFL, he worked for two major networks as a sports commentator, and there were several more motion pictures, including the highly successful *Naked Gun* spoofs, where Simpson played a victimized and bumbling but sympathetic cop. Finally, there are the double murders of a white man and woman, with the accused as her ex-husband—a black celebrity—who was caught stalking his former wife and secretly watching her perform oral sex on other men in her condominium, while their kids were assumed to be upstairs fast asleep.

What transpired over time, directly and indirectly, and long before there were the double homicides, was the construction by the mass media and by O.J. of a public persona of iconic proportions that flew in the face of the usual ''criminal menace'' that haunts U.S. society. Thus, when these contrasting images converged and wrapped themselves around Orenthal James Simpson, Nicole Brown Simpson, and Ronald Lyle Goldman, it was the American people's fascination with this contradiction rather than the media, per se, that drove (and continues to drive) our mass appeal. There was a negative photo on the cover of *Newsweek* that had darkened in O.J.'s lighter natural color. Never before and not since were so many people caught up in a mass-mediated criminal trial. Inquiring minds did want to know if O.J.—a kid from a poor and humble background who had grown into a rich, handsome, popular, and successful public figure—was guilty of the brutal murders, or if he was being framed for them by the LAPD.

THE CRIMINAL TRIAL

In the end, what hooked a mass audience on the O.J. Simpson criminal trial was that people wanted to judge for themselves; they wanted to evaluate the circumstantial evidence, ponder what did not make sense to them or did not quite fit, and ultimately decide the question of guilt or innocence. Of course, people do not ordinarily wait for the presentation of all the evidence before ''rushing to judgment.'' Typically, most of society—including those jurors selected in any criminal case—will have initial conclusions about the guilt or innocence of the accused. The conclusions are drawn from whatever information is at hand, no matter how complete or incomplete. So, from the time O.J. was first arrested to the time he did not turn himself in—as previously agreed—but chose, instead, to flee on the San Diego Freeway, people began to interpret these actions and arrive at their own assessments.

When people become either aware of or involved in a criminal trial, they bring to that adjudication a particular history, culture, and social experience of the administration of justice, reflected in part—at least—by their class, race, ethnicity, gender, and sexuality.

Accordingly, the social realities of crime and justice in the United States—past and present—vary according to the perceptions and experiences of different socioeconomic and subcultural groupings and to the associated prejudices, biases, and stereotypes that they bring as part of their biographical baggage (Barak, Flavin, and Leighton, 2001). As a professor of criminology and criminal justice, as an author of two books on the criminal justice system, and as the editor of *Representing O.J.: Murder, Criminal Justice, and Mass Culture* (1996), I bring my own criminological baggage that includes—among other things—knowledge that there are significant gaps between scientific knowledge and legal knowledge and that legal and social justice are often illusive commodities.

In addition, as a layperson, I concluded both before and after the evidence was presented that Simpson was guilty of the crimes as charged. I had judged the circumstantial evidence based not on my knowledge of substantive and procedural criminal law but rather on common sense. Common sense helps attorneys for either side of a criminal controversy fill the gaps between scientific and legal truisms that they might persuade the jury to believe their theory, version, or story of the events. So, before presenting an overview of the facts of the Simpson case and of the respective theories of the prosecution and the defense, allow me to briefly explain my commonsense reasoning as to why I thought O.J. was guilty as charged. Let me also address that these conclusions need not influence or cloud my objective treatment of the case. In fact, throughout the nine-month criminal trial, I was the expert commentator for a radio station in Ann Arbor, Michigan, without ever letting the listening audience know what I had actually thought about Simpson's guilt or innocence.

Ironically and long before I heard or saw the ''mountains of evidence'' presented against the defendant in a court of law, including the blood, the fibers, the DNA, and other physical evidence, there was an array of other factual evidence that was never introduced by the prosecution. These excluded facts from the trial, including O.J.'s suicide note that was read on national television by his former friend and attorney, Robert Kardashian; not to mention the Bronco ''get away'' with his lifelong friend Al Cowlings at the driver's wheel and O.J. with his passport, a disguise, $8,750 in cash, and a pistol to his head. Of course, there were many other people who concluded that O.J. realized that he was about to be framed by the LAPD for the double homicide and that he had better leave Los Angeles quickly.

The Facts

The ''facts'' of the murders of Nicole Brown Simpson and Ronald Lyle Goldman, or the facts of any other criminal homicide, are reconstructions of what transpired, unless there is some fluke where the killings were deliberately or inadvertently caught on audio or video. In a typical criminal homicide, however, the reconstruction begins when the police are called to the scene of the crime by a witness or, more likely, by the person who discovers the body. With respect to the double homicide that occurred on the evening of June 12, 1994, at 875 South Bundy Drive in the genteel neighborhood of Brentwood in Los Angeles, a bloody body of a woman was first discovered by Sukru Boztepe and Bettina Rasmussen who were out for a midnight stroll. While out walking, they came across an agitated stray dog that led them to the front of Nicole Brown Simpson's condominium.

Officer Robert Riske was the first police officer to arrive on the scene. It was so dark when he arrived that it took a little time before he discovered the second body. The woman was identified as Nicole Brown Simpson, resident of the Bundy address. Hours

O.J. WEB SITES

I WANT TO TELL YOU

http://pathfinder.com/@qL1NXAEYYAIAQIIL/twep/Fcus/OJ/OJ.html
This page by Little, Brown promoted Simpson's book. It includes audio excepts, photos, and passages.

THE UNOFFICIAL O.J. SIMPSON BOYCOTT PAGE

http://sidewalk.com/boycott/
This page provided information on how to boycott Simpson and companies who may employ him.

THE O.J. SIMPSON POETRY CORNER

http://www.cco.calech.edu/~ekrider/OJPoetry/ojpoetry.html
A beautifully designed page of original poetry on the Simpson case.

THE LECTRIC LAW LIBRARY'S O.J. SIMPSON MURDER CASES ALCOVE

http://www.lectlaw.com/oj.html
From the Lectric Law Library's Alcove for the ''Trials of the Century,'' this page provides a select group of files and materials from both the criminal and civil trials.

DMITRI'S O.J. SIMPSON TRIAL CENTER

http://www.cs.indiana.edu/hyplan/dmiguse/oj.html
This site was full of interesting and informative material, including photos, archived articles, court documents, as well as links to other sites concerned with the Simpson case.

THE TRIAL OF O.J. SIMPSON

http://www.law.umkc.edu/faculty/projects/ftrials/Simpson/simpson.htm
A trial account complete with chronology, maps, O.J.'s statements to the police, incriminating evidence, biographies, images, trial excerpts, satire, and more.

would pass before the second victim was identified as Ronald Lyle Goldman, a friend of Nicole's. Both victims had bled to death following multiple stab wounds. Nicole's throat had been deeply slashed; Ronald had stab wounds all over his body, and there was evidence indicating some kind of physical struggle before he had died.

Mark Fuhrman—who would later be accused by the defense of planting the infamous glove at 360 North Rockingham Avenue that appeared ''not to fit'' during the course of the trial—was one of the first two detectives from the local police station assigned to the double homicide. The two local detectives were immediately aided by two other detectives



Figure 9.1 Former Los Angeles Police Department Detective Mark Fuhrman is seen pointing to a piece of evidence near the body of Nicole Brown Simpson as seen in this LAPD photo, introduced and accepted as evidence in the O.J. Simpson wrongful-death civil trial, 1996. © AP Photo/LAPD.

from the Central Robbery and Homicide Division of the LAPD. One of these detectives, Philip Vannatter, would subsequently be accused by Simpson's lawyers of planting blood evidence. A few minutes after reinforcements had arrived at the scene, all four detectives were ordered by a superior to notify the ex-husband that his former wife had been murdered and that their children were safe and sound. The four men then left the murder scene and headed to Simpson's upscale Rockingham address a few miles away.

In the immediate hours following the discovery of the murdered bodies, police and criminalists would identify important evidence at both the scene of the crime and at O.J.'s house. At the scene of the crime there were bloody shoe impressions leading away from the bodies toward the back alley; several drops of blood appearing to the left of those footprints; the door to Nicole's condominium was ajar, but there was no evidence of any ransacking or blood inside her home; drops of blood were also found by several officers on the back gate leading to the alley; and a glove and knit hat were found on the ground near the bodies. Meanwhile, at Simpson's Rockingham address, blood was found inside and outside O.J.'s white Ford Bronco, including what appeared to be a bloody shoe impression in the carpet; blood was also found in O.J.'s driveway, in the foyer to his house, and in his bathroom; and a blood-drenched glove that matched the single glove found at the murder scene was found in an obscure and out of the way location on the estate grounds (Rantala, 1996).

One other fact of importance, of course, was not found either at the scene of the crime or at the home of the accused. There was a deep cut on one of O.J.'s left fingers that was

acknowledged during his interview with the LAPD at their downtown office some 15 hours after the murders. Simpson did not have an explanation for his fresh wound. In fact, at the time he could not recall how he had come to have that cut on his finger. Subsequently, O.J. and his attorneys came up with less than satisfactory explanations for the multiple cuts to his left hand. A doctor hired by the defense to examine Simpson less than 72 hours after the murders found multiple cuts and abrasions on his left hand.

The Prosecution's Case

The prosecution built its case on a mountain of evidence, including, but not limited to, the following:

DNA matched Simpson's blood to the blood drops at the murder scene that were to the left of the bloody footprints.

The shoes leaving the bloody footprints were identified as Bruno Magli's—expensive and rare Italian-made shoes—sold in only 40 stores across the United States, including Bloomingdale's, where Simpson regularly purchased size 12 shoes—the same size as the footprints by the body.

The hat found at the murder scene had hairs in it consistent with O.J.'s hair.

Simpson's Ford Bronco had blood on the center console from both victims. On the driver's side carpet was an impression with Nicole's blood, which was consistent with the Bruno Magli shoe pattern left at the murder scene.

A trail of Simpson's own blood led from his Bronco into his house, and in his bedroom socks were found that contained his and Nicole's blood.

The two gloves found, one at the Bundy crime scene and the other at Simpson's Rockingham estate, were a matched pair. The gloves were Simpson's size, and they were rare and expensive and sold at only one store that the prosecution argued Nicole bought for O.J. the week before Christmas in 1990. Several photographs and videos reveal Simpson wearing gloves of the same make and model.

When the limo driver arrived at Simpson's home on the night of June 12 to take O.J. to the airport, there was no reply for 20 minutes and no white Ford Bronco. The limo driver's buzzes on the doorbell were answered only after he saw a tall, 200-pound black person enter the house.

On the night of the murder, at the same time that O.J. was scheduled to leave for the airport, Brian "Kato" Kaelin, living in Simpson's guesthouse, heard three thumps behind his room. When Kato left his room to investigate, he arrived at the front of the house from one direction, as Simpson was approaching his own door from a different direction. It turned out that is precisely where the Rockingham glove was found. And despite Kato's concern and the presence of O.J.'s eldest daughter from his first marriage residing in her own quarters on the premises, O.J. did not investigate or alert his private security service. Uncharacteristically, he also forgot to turn on the security system before he left for the airport.

> Loading up the limousine, Kato offered to carry one of Simpson's bags from the pavement; however, Simpson insisted on carrying the bag himself. By the next morning, the bag had disappeared and has not been seen since, nor have the clothes that Simpson was allegedly wearing on the night of June 12.
>
> The night after the murder, Simpson told an old friend and retired cop, Ron Shipp, that he had had dreams of killing Nicole. He also inquired about how long it took to get DNA results back.

In addition to the evidence presented, Simpson had no alibi to exclude him from consideration. It would also be argued, if not proven, that O.J. had the time, opportunity, and motive to commit the murder. As for the latter, the prosecution made the case that the murder of Nicole was a premeditated act born out of Simpson's obsession with her and his final realization that he could no longer have her. Goldman, the second victim, had the misfortune of showing up at the wrong place at the wrong time to return a pair of eyeglasses, and he was killed so that the murderer could escape without a witness. The prosecution argued that O.J. abused Nicole during the span of their 17-year relationship. Prosecutors disclosed a history of brutal beatings, verbal assaults, humiliation, and financial control. Consistent with classic abusive and battering cycles or scenarios, the worst episodes of domestic violence were followed by periods of contrition and attempts by both of them to try again. In sum, the prosecution advanced the theory that O.J. killed Nicole because of his need to possess and control her, because of his realization that he had lost Nicole once and for all, and because of his parallel rationalization that if he could not have her, then nobody could.

The Defense Case

The case for the defense centered on a conspiracy against O.J. Simpson orchestrated by the LAPD:

> Some officers, like Vannatter and Fuhrman, were accused of actively participating in evidence planting and tampering. Others, both officers and members of the LAPD Scientific Investigation Division, were accused of a more passive role. Some of these passive participants knew that something was wrong, Simpson's lawyers argued, but refused to tell anyone about it, even when testifying under oath. The defense dubbed this latter aspect of their theory the ''conspiracy of silence.'' (Rantala, 1996, p. 25)

Even before Johnnie Cochran's opening statement informing the jury that the evidence against Simpson was ''contaminated, compromised, and ultimately corrupted,'' the multimillion-dollar ''Dream Team'' defense had been fueling ideas in the tabloid and mainstream news alike about evidence tampering and an O.J. frame-up by dirty cops who wanted to convict Simpson at any cost.[1] From the beginning, O.J.'s defense team was trying to put the police, the state, and the prosecution's case on trial and present the adjudication of Simpson as a miscarriage of justice.

Simpson's lawyers argued that the investigation was so botched that conclusions about the physical evidence could not be trusted. For example, the defense argued that the DNA evidence implicating O.J. was contaminated with the blood that Simpson voluntarily gave to the police. They further argued that the bloody glove found at Simpson's estate, as well as other blood droplets, were planted at the scene, at O.J.'s house on Rockingham, and in his Ford Bronco. They specifically charged Mark Fuhrman with planting the bloody glove



Figure 9.2 O.J. Simpson and his defense attorney, Johnnie Cochran, Jr., listen in court to Judge Lance Ito, during the Simpson double-murder trial in Los Angeles, 1995. © AP Photo/Vince Bucci, Pool.

at Rockingham and smearing some of the blood off of the glove and onto the Bronco, and they similarly accused Philip Vannatter of planting the blood that Simpson had voluntarily given to the police.

To buttress their argument against Vannatter, the defense argued that blood on the back gate and on the socks in Simpson's bedroom contained a preservative, so it must have been in one of the test tubes used by the jail nurse who drew blood from O.J. the day after the murders.

In short, whenever the defense could critique the LAPD's investigative process in relationship to any damaging evidence, they did so. When the defense could not offer any type of rebuttal, they simply chose to remain quiet, leaving the incriminating evidence alone. When there were uncertain or unknown aspects in the case that could be speculated about—like the time of the murders—the defense made a case for the murders happening later than the prosecution had surmised, hoping to show that O.J. could not have had the time to commit the murders and catch the early bird flight from LAX to Chicago. The defense alleged that Simpson was too infirm from his arthritis to have committed the double homicide. Similarly, they argued that Nicole had not bought the gloves as a Christmas present for Simpson in 1990, nor did the gloves have any connection to Simpson whatsoever. Finally, as for Simpson not responding for 20 minutes to the calls from the limousine driver at his Rockingham address at the approximate time of the murders, his lawyers maintained that O.J. had simply overslept.

As for the issue of motive, the defense upheld that Simpson was a happy man. Despite that the police had responded on several occasions to domestic violence calls from Nicole involving O.J., his defense attorneys argued that he regretted the lone incident in which he was officially adjudicated for battery in 1989. Simpson's attorneys further claimed that there had been no ensuing physical violence between O.J. and Nicole. They also claimed that he was not upset or agitated between the time when the murders were committed and when he learned of the deaths early the next day in Chicago. Furthermore, Simpson's family members denied that a private conversation had occurred between O.J. and Ron Shipp the evening after the murders.

Although the defense need not offer an explanation for the murders, they did come up with a ''theory'' for the crime; the defense suggested that the brutal killings were carried out by two men rather than one. They further speculated that the double homicide had something to do with cocaine used by Nicole's friend Fay Resnick and debts Resnick allegedly owed to some unidentified drug dealers.

Jury Selection and the Verdict of Not Guilty

Jury consultants were used by both the prosecution and defense in the Simpson criminal trial. Interestingly, Jo-Ellan Dimitris of Litigation Science, who was retained by the defense, and Donald Vinson of Decision Quest, who worked *pro bono* for the prosecution, came essentially to the same conclusions about the type of jury that would be more or less likely to convict Simpson. Not surprisingly, both Dimitris and Vinson thought white jurors would be more likely to convict Simpson than black jurors would. More significantly, both consultants thought that black men would be some three times more likely than black women to convict O.J.

Vinson, who conducted several 15-person focus group sessions, provided extensive research and data, created elaborate displays and exhibits, and stressed the importance of keeping black women away from the jury box. For example, he noted that his data revealed that 23 percent of black men thought O.J. was guilty, while only 7 percent of black women thought him guilty (Barak, 1996).

From the focus groups, Vinson learned not only what type of jurors to select, but he also gained insight into who should or should not prosecute the case against Simpson. It was clear that black women were more vocal in their support of O.J. than black men were. Black women were also ready to dismiss the importance of Simpson having beaten Nicole, rationalizing that "every relationship has these kinds of problems" (Bugliosi, 1996, p. 82). Finally, Vinson learned of the intense dislike and extreme negativity that these black women from the focus groups had for the white female prosecutor Marcia Clark; some went so far as to vocalize their hate and contempt by referring to Clark as that "bitch." As it turned out, however, the Los Angeles district attorney at the time, John Garcetti, and the lead prosecutor, Marcia Clark, both ignored what turned out to be sage advice from Vinson. In other words, not only did the district attorney's office not substitute another lead prosecutor in place of Clark, but they concluded that they knew best and that gender was a trump card over race. White or black women alike would convict Simpson, so Clark believed. As it would turn out, it was not a question of gender over race or vice versa, but rather it was a case of gender and race.

Meanwhile, Dimitris and the defense team had reached the same conclusions as Vinson. When the prosecution rejected essentially the same advice, but reversed, as the defense had accepted, they both were, in effect, selecting the same type of jury that turned out, as predicted by Litigation Science and Decision Quest, to be the least likely jury (e.g., the one with the most black women) in terms of demographics to convict O.J. of the double homicides. Simpson's jury of 12 consisted of two white women, nine black women, and one black man. Again, as jury consultant Vinson told Clark and Garcetti, "black females were the worst conceivable jurors for the prosecution" (Bugliosi, 1996, p. 82).

According to research by Russell, although black women have tended to be more physically assertive in their abusive and battering relations than white women, they have also been protective of black males in terms of the dominant white society (Russell, 1996). Moreover, the institutional suppression of the problem of domestic violence in the black community was underscored by Michael Eric Dyson—a syndicated columnist for the *Chicago Sun Times,* a distinguished professor of African American and religious studies, and the Avalon Foundation Professor of Humanities at the University of Pennsylvania—when he wrote:

> The truth is that black male violence against black women is a mainstay of relations between the two. The oppressive silence black women have observed in deference to race loyalty, or had imposed on them out of fear, remains a tragically underexplored issue in black life. Domestic violence against women is a concealed epidemic in black communities. It needs to be exposed. (Dyson, 1996, p. 51)

What Marcia Clark and the prosecution failed to take into account was the emotional and psychological history of domestic violence in the black community. Not only the prevalence of such behavior but also the fact that those who have experienced such violence as a victim, or who have encountered it in their families, tend to be forgiving, emphasize recovery, and do not conclude that domestic violence necessarily leads to homicide. Attitudes or rationalizations of this kind work on two levels: First, there are the more overt tendencies to identify with and to displace the blame of O.J. onto the victim Nicole with whom identification is blocked. Second, at a more latent or unconscious level, if O.J.—who had everything in the world going for himself with few of the everyday hassles and frustrations of many black men—could resort to escalating this domestic violence into murder, how safe were these black women (jurors) from the men in their lives?

When the trial was finished, the sequestered jury, who had spent nine months listening to one of the longest and most contentious trials in courtroom history, took only four hours to reach a decision of not guilty. It was "obvious" that they had bought the defense team's argument that evidence against O.J. was tainted, planted, and contaminated. To subordinate the uncontested evidence against O.J. to the contested evidence was to accept the defense team's assertion that the state had set out to frame O.J. for the double homicide. In effect, some have argued that, in a way, the jury's decision of a not guilty verdict was an act of unconscious "jury nullification."

On the other hand, not all jurors were as "unconscious" of the decision that they were making. The lone male juror, a black man, raised his right fist in a black power salute when the jury stepped down after the verdict was read. Gender and race came into play quite clearly. For example, the jury did not reach a unanimous verdict of not guilty on the first vote. The initial polling had ten jurors voting not guilty and two voting guilty. The two jurors who voted for the guilty verdict on the first vote and then subsequently changed their minds on the second vote were the only whites on the jury. The two white jurors were women who quickly decided to capitulate or acknowledge defeat rather than stage a racial contest with the other ten emotionally united blacks who had concluded that O.J. was not guilty.

SIDELINE PUNDITS AND POSTADJUDICATION AUTOPSIES

Both during and after the Simpson trials, sideline pundits consisted overwhelmingly of attorneys. Nearly every one of these lawyers had courtroom experience as a prosecutor or as a defense attorney or both. Out of the hundreds, if not thousands, of hours of Simpson programming, scant minutes at most were allocated to contributions from those who were not lawyers, including forensic scientists, social and behavioral scientists, and other experts on culture and society. As a result, the mass-mediated discourse on the representation of O.J. Simpson was rarely about law and society in general. In particular, it was not about race and social control or about gender relations inside or outside the courtroom. For the most part, the coverage was restricted to the courtroom dynamics of the legal

actors in this American tragedy and to how well they were playing to the jury and to the public.

Those legal pundits who had managed to capture a place at the Simpson trough did so because they were able to display emotions and connect themselves to the media frenzy. Their popularity was not their legal expertise per se, but rather their courtroom experience and viewpoints for what would and would not work in a court of law. Most of the time, those legal pundits were engaged in ''evaluating'' how well the judge, the defense, the prosecution, and the witnesses were doing on any given day. In other words, it was a ''who's up, who's down'' type of coverage. Much of their infotainment consisted of supplying endless praise and criticism for the way the attorneys had performed with respect to opening arguments, direct examinations, cross-examinations, redirects, closing arguments, and so on. Occasionally these pundits ventured outside of the procedurally construed legal commentary and into the allied cultural issues of the wider society and the administration of social justice.

Defensive of the legal status quo and the U.S. criminal justice system as a whole, most of these ''legal experts'' acknowledged that, because of his fame and fortune, O.J. was afforded very special and privileged treatment by the state during his arrest, investigation, and prosecution. For example, in a reversal of how the criminal justice system normally works in a capital crime before the actual trial begins, the Los Angeles District Attorney's Office stipulated that the prosecution would not seek the death penalty if the verdict resulted in a guilty conviction. This was a calculated concession to O.J.'s popularity and the belief that his conviction would be even less likely if he was facing the death penalty. From the beginning, Garcetti and the prosecution were skeptical of their chances of winning despite their evidence against Simpson.

Most legal pundits in their postadjudicative autopsies—daily or at the climax of each one of Simpson's trials—were able to point out the differences in treatment afforded to Orenthal James Simpson and the treatment experienced by other black men who have been similarly charged with criminal homicide. Seldom, however, did these pundits discuss the differential impact of institutionalized racism, sexism, or classism on the administration of justice. Even more remote were the few discussions that tried to connect the larger social, political, and economic arrangements of inequality to the way in which these forces shape or influence the perceptions and attitudes that people have about crime and justice in the United States.

As for the average viewers, most pundits thought that they had received a worthwhile crash course—O.J. 101—in criminal law and procedural due process. Some believe that beyond the mediated spectacle there was not nearly as much valuable information communicated about crime and justice as there should have been, especially given all the airtime. For the most part, the lessons were superficial or they were so basic that they should have been known in the first place. For example, it was repeatedly pointed out how the public had learned the difference in the burdens of proof involved in criminal and civil litigations. That is to say, most laypeople who tuned into the legal proceedings came to realize that the state or prosecution in the criminal case had a tougher burden to prove than the plaintiff in a civil case. Regarding Simpson and the criminal case, the public understood that the prosecution had not proved its case against Simpson ''beyond a reasonable doubt.'' In the latter civil case, people also understood that O.J. had been found guilty of the wrongful deaths of Nicole Brown Simpson and Ronald Lyle Goldman based on a ''preponderance of the evidence.''

MEDIA, DISCOURSE, AND THE O.J. SIMPSON CASE: A FINAL COMMENT

In the postmodern and contemporary worlds of telecommunications, there has been a blurring of the news and entertainment media. The blurring has been technological and thematic. Thematically, the blurring is exemplified by the public discourse surrounding the representation of crime and justice in America. When it comes to high-profile criminal trials in particular, especially since O.J., there is usually a flurry of activity to gain access to such media sites as CNN, Court TV, Hard Copy, Entertainment Tonight, CNBC, the major network news stations, and all the other entertainment news shows that are produced regularly. Those prime-time show formats like *Larry King Live* or the discontinued *Rivera Live* allow those immerged in high-profile criminal trials to try their case in the "court of public opinion"—free as much as possible from law.

Beyond the particulars of these high-profile criminal trials, those pundits or whoever attach themselves to the mass-mediated discussions of these cases possess the opportunity to assist and/or resist the reconstruction of a fairly solidified agenda of "law and order." During their encounter with the inequities, for example, involved in the administration of crime and justice in the United States, these pundits may choose to explore or ignore these social realities. For in the end, when it comes to reporting on the administration of justice there is much more involved than merely reporting "just the facts" as television detective Jack Webb used to say. Interestingly, for all the to-do, all the fuss, and all the debate about the Orenthal James Simpson double murder of Nicole Brown Simpson and Ronald Lyle Goldman, the influence of those trials on the practice of criminal and civil justice in the United States has been virtually nil.

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NOTE

1. For more information, see Trial Transcripts, 1995, available at http://www.cnn.com/US/OJ/trial/jan/

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10

From Victim to Vamp in Nine Days: The Susan Smith Child Homicide Case

KEVIN BUCKLER

At around 9:00 p.m. on October 25, 1995, Shirley McCloud, a resident of Union, South Carolina, was just finishing reading the daily edition of the *Union Daily Times* when she heard a woman screaming from just outside her residence. Instinctively, she went to investigate and observed a young woman in her early to mid-twenties haphazardly calling out for someone to help her. The young woman told Shirley McCloud that a man had abducted her children—more specifically, the young, visibly shaken women exclaimed, ''A black man has got my kids and my car!'' Shirley McCloud and her husband, Rick McCloud, quickly told their son to call 911 emergency, and, within minutes, one of the most complex, disturbing, and memorable cases in recent U.S. history was set in motion.

The woman screaming outside of the McCloud residence that night was 23-year-old Susan Smith. In her first interview with police, Susan Smith asserted that she was at a stop light at Monarch Mills intersection when an African American man jumped in her car and told her to drive. He further claimed that when she asked the man why he was abducting her and her children, Michael and Alex Smith, who were in the backseat of the vehicle, the man told her to shut up and drive or he would kill her. Susan Smith told police that she had driven the car about four miles northeast of Union when the man told her to stop the car next to a street sign that advertised John D. Long Lake. This lake was located just several hundred yards from the McCloud residence. She told police that the man made her stop in the middle of the road and he then told her to get out of the car. After asking the man why she could not take her children with her, Susan Smith told police, the man said there was not enough time. The man then pushed her out of the car while pointing a gun at her side. The man then told her not to worry, that he was not going to harm her children, and then he drove away.

The case immediately received substantial mass media attention. Susan Smith and her husband, David Smith, appeared on several nationally televised news programs begging



Figure 10.1 Visitors walk down the ramp where Alex and Michael Smith were drowned in a car in 1994 in Union, South Carolina. © AP Photo/Lou Krasky.

and pleading that the man return their children unharmed. Initially the police investigated the matter as a child abduction case. But when police investigators started to notice several inconsistencies in the statements of Susan Smith, the investigation started to take a decidedly different turn. Eventually, police were able to obtain a confession from Susan Smith. She confessed that she murdered her children by drowning; she told police that she drove her car into the John D. Long Lake with her children inside.

This chapter will explore the social and cultural implications of the Susan Smith case. First, it provides a detailed description of the case, beginning with the context of the offense, the participants of the case, the actions taken by the agents of the criminal justice system, and an account of the trial and the final resolution of the case. Second, an analysis of the media coverage of the case is provided with an explanation of how the circumstances inherent in the case lent themselves well to intense media coverage. Third, the racial implications of the case are explored. Fourth, the implications of the case for social understanding of maternal homicide are considered. And last, the cultural appeal of the case is documented by providing illustrations of how the case has impacted popular culture.

Background and Description of the Crime

One of the several books that were published about the Susan Smith case asks a very provocative question: *Susan Smith: Victim or Murderer?* (Rekers, 1996). It is a question that is intricately wrapped and woven into one of the, if not the, most intently debated

questions in the scholarly fields of philosophy, psychology, sociology, and other humanities. Do individuals who commit horrific crimes such as these have, and exercise, free will in their actions or are psychological, biological, and/or sociological and environmental factors at work that serve to compel behavior? To what degree do unfortunate and personally damaging incidents occurring in the life of an individual, especially in young adulthood stages of development, impact the individual's future behavior? If social and environmental factors serve as an adequate explanation of behavior, do these factors excuse such behavior? This section highlights the personal, family, and behavioral background of Susan Smith and her family. It is these personal and familial factors that, the defense team for Susan Smith would eventually come to argue, explain her behavior that led to the deaths of her sons, Michael and Alex Smith.

The Childhood of Susan Smith

Susan was born in the small, rural town of Union, South Carolina, to Linda, a homemaker, and Harry Vaughan, a local firefighter and textile worker. Her home life was marred by conflict, dysfunction, and tragedy. The marriage of Linda and Harry Vaughan was a rocky one that was characterized by conflict and violent confrontation. On several occasions, Harry Vaughan threatened to murder his wife and then take his own life. Before Susan had entered elementary school, her half-brother, Michael, had tried to commit suicide by hanging himself.

When Susan was six or seven years old, her parents ended their tumultuous marriage. Within five weeks of the final divorce decree, Harry Vaughan committed suicide. The suicide occurred shortly after an argument had ensued between her parents that led her mother to call the police. After police arrived at the scene, they witnessed Harry strike his ex-wife. The police further determined that he had gained access to the home of his ex-wife by breaking and entering. Shortly thereafter, he placed a gun between his legs and fired one shot into his abdomen and was later pronounced dead after emergency surgery was performed.

Within two weeks of her divorce, Linda had remarried a man by the name of Beverly (Bev) Russell. He was a businessman as well as a South Carolina State Republican Executive committeeman and member of the advisory board of the Christian Coalition. Beverly Russell and Linda moved their family into his exclusive Mount Vernon Estates home on the outskirts of Union. Initially, Susan did not show signs of ill effects of the divorce of her biological parents, her father's suicide, or the subsequent remarriage of her mother to her new stepfather. She performed exceptionally well in elementary school, junior high school, and high school. She was a member of several clubs in school and maintained a B average or higher throughout her school career. She was also a volunteer who worked with the elderly and the Special Olympics.

Despite this apparent stability, official documentation showed that Susan's home life was filled with internal conflict and turmoil. For instance, at the age of 13, she attempted suicide by overdosing on aspirin. But the most glaring example of this conflict was manifested in her relationship with her stepfather. There were several documented reports of behavior occurring between Susan and Beverly Russell that evidenced inappropriate sexual contact. One such report occurred around her 16th birthday when she crawled into the lap of Beverly Russell and, when she began to fall asleep, her stepfather moved his

hand toward her breast and fondled her. Reports also suggested that during this encounter, her stepfather moved one of Susan's hands, placing it directly on his genitals. Susan pretended to be asleep while the molestation occurred (Pergament, n.d.).

Susan filed a complaint with the Union County Sheriff's Office and the South Carolina Department of Social Services. As a result, Susan and her mother attended several family counseling sessions and Beverly Russell temporarily moved out of the family residence. She and her mother would eventually terminate the family counseling sessions, and her stepfather returned to the family residence. But the inappropriate sexual contact that occurred between the stepfather and stepdaughter did not end. In fact, in the trial of Susan Smith, the defense counsel's psychiatric expert testified that the family appeared to place the blame for the inappropriate acts on Susan Smith.

Official county and state records indicated that in March 1988, the then 17-year-old Susan reported an incident of sexual molestation by her stepfather to a high school guidance counselor. Under state law, the guidance counselor was required to report the incident to the proper authorities. During the eventual murder trial of Susan Smith, the state caseworker assigned to this second documented case of molestation testified that she had learned that Beverly Russell had fondled Susan Smith's breasts, French-kissed her, and placed her hand on his genitalia, on numerous occasions. No charges were brought against Beverly Russell for this second set of allegations because Susan Smith agreed not to press charges. The caseworker testified that she attempted to convince Jack Flynn, the Assistant Court Solicitor at the time, to file aggravated assault and battery charges against Beverly Russell. But an agreement was reached between Beverly Russell's attorney and the Assistant Court Solicitor not to file charges, and the agreement was accepted and sealed by an appropriate judicial authority.

The Adulthood Family and Intimate Relationships of Susan Smith

During her junior and senior years of high school, Susan worked at a local Winn-Dixie supermarket in Union as a cashier and bookkeeper. During her stint at the supermarket, she met and dated several men. The first relationship that Susan was involved in while working at the supermarket was with a married man. The relationship led to an unwanted

INTERESTING FACTOIDS ABOUT SUSAN SMITH

Susan Smith's tendency for controversy and unhealthy and damaging intimate relationships with men did not end when she was sentenced to prison. In 2000, Susan Smith admitted to having sexual relations with two different male prison guards while incarcerated by the South Carolina Department of Corrections. She also became the center of mild controversy in 2003 when it was discovered that she had placed an advertisement with WriteAPrisoner.com. The controversy prompted the company to request that Susan Smith remove the advertisement because the ad was generating hundreds of responses and was becoming a distraction to the company's stated purpose of helping inmates make and maintain contacts with the outside world.

pregnancy and subsequent abortion. Following the abortion, the married man broke off the relationship. Susan became depressed and ultimately attempted a second suicide by overdosing on Tylenol and aspirin. She eventually met and married (in March 1991) co-worker David Smith, the father of Michael and Alex.



Figure 10.2 Susan Smith's mug shots, 1994. Courtesy of the Library of Congress.

Early in their relationship, Susan Smith learned that she was pregnant. From the start, the marriage was characterized by a great deal of conflict and difficulty, much of which centered on the issue of finances and the dissimilar backgrounds of the couple. He had grown up in relatively simple surroundings and envisioned a simple, country-style life for him and his family. She desired more of a grand and financially expensive lifestyle. Susan Smith's mother also served as a constant element of contention for the couple. David perceived her mother to be quite controlling and domineering. Thus, their marriage was marred with tension and would eventually come to be characterized by several extramarital affairs. By their third wedding anniversary, the couple had separated on several occasions. In the winter of 1993, the couple attempted to reconcile their chaotic marriage. They purchased a small home in Union. She gave birth to a second child, Alex Smith. But within three weeks of the birth of Alex, the couple mutually agreed that their relationship was over and split up once again.

It was during this time that Susan Smith came to be employed as a bookkeeper at Conso Products, serving as the assistant to the executive secretary for J. Carney Findlay, president and CEO of Conso. It was here that she met Tom Findlay, son of the company's CEO. She began a short-lived, on again, off again relationship with Tom Findlay. Accounts of the Susan Smith case suggest that she was beginning to feel that she finally had found some degree of stability in her life and that she attributed this to her new relationship. But Tom Findlay decided to end the relationship due to his feeling that she was overly possessive and needy. In a letter to her, Findlay wrote,

> You will, without a doubt, make some lucky man a great wife. But unfortunately, it won't be me. . . Susan, I could really fall for you. You have some endearing qualities about you, and I think that you are a terrific person. But like I have told you before, there are some things about you that aren't suited for me, and yes, I am speaking about your children. (Pergament, n.d.)

The letter went on to explain that he did not want the responsibility of caring for another man's children. The letter also stated that he had been upset by several aspects of her recent behavior, including her behavior at a party the two had attended. During the party Susan Smith and the husband of one of her friends had kissed and fondled each other in Tom Findlay's hot tub. Concerning the incident, Findlay wrote,

> If you want to catch a nice guy like me one day, you have to act like a nice girl. And you know, nice girls don't sleep with married men. (Pergament, n.d.)

Around the same time that Susan Smith received this letter, her divorce with David Smith was becoming finalized. In September 1994, David Smith was served with divorce papers, and in October 1994, the divorce papers were filed at the courthouse in Union. By most accounts, Susan Smith was both angered and devastated by the break of the relationship with Tom Findlay. On several occasions, she sought him out at both his personal residence and his work in attempts to reconcile the relationship.

The Drowning at John D. Long Lake

On October 25, 1994 (the day of the eventual drownings), sometime in the early part of the afternoon, Susan Smith requested that her supervisor allow her to leave work early. She was feeling very distraught over the situation with Tom Findlay. She further confided in her supervisor that she was in love with a man who did not love her and that the reason the relationship did not work out was because of her children.

Later that afternoon, on various occasions between the hours of 2:30 and 6:00, she initiated contact with Tom Findlay. She was in desperate attempt to reconcile the relationship. First, she concocted a story that her ex-husband, David Smith, was threatening to go public with news of an affair between her and Tom Findlay's father as well with allegations that she had been cheating the IRS out of funds. She also telephoned a co-worker who was having dinner with Tom Findlay to ask if he had mentioned her at all during the dinner. These repeated attempts to make contact with Tom Findlay served as powerful indicators for the prosecution that Susan Smith had taken the lives of her children because she saw her children as a blockade preventing her relationship with Tom Findlay from further developing.

At around 8:00 p.m., Susan Smith dressed her two sons, placed them in their car seats, and began the fateful drive that eventually ended with her rolling her car into John D. Long Lake with her children strapped inside their car seats. The purpose of her driving to the lake was a source of a great deal of contention between the prosecution and defense attorneys. In her initial confession she told police that she drove to the lake because she wanted to commit suicide. She wrote in her confession that she believed that her children would be better off in God's hands so she planned to kill herself and her two sons together.

In a subsequent statement to police, she wrote that on three separate instances she put the car in neutral and started to roll her car into the lake but that she had pulled on the parking brake to stop the car. After the third attempt, she told police, she got out of the car and stood for a brief moment until she finally reached into the vehicle and released the parking brake, sending her car and two sons into the lake. After releasing the parking break and watching the vehicle descend into the lake, she told police that she ran to the McCloud residence and began to concoct the story of the black male abductor.

THE INVESTIGATION

During the initial questioning of Susan Smith shortly after the 911 call was placed, representatives from the Sheriff's Office simply documented the story relayed by the dispatcher and then again from Susan Smith. At this point, the police representatives were concerned only with collecting the information as it was made available to them and following up on any leads as they developed. It was not until the following days that police representatives began to critically examine and assess the statements of Susan Smith

and begin to suspect that she knew something more about the disappearance of her two children.

In the initial stages of the investigation, the Sheriff of Union County contacted representatives of the South Carolina Law Enforcement Division (hereafter referred to as "SLED") to obtain assistance with the investigation. The Sheriff coordinated collaborative efforts with SLED to have divers search John D. Long Lake, as well as to have helicopters with heat sensors fly over the area. A police artist met with Susan Smith to construct a composite drawing of the suspect. She described a black man who was around the age of 40, wearing a dark shirt, jeans, a plaid jacket, and a dark knit cap.

Special interest groups, specializing in missing and abducted children, became involved in the case. The Adam Walsh Center[1] (a center developed in the honor of Adam Walsh, a six-year old who was abducted from a Florida shopping mall and murdered) sent representatives to Union to speak with Susan and David Smith. These representatives met with the parents and explained the services that they could offer and proposed that the organization serve as media liaison for the family. Also, within the first week of the investigation process, Marc Klaas (founder of the Marc Klaas Foundation) and Jeanne Boyton, a cognitive graphic artist affiliated with the Polly Klaas Foundation and the Marc Klaas Foundation[2] attempted to become involved in the investigation, but Susan and David Smith refused to meet with them.

A representative of the Adam Walsh Foundation and the Sheriff of Union County convinced David Smith to make a public plea for the safe return of his children. He made the following public statement:

> To whoever has our boys, we ask that you please don't hurt them and bring them back. We love them very much....I plead to the guy please return our children to us safe and unharmed. Everywhere I look, I see their play toys and pictures. They are both wonderful children. I don't know how else to put it. And I can't imagine life without them. (Pergament, n.d.)

Once the standard protocol in cases of missing and abducted children (i.e., sketches of the suspect, photos of the missing children, pleas for the safe return of the children) had been set in motion, police attention began to shift their attention back to the statement provided by Susan Smith. The Sheriff of Union County contacted David Caldwell, Director of the Forensic Sciences Laboratory for the SLED and requested that he come to Union to interview Susan Smith. Two days after the alleged abduction, Susan and David Smith were both administered a polygraph examination. The results of David Smith's polygraph suggested that he knew nothing about the disappearance of his sons, whereas the polygraph of Susan Smith was inconclusive. A major point of contention for the Sheriff's department and SLED investigators was Susan Smith's polygraph answer to the question "do you know where your children are?" Consequentially, over the course of the investigation, she would be constantly interviewed and reinterviewed, and, in some instances, she was interviewed multiple times a day.

Subsequent police interviews with her revealed several inconsistencies and questionable assertions in her initial and subsequent statements. During an interview with David Caldwell (the SLED investigator), Susan Smith had told him that around 7:30 on the night of the alleged abduction her son, Michael Smith, had told her he wanted to go to the local Wal-Mart. Susan Smith had also told the SLED investigator that while they were out, her son had also asked if they could go and visit Mitchell Sinclair, the fiancé of

Susan Smith's friend Donna Garner. When David Caldwell pressed her on this issue, Susan Smith recanted her statements and admitted that it was initially her idea to go to Wal-Mart.

David Caldwell had doubted that Susan Smith and her children had gone to Wal-Mart. The SLED investigator told Susan Smith that police had spoken to several employees and patrons who were in Wal-Mart that night and that no one recalled seeing her or her children. David Caldwell also revealed that investigators had spoken with Mitchell Sinclair and that he had told investigators that he was not home at the time and that he was not expecting her. After being confronted about these inconsistencies, Susan Smith amended her story and claimed that she had actually been driving around for hours with her children in the backseat. She claimed that she had lied about these circumstances because she was afraid that her behavior would have sounded suspicious.

The investigators also found inconsistencies in her statements about how the abduction occurred. In the initial statement Susan Smith made to the police, she had claimed she was at a stop light at the Monarch intersection when the black man had approached the car and abducted her and her two children. Susan further asserted that there were no other vehicles in the area; thus, there were no other persons in the area to offer assistance or to substantiate her story. However, David Caldwell and the SLED investigators had determined that this could not be accurate because the light at the Monarch intersection is permanently green unless a car on the cross street triggers the signal to switch. If there were no other cars in the area, the light would not have been red at the intersection. When confronted with each of these inconsistencies during the lengthy and ongoing interrogation process, she began to modify her statements.

Consequently, it became clear to the SLED investigators that it would not be easy to obtain a confession from Susan Smith. So the investigators formulated a plan that called for the use of the media as an important tool to get her to confess that she had information that she was withholding from the police. The plan called for police to hold multiple press conferences to inform the public that they were making little progress in the investigation. Police investigators also invited the producers of *America's Most Wanted* to Union to tape a show concerning the abductions. Police investigators encouraged local ministries to hold press conferences requesting the safe return of the children. The objective of the plan was to use more intense media coverage of the alleged abductions to place added pressure on Susan Smith. Police hoped that the added media coverage would increase the psychological burden on Susan Smith to be more forthcoming with her knowledge of what happened.

The strategy worked. On November 3, 1994, Susan Smith confessed to the murders of her children, Michael and Alex Smith, by drowning the boys in her 1990 Mazda, in John D. Long Lake.[3] In her confession, Susan Smith told investigators of her desperate mental state on the night of the murders, her difficult relationship with David Smith, and the letter she had received from Tom Findlay. She told investigators that she had driven to the lake with the intention of committing suicide and simultaneously ending the lives of her sons. The confession further detailed three instances in which she allegedly attempted to roll the car into the lake, but at the last minute, applied the parking break. She told police that she eventually stood outside of the car, released the parking break, and the car slowly descended into the lake. Susan Smith was arrested and charged with double murder.

Susan Smith's family hired David Bruck, a defense attorney in Columbia, South Carolina, who specialized in death penalty cases. Prior to accepting the Susan Smith case,

Bruck had represented clients in 50 capital cases and had lost only three of these cases. David Bruck hired Judith Clarke, a federal public defender from Washington and an expert in death penalty cases, to assist in the case. State Solicitor Thomas Pope would represent the state in the case.

The Trial

While awaiting her trial, Susan Smith was detained in the Women's Correctional Facility in Columbia, South Carolina. She was given immediate psychological and physical examinations by the correctional staff and placed on 24-hour suicide watch, which entailed closed circuit monitoring and consistent checks by the facility correctional staff in 15-minute increments.

On January 16, 1995, the prosecution announced the intentions of the state to seek the death penalty against Susan Smith. The state based its decision to seek the death penalty on two aggravating factors that, in their estimation, made the case death penalty eligible. First, Susan Smith had killed two different people in one act. And second, the actions of Susan had taken the life of two children under the age of 11. With the announcement of the state's intention to seek the death penalty, public and media interest in the case became even more pronounced. On January 27, 1995, Judge William Howard issued a gag order in the case to prevent the defense and prosecution from releasing any prejudicial evidence or statements to the media that had not been released in court. The judge also ruled that cameras would be banned from the courtroom for the duration of the trial.

Prior to the commencement of the trial, Susan Smith's attorney, David Bruck, attempted to plea bargain the case to avoid trial. He offered the prosecution 30 years in prison without the possibility of parole. The state rejected the offer. To the surprise of many legal analysts, the defense attorney did not request a change of venue that would have moved the case out of the Union County courts and into the courts of a neighboring jurisdiction. A motion for change of venue is typically made by the defense attorney in high-profile cases because it is often difficult for high-profile defendants to receive a fair trial from locals who are familiar with the case. But the defense attorney believed that the mood of the citizens of Union was shifting from one of initial shock that the crime elicited to sympathy for the plight of Susan Smith. A second controversial decision by the defense raised questions and criticisms by many legal experts and media commentators. Just days prior to the commencement of the trial, with the defense counsel's consent, Susan Smith's pastor, Mark Long, held a press conference announcing that she had undergone a Christian conversion and baptism while in prison. To many, the press conference gave the appearance of a ploy designed to garner sympathy for Susan Smith.

The trial of Susan Smith began on July 10, 1995. The jury was composed initially[4] of five white males, two white females, four black males, and one black female.[5] At trial, the prosecution's theory of the murders was that Susan Smith had drowned her two children in John D. Long Lake for reasons of rational self-interest. The prosecution depicted Susan as an egocentric, manipulative, and unremorseful mother who had drowned her children because she wanted to maintain a romantic relationship with Tom Findlay, the ex-boyfriend who was opposed to a relationship with a woman with children. The defense strategy focused on depicting Susan Smith as a child-like individual who had suffered through a difficult, tragic life that included molestation, her father's suicide, and her own attempts at ending her life. The defense presented these circumstances as an

explanation of the erratic and tragic behavior of Susan Smith that led to the death of her children.

To make its case, the prosecution relied on the testimony of Shirley McCloud to place Susan at the scene of the crime and to detail the events of the night that led to the 911 call reporting the alleged abduction by a black man. Union County Sheriff Howard Wells and SLED interrogator Pete Logan offered testimony concerning the specific details that led to the confession of Susan, including the lie that Sheriff Wells told Susan that triggered her confession. In an effort to depict Susan Smith's state of mind as cold, calculated, and remorseless, other investigators and SLED representatives who had contact with Susan testified concerning her perceived lack of remorse toward the crime. Roy Paschal (SLED sketch artist) and David Espie (SLED polygraph examiner) testified about the vague description of the black abductor given by Susan Smith and the vague methods of sobbing by her during the polygraph examinations. Steve Morrow (SLED diving expert) and Dr. Sandra Condari (pathologist) also offered expert testimony concerning the evidence that was retrieved from the lake. Steve Morrow testified about finding the bodies of the boys and the Tom Findlay letter discovered in the vehicle recovered from the lake. Dr. Condari provided limited expert testimony about the qualities and damages of the bodies recovered from the lake.[6]

Tom Findlay and three of Susan's co-workers provided testimony to make the link between Susan Smith's relationship with Tom Findlay and the necessity to remove her children from the equation in order to make the relationship happen. Tom Findlay testified that he had written the letter to Susan Smith breaking off their relationship that had implicated her children as a primary reason for the breakup. But Tom Findlay was also a useful witness for the defense. He testified that Susan Smith was a kind and caring person, not the monstrous individual that the prosecution was attempting to manufacture. The three co-workers testified that they had heard Susan Smith speaking of what her life could have potentially been like had she not married and had children at such a young age.

The Defense Witnesses

The defense strategy was to offer personal background and family history evidence to explain to the jury how and why Susan Smith killed her two sons. The defense strategy was also focused on addressing the prosecution's contention that the crime was a cold, calculated, and rationally based action with the objective of removing her children from her life equation and, thus, clearing the way for Susan to continue her relationship with Tom Findlay.

The defense team recalled the prosecution witnesses SLED investigators Pete Logan and Carol Allison, who were very sympathetic to Susan Smith during their previous testimony. The defense team also provided testimony from University of South Carolina Professor of Social Work, Dr. Arlene Andrews. Dr. Andrews testified about the link between ongoing familial depression and its causal connection to the erratic behavior of Susan Smith. This expert witness suggested that because depression and suicidal occurrences were relatively common in the Vaughan family, Susan Smith was biologically predisposed to depression and suicidal tendencies. To further advance this line of reasoning, the defense team called several witnesses who testified about the past depression and suicidal tendencies of Susan Smith that had become manifest around the age of ten.

To attack the credibility of the prosecution's assertion of motive in the case, the defense relied on the expert testimony of Dr. Seymour Halleck, a University of North Carolina

Psychiatrist and Law Professor. Dr. Halleck testified that, based on his interviews with Susan Smith, his conclusion was that she had been suffering depression and suicidal thoughts leading up to the night of the drownings. Moreover, according to the testimony of Dr. Halleck, Susan Smith had been coping with her depression and suicidal tendencies through sexual encounters with different men in her life in the six-week period preceding the crimes, including David Smith, Tom Findlay, and Beverly Russell. Dr. Halleck further testified that Susan Smith had intended to kill herself when she drove to the lake, but at the last moment, her self-preservation instincts took over, which prevented her from doing so.

The Verdict

Judge Howard ruled in favor of the defense on a motion to allow the jury to consider involuntary manslaughter as a potential lesser charge, even though the prosecution had not presented it as an alternative possibility during the trial.[7] The jury, however, rejected the opportunity to find Susan guilty of the lesser offense and, after deliberating for two and one-half hours, the jury returned with a verdict of guilty on two counts of murder.

The Penalty Phase

The Prosecution Evidence

During the penalty phase, the prosecution began its case by presenting the video evidence of Susan Smith continuously lying about the disappearance of her children. Three witnesses provided testimony about the mannerisms of Susan Smith while she claimed that her children had been abducted. The point that the state was attempting to make was that Susan Smith's responses to the alleged abduction were uncharacteristic of a mother who was grieving the loss of her children. Margaret Frierson, the Executive Director of the Adam Walsh Center, testified that in her initial interactions with Susan Smith she had appeared unusually calm. Eddie Harris, a SLED agent who had transported Susan Smith during her interrogations, testified that she seemed disinterested and calm about the search for her children. Margaret Gregory, Susan Smith's cousin,

ANDREA PIA YATES

About seven years after the Susan Smith case captured media attention, another infamous case of maternal homicide received widespread coverage. In June 2001 in Houston, Texas, Andrea Pia Yates was arrested in the drowning deaths of her five young children. Her defense at trial was that she was legally insane because she was suffering from postpartum psychosis at the time of the murders. In March 2002, a criminal jury rejected her insanity defense and convicted her in the murders. Andrea Yates was sentenced to life imprisonment with the possibility for parole after 40 years. An appellate court later overturned her criminal conviction on the basis that an expert witness for the prosecution had provided inaccurate testimony at the trial. Dr. Park Deitz had testified that the popular television show *Law & Order* had aired an episode that featured a mother who had drowned her kids and had successfully used the insanity defense to escape punishment. The appellate court believed that the statement may have influenced the jury to the extent that they may have believed that Andrea Yates watched the show and concocted a similar plan to dispose of her children. On July 26, 2006, a second criminal jury found Andrea Yates not guilty by reason of insanity, meaning that she will be sentenced to a state mental facility until she is no longer a threat to herself or society.

testified about the number of times that Susan Smith had appeared on television and lied about an alleged "black man" who had abducted her and her children.

The prosecution's presentation of the evidence culminated with the testimony of David Smith and with evidence of a video reenactment of Susan Smith's vehicle becoming submerged by water. The jury was also shown photos of the bodies of Michael and Alex Smith upon removal from the lake (showing the decomposing arms and legs of the children). The objective of the prosecution during the penalty phase was to depict the actions and mannerisms of Susan Smith as cold and calculated. The prosecution also worked to show the damage that Susan Smith's actions had on her children and her ex-husband.

The Defense Evidence

Dr. Andrews, the University of South Carolina Professor of Social Work who testified during the trial, testified about the extremely strained nature of the intimate relationship between Susan and David Smith, as well as about how Susan Smith's overall mental health began to deteriorate after the final attempt at reconciling her marriage had failed. The professor also noted that the tragic event in question had occurred just five days after David Smith had confronted Susan Smith about her relationship with Tom Findlay and that a once decidedly amicable split with her ex-husband had turned hostile.

Scotty Vaughan, Susan Smith's brother, testified and suggested that the greatest pain of Susan Smith is in living, not in the fear of dying. Last, Beverly Russell testified that he accepted part of the blame in the drowning deaths of Michael and Alex Smith. He further testified that he had molested Susan Smith when she was a teenager and had had consensual sex with Susan on multiple occasions after Susan had reached adulthood. In the closing statements of the penalty proceedings, the prosecution strongly reasserted its position that the offense was committed by Susan Smith as a rational choice and that she had murdered her two children because they stood in the way of her romantic relationship with Tom Findlay. In their closing examination, the defense team reemphasized the difficult life history of Susan and the deleterious effects that her life experiences had on her mental capacity.

The Sentence

After deliberating for about two and one-half hours, the jury decided to sentence Susan Smith to imprisonment and not the death penalty. Judge Howard would eventually sentence Susan Smith to serve 30 years to life imprisonment, meaning that in the year 2025, Susan would be eligible for parole in the state of South Carolina. When she becomes eligible for parole, she will be 53 years old.

CULTURAL SIGNIFICANCE AND IMPLICATIONS

Analysis of Mass News Media Coverage

The Susan Smith case received tremendous coverage in the press. Several major regional newspapers, including *The Atlanta Journal and Constitution* and the *Miami Herald,* provided coverage of the case through its various stages. However, the importance that mass media organizations placed on the case can best be assessed by considering coverage that appeared on the major networks of ABC, CBS, and NBC. Over a two-year period beginning on October 26, 1994 (the day after the murders), extending through

October 26, 1996, the three major networks aired 109 news segments during their national news telecasts that focused on some aspect of the case (Vanderbilt Television News Archive).[8] Collectively, these three networks totaled 199 minutes of total coverage of the case.[9] These figures do not include any of the time that was devoted to the case by local network affiliates during local telecasts, nor does it include the ''Special Episodes'' that were generated in the coverage of the case. For instance, each of the three networks aired a 21 minute (total air time) special program that focused on the Susan and David Smith interviews. ABC's *Nightline* also aired a special program concerning the case on November 3, 1994 that lasted for 41 minutes of total airtime.

The national prominence of the case is quite understandable given the social and mass media context prevalent at the time the case occurred. The Susan Smith ordeal occurred during the O.J. Simpson double-murder investigation and the subsequent televised trial. The Simpson case created a ratings bonanza that administrators of mass media outlets realized they could cash in on. News editors and journalists came to conclude that intense coverage of high-profile and celebrity crime cases was something that could be used by these organizations to obtain and retain viewers (Barak, 2004). But the social and media context within which the case occurred cannot alone explain the tremendous coverage that the Susan Smith case generated.

For a comprehensive understanding of why the Susan Smith case generated so much media attention, the unique circumstances of the case must be considered and grounded in scholarly theory and research about mass media behavior in covering criminal cases. Research and theory about mass media coverage of crime has suggested that when a criminal case possesses certain qualities, these specific qualities make the criminal event either more or less likely to have massive amounts of media coverage. In particular, Pritchard and Hughes (1997) suggested that what they refer to as the ''Doyle criteria'' explains the intensity of coverage devoted to a particular crime story. This criteria predicts that crime coverage will be most intense when a crime involves a socially respectable or prominent citizen as a victim or as an offender, when the victim of the crime is an overmatched target (such as a child or an elderly person), when the method of the crime is particularly shocking or brutal, when the crime involves multiple victims and/or offenders, and when a crime involves circumstances that lend themselves to the development of a narrative that generates mystery or suspense. Other scholars have developed similar sets of newsworthiness criteria to account for intense coverage that draws on many of the same elements as the Doyle criteria (Chermak, 1995; Pritchard & Hughes, 1997).

While nearly all elements of the ''Doyle criteria'' are applicable to the Susan Smith case, three separate elements of the case propelled it to its high-profile status. First, the case originally involved accusations that a black man had victimized a white woman and had abducted two small white children. This aspect of the case played on fears and stereotypes about stranger-based abduction by the black male assailant. Some academics have asserted that citizens of minority status are perceived as a social threat to existing social establishments (Blalock, 1967; Behrens, Uggen, & Manza, 2003; Chamlin, 1989; Corzine, Huff-Corzine, & Creech, 1983; Jacobs & Carmichael, 2002; Jacobs & Wood, 1999; Phillips, 1986; Tolnay, Beck & Massey, 1989). Academic literature also suggests that many important social establishments are impacted by perceptions of social threat, including police (Sheppard-Engel & Calnon, 2004), courts (Paternoster & Brame, 2003; Steffensmeier & Demuth, 2001), and mass media (Buckler & Travis, 2005; Chiricos & Eschholz, 2002; Sorensen, Manx, & Berk, 1998). In essence, what these studies suggest is that these social

institutions respond more strongly to the behavior of minority citizens, especially when the act is perpetrated by a minority against a member of the majority population.

Second, the story involved victims who could be portrayed as the epitome of innocence who, through no fault of their own, became enthralled in a dastardly crime committed by a more powerful figure relative to the victim. Public ideas about the innocence and helplessness of females and children provided a quintessential cue for the mass media that the case was worth following. And third, the case involved a powerful element of mystery, intrigue, and suspense that captured the curiosity of the public. Initially the children were presumed to be kidnapped, which meant that the mass media could generate public attention by providing continuous updates about how the investigation was proceeding and whether there was news about the location of the children. As the case developed, some people in the general public began to doubt that Susan Smith was being completely truthful and forthright—even before it became known that police detectives doubted her story. This created substantial interest in the story since is was an important and unresolved issue.

Implications of the Case on Race Relations

A line from the 2000 movie *Traffic* appropriately illustrates the issue of race as it relates to the Susan Smith case. In the movie, a teenage character is engaged in an intense discussion with the U.S. drug czar character played by Michael Douglas. The drug czar character is overlooking a rundown, presumably drug-infested, inner-city area of Cincinnati, Ohio, when he makes a statement to the teenage character, to the effect of ''How could you bring my daughter to a place like this?'' To which the teenage character responds by asserting that white kids come to the area all the time to score some dope and states, ''Can you imagine the effect that that has on the psyche of the African-Americans living in these areas.'' Thus, when white people make the assumption that any black guy on the street would know where to score some drugs, such a stereotypical assertion makes a subconscious link between being black and using drugs or dealing drugs. The character's point was that such stereotypical beliefs can be personally damaging to the self-image of the black male.

The same basic logic can be readily applied to cases like that of Susan Smith where the initial image of the criminal in the minds of members of the public is that of an African American male. When Susan Smith concocted the abduction story, she did not say that a person had abducted her children—nor did she say that a man abducted her children. Instead, she was more precise—a black man abducted her children. Why a black man? Why not a white man? Maybe because she thought that the story would be more believable if the narrative involved a black man, because ''everyone'' knows that blacks commit crimes. Maybe this was because in her mind she knew that child abduction was a crime and that the ''typical'' criminal was a black male. Maybe she was so psychologically shocked by her own actions that she constructed a ''logical'' story to clear herself of any guilt that she was experiencing. Whatever the reasoning behind her initial statement to the police, for many, especially those in African American communities, the case served as a gross illustration of the use of the African American male as a scapegoat for society's social problems. The case served as a powerful illustration of how people use racial typifications to explain difficult social events and to fill in the gaps when information may be missing. The case also served as a substantial indicator that the general public is often all too willing to accept racial typifications linking race to criminal conduct.

Additionally, the racial element in cases such as the Susan Smith case can serve to further deepen the racial divide in perceptions of injustice perpetrated by the criminal justice system. Research has consistently shown that African Americans perceive the various components of the justice system (police, prosecutors, and courts) as less fair and just than white respondents (Engel, 2005; Hagan, Payne, & Shedd, 2005; Sherman, 2002). Therefore, with respect to the Susan Smith case, the psyche of African Americans essentially becomes—we get blamed for crimes that we do not even commit—in fact, we get blamed for crimes that have been made up by white people who see us as criminal and as evil. So for minority citizens, they come to ask the question: how can we continue to claim that in the United States justice is administered fairly and impartially?

For many African Americans, the case was eerily similar to other historical cases, such as the Scottsboro Boys case (1930s) and the Charles Stewart case (1989) in Massachusetts (Williams, 2001). The Scottsboro Boys case involved a white woman who falsely accused several African American males of raping her while aboard a train. The Charles Stewart case concerned a white male who murdered his wife and unborn child and blamed the murders on an African American male. Even though the SLED investigators were able to discover the lie and attain the truth in the Susan Smith case, the psychological consequences of the false accusation that a black man committed a crime on African American males is potentially profound. The responses of several African Americans to the Susan Smith case was illustrated by the November 28, 1994, *Jet* piece reprinted in this chapter.

Implications for Social Awareness of Maternal Homicide

The Susan Smith case was able to bring the issue of maternal homicide of children to the attention of the general public. The Susan Smith case, along with the Andrea Yates case in Texas, opened public discourse about the nature and causes of maternal homicide, as well as the most appropriate ways of handling such cases. Defense attorneys for Susan Smith attempted to offer evidence of a long line of family depression and suicidal tendencies as evidence that she was mentally unbalanced. In the Susan Smith case, the jury was apparently quite reluctant to allow evidence of this nature to serve as a justification not to convict her of murder. There was strong public sentiment that Susan Smith had deliberately killed her sons in an attempt to save her relationship with a man. In the later case of Andrea Pia Yates, who was charged with the drowning deaths of her five children, a Texas jury convicted Yates of murder. The case was subsequently overturned by an appellate court because an expert witness was determined to have made a false statement on the witness stand. In July 2006 a second Houston jury found that Andrea Yates was not guilty by reason of insanity, thereby sentencing her to a mental facility until it is shown that her behavior is no longer impacted by psychosis and that she is no longer a threat to herself or to society.

The defense attorneys for Andrea Yates hailed the not guilty verdict as a ''watershed for mental illness and the criminal justice system'' (Brown, 2006). They further explained that the differences in the two jury verdicts may be that over time people are able to get over their initial anger and more fairly assess the merits of cases. At any rate, the Susan Smith case apparently hardened attitudes toward mothers who kill their children. However, we could be witnessing a shift in those hardened attitudes, especially given that the Andrea Yates case occurred in the state of Texas and in the city of Houston, both of which are known for their punitive approaches to crime control.

Cultural References to the Susan Smith Case

The Susan Smith case has also had an enduring impact on popular culture. The case has been the basis for songs, movies, and topical subjects on television crime dramas. In 1995, an episode of *Law & Order* was based on the events of the case. In the episode, entitled "Angel," a woman blames a Puerto Rican man of abducting her child. The Susan Smith case was referred to in both the investigation and trial phases depicted on the show. Similarly, in an episode of *South Park,* a mother was depicted as attempting to murder her son and then blaming a Puerto Rican man for the crime. The Susan Smith case also served as inspiration for the 2006 film *Freedomland* in which a woman reports to police that she had her car stolen on an isolated highway with her child in the back seat of the car. The focus of the movie is on the racial tensions that were ignited in the town during the search for the missing child.

The case has also served as the backdrop for several musical and poetic works of art. For instance, in Cornelius Eady's *Brutal Imagination* the murders are recounted from the perspective of the imagined black abductor. New York poet Lee Ann Brown created a *Ballad of Susan Smith* that is sung to an old southern hymn playing in the background.

SUGGESTIONS FOR FURTHER READING

ON THE SUSAN SMITH CASE

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Notes

1. The Adam Walsh Center is a special interest organization that was instrumental in the passage of the 1984 Missing Children's Act, which organized a computerized system for the sharing of information relating to missing children in the United States.
2. The Polly Klaas Foundation and the Marc Klaas Foundation are special interest foundations that were developed to honor the memory of Polly Klaas, a 12-year-old girl who was abducted from her home in Petaluma, California, and was murdered by her abductor. These two organizations actively lobby for stronger laws to protect children and keep violent and repeat offenders in prison for longer periods of time.
3. The confession of Susan Smith was obtained when Susan, in an attempt to change her statement to fit the information that the police investigators had given her, stated that she had not stopped at Monarch Mills intersection, but instead had stopped at a different intersection. Sheriff Wells, in response, lied and told Susan that he knew she was lying because the police had units stationed at the intersection and the police would have observed the incident as it occurred.
4. The jury that would eventually decide the case was partially composed of two alternate jury members, as two of the initial members of the original jury were excused, one for failure to disclose previous charges of credit card fraud, and the other as a result of a family tie to the case.
5. The gender and ethnic composition of the jury resulted in a challenge by Susan Smith's defense attorney. The basis for the legal challenge was that the jury composition was not truly representative of the community. This legal argument was rejected by the judge.
6. The judge, because of the potentially prejudicial nature of the physical evidence, strictly limited the testimony of Dr. Condari concerning the nature of the boys decayed physical features.
7. Involuntary manslaughter does not place strict restrictions on the jury in terms of determining that the accused intentionally committed the homicide with malice aforethought. Under South Carolina law, if convicted of involuntary manslaughter, the accused faces from three to ten years imprisonment. A conviction of murder for Susan Smith would have meant the potential for life imprisonment or a sentence of death.
8. The Vanderbilt University Television News Archive was searched for news segments that were aired on the national news networks ABC, CBS, and NBC. ABC aired 30 segments, CBS aired 40 segments, and NBC aired 39 segments during their regular news telecasts.
9. ABC accounted for 46 minutes, CBS accounted for 77 minutes, and NBC accounted for 76 minutes of the 199 total minutes of national network news coverage during its national news telecasts.

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11

Timothy McVeigh: The Oklahoma City Bombing

JEFFREY GRUENEWALD

Oklahoma City, 9:02 a.m.[1]

Shortly before 9 a.m. on April 19, 1995, Timothy McVeigh carefully pulled a rented Ryder moving truck to the side of 5th Street. He leaned over the front seat to light a long fuse that ran from the cab of the truck to the storage bed; McVeigh expected the fuse to burn for five minutes before reaching 50 large, plastic barrels of ammonium nitrate and diesel fuel he and his accomplice, Terry Nichols, had mixed the previous morning. McVeigh returned the truck to 5th Street, as it filled with smoke from the burning fuse. Rolling down the windows of the truck, McVeigh lit a second shorter fuse as he quickly arrived at his target, the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. Directly below the America's Kids Day Care Center located on the second floor of the federal building, McVeigh purposively backed the truck up to the front entrance of the building to maximize the impact of the blast. With the fuses burning, McVeigh exited the truck, locked the doors, and quickly walked toward his beat-up Mercury getaway car. At 9:02 a.m., the two-and-a-half-ton truck bomb exploded, killing 168 people and injuring over 500 more. As police, medics, firefighters, and heroic citizens frantically searched for signs of life from the rubble, McVeigh felt the satisfaction of an accomplished mission. For him, the bombing was a defensive tactic in a war initiated by the U.S. federal government, and those killed were simply collateral damage. To the rest of Americans, the bombing in Oklahoma City was not only an attack on the federal government but on the freedom for which the United States prides itself on. On April 19, Timothy McVeigh's bomb ripped a hole in the social fabric of America.


EXTRA!
Rocky Mountain News
GUILTY
Jury convicts Tim McVeigh in Okla. City bombing
95 057
04 19 95
FOUR FULL PAGES OF COVERAGE

Figure 11.1 The front page of an extra edition of the *Rocky Mountain News* that was being sold in front of the federal courthouse in Denver an hour after the guilty verdict was announced in the trial of Timothy McVeigh, 1997. © AP Photo/Rocky Mountain News, ho.

THE ROLE OF THE MEDIA

This chapter retells the celebrated story of the Oklahoma City bombing by capturing the dynamic relationship among three of its main characters: Timothy McVeigh, the U.S. criminal justice system, and the news media. First, this chapter provides a contextual background of the life of Timothy McVeigh by examining the radical right-wing extremist culture and how McVeigh's political views were greatly influenced by this culture. Second, this chapter relies heavily on the insights found in Lou Michel and Dan Herbeck's book *American Terrorist,* which goes through a sequence of events capturing McVeigh's life before and after the Oklahoma City bombing.[2] Throughout this chapter, I have selected pieces of Michel and Herbeck's detailed work to retell the story of McVeigh's life and the Oklahoma City bombing based on McVeigh's own words. Third, this chapter discusses the criminal justice system, which had the responsibility of bringing the most notorious American-born terrorist to justice. Finally, this chapter reviews the role of the news media, as it was weaved into the story of Timothy McVeigh and his experience with the criminal justice system, with an emphasis on the media's work to package and deliver the Oklahoma City bombing in an acceptable format to the American public. McVeigh's case was one of the most important media crime events in the 1990s, spurring an in-depth examination of relevant political issues and intense scrutiny of how McVeigh's criminal trial was processed by the U.S. criminal justice system. From the first news images of heroic firefighters carrying injured children out of the dilapidated day care center to media images of McVeigh's emotionless courtroom demeanor, the media played an important role in defining how the public, political authorities, and the criminal justice system would react to the Oklahoma City bombing. In this account of the Oklahoma City bombing, the chapter attempts to capture how Timothy McVeigh, the criminal justice system, and the news media—each with his/its own agenda—interrelated to make one of the most phenomenal criminal cases of the twentieth century.

THE RADICAL RIGHT: CHRISTIAN IDENTITY AND *THE TURNER DIARIES*

A good place to begin any account of the Oklahoma City bombing is an examination of the religious and political ideologies of the radical right. The modern right-wing extremist movement, born in the early 1980s, has been loosely held together by the racist beliefs of

the Christian Identity religion. McVeigh surrounded himself with Christian Identity followers. Christian Identity followers believe that Jews are the descendants of Satan and that white Aryans are the true Israelites—or God's chosen people. Followers also believe the world is entering an apocalyptic struggle between the Aryan race and the participants of a Jewish plot to combine all governments into a global dictatorship, known as the Zionist Occupied Government (ZOG). Active followers believe they are chosen by Yahweh, or God, to overthrow the evil U.S. government to create a single, united ''Aryan Nation.'' Although McVeigh denied being a Christian Identity follower, he did admit to adopting many of their secular beliefs concerning an inevitable battle against a ''tyrannous'' U.S. government.

These beliefs held by McVeigh and Christian Identity followers are conceptualized in *The Turner Diaries,* which is a science fiction novel written by a neo-Nazi and former physics professor, William L. Pierce. In the fictitious book written in 1978, the federal government outlaws gun ownership and forces all races to integrate. To combat the evil government, protagonist Earl Turner forms a white supremacist group known as ''The Order.'' The group wages a mortar attack against the U.S. Capital, assassinates gun control activists, and bombs the FBI headquarters in Washington, DC, with a truck full of ammonium nitrate and diesel fuel. Christian Identity followers do not consider *The Turner Diaries* as fiction but as a prophetic message. The book has served as a road map for radical right terrorist cells such as The Order, whose name is taken directly from *The Turner Diaries.*[3] The book has also served as an instruction manual for individual neo-Nazi terrorists and for Oklahoma City conspirators Timothy McVeigh and Terry Nichols.

GUN CONTROL, RUBY RIDGE, AND WACO

For McVeigh and other right-wing constituents, political discussion hinged on the issue of gun control. Although claiming that any one event led McVeigh to commit the Oklahoma City bombing would be simplistic, it is clear that McVeigh viewed three celebrated gun-related events as proof supporting his conspiracy theories of a corrupt government. The parallels McVeigh saw between *The Turner Diaries* and the political environment of the United States led McVeigh to take the advice of Pierce, the author of *The Turner Diaries,* and become proactive against what he saw to be a tyrannous government.

First, in 1992, a political catastrophe for the right-wing community occurred. In what is known as the standoff at Ruby Ridge, on August 21, 1992, U.S. federal agents raided the rural property of Randy Weaver, a white supremacist accused of selling a sawed-off shotgun to an undercover Alcohol, Tobacco, and Firearms (ATF) agent. A gun battle ensued between agents from the U.S. Marshals and the Weaver family. After two days of gunfire, one U.S. Marshal lay dead along with Randy Weaver's pregnant wife and adolescent son. To McVeigh, the standoff at Ruby Ridge was further proof that the federal government was cracking down on the American right to freely own and sell guns. Second, McVeigh viewed the increasingly strict regulations set on the purchasing of guns as a wake-up call for right-wing extremists. In 1993, President Bill Clinton signed The Brady Handgun Violence Prevention Act, which dictated how long individuals had to wait before purchasing a gun. McVeigh saw gun control as the attempt by the federal government to get one step closer to a complete disarmament of U.S. citizens. Finally, McVeigh and other radical right advocates saw the federal siege and subsequent burning

of David Koresh's Branch Davidian compound as another testament to the federal government's war against U.S. gun owners (Michel and Herbeck, 2001, p. 135). On February 28, 1993, ninety ATF agents issued a search-and-arrest warrant on the Branch Davidian compound based on allegations that cult members were converting semiautomatic firearms into machine guns. At approximately 9 a.m., agents barged into the compound, while three National Guard helicopters flew overhead. A gun battle ensued and left four ATF agents and six Davidians dead. A siege lasting weeks followed, eventually causing 668 FBI personnel to be called into Waco, Texas. After weeks of watching the standoff on his television, McVeigh traveled to Waco to hand out antigovernment pamphlets and bumper stickers (Michel and Herbeck, 2001, p. 119). Over a month later, on April 19, the siege ended when four armored vehicles punched holes in the compound and fired dozens of canisters filled with O-chlorobenzylidene malonontrite—a substance more potent than tear gas—into the building. After approximately three hours, the compound was engulfed in flames, leaving 67 more Davidians dead and the source of the fire's ignition a controversy. In McVeigh's mind, Randy Weaver and David Koresh were not criminals but innocent gun owners who were bullied by the federal government. Instead of just waiting for the federal government to attack him, McVeigh decided to attack them first. At some point shortly after the burning at Waco, McVeigh decided that bombing a federal building, as in *The Turner Diaries,* would wake up the American people to the atrocities committed by the federal government and avenge the events at Ruby Ridge and in Waco (Hamm, 1997).

Although it is clear that *The Turner Diaries,* Ruby Ridge, and Waco had a significant impact on McVeigh, these events do not completely explain how he evolved from an American boy to a decorated Gulf War veteran and finally to the most notorious U.S. domestic terrorist. Two days after the bombing in Oklahoma City, two *Buffalo News* reporters, Lou Michel and Dan Herbeck, began a quest to uncover the story behind the bombing. Despite McVeigh's apprehension of the media, Michel gradually earned McVeigh's trust and maintained a dialogue with McVeigh. Upset by false stories written about him by other media outlets, McVeigh eventually consented to tell his entire, unedited biography to Michel and Herbeck (Michel and Herbeck, 2001, pp. xvi–xix). It would be his chance to tell his side of the story. In *American Terrorist,* the authors offer a detailed biography of the most notorious domestic terrorist by incorporating McVeigh's own perspective of his life before and after the bombing. What follows is a brief summary of McVeigh's life with insights into McVeigh's own thoughts and motivations for the Oklahoma City bombing captured by Michel and Herbeck.

TIMOTHY JAMES MCVEIGH: BEFORE THE BOMBING

Timothy McVeigh was born on April 23, 1968, to Bill and Mildred "Mickey" McVeigh in Lockport, New York. Bill, a shy blue-collar worker, had always been dedicated to the benefits of hard work, whether it was in the factory or in his garden. McVeigh's mother, Mickey, a boisterous, quick-witted woman, always enjoyed the excitement and adventure of travel. McVeigh had two sisters: Patty is two years younger than McVeigh, and his other sister, Jennifer, is six years younger. Bill and Mickey separated numerous times during McVeigh's childhood, forcing him and his sisters into two households. Each time, McVeigh felt sorry for his father and chose to stay with him, and his sisters opted to leave their Lockport home to be with their mother. The differences in Bill's and Mickey's

personalities would eventually prove incurable and led to divorce in 1984. After they divorced, Bill sold their home to build a smaller one for him and his son. By this time, McVeigh had matured significantly and spent most of his time alone, nurturing his love for the outdoors. Detached from his feuding parents, McVeigh found refuge with his grandfather, Ed McVeigh, who introduced and fostered McVeigh's love for guns.

A PERFECT SOLDIER

After high school, McVeigh worked odd jobs as a security guard. He found the work unimportant, and he spent most of his free time indulging in radical right extremist literature and gun magazines. In 1988 a restless and searching McVeigh enlisted in the U.S. Army. Because he did so well on his military vocational aptitude test, McVeigh's options were somewhat open to which branch of the military he would enlist. He chose the army to acquire more survival skills, and he dreamed of being a Rambo-type soldier that he saw in the movie *First Blood* (Michel and Herbeck, 2001, p. 50).[4] McVeigh had a purpose in the military, and he felt at home for the first time. He described boot camp as the finest period in his life, and he excelled in the army to become what some would consider a perfect soldier. He loved the physical challenges of all-night marches and found comfort in the detailed order and routine of army life. McVeigh quickly advanced to top gunner on the Fort Riley base and was selected to test for an Army Special Forces unit in 1989 (Michel and Herbeck, 2001, p. 63). McVeigh told Michel and Herbeck, the authors of *American Terrorist,* that while others went out on the weekends, McVeigh chose to stay behind and indulge in gun magazines and extremist literature (2001, p. 61). Although he was reprimanded for distributing the extremist literature, such as *The Turner Diaries,* on the base he continued on, not phased. His words usually fell on deaf ears, but he continued to talk with other soldiers about his negative views of the federal government. Two people interested in what he had to say were Terry Nichols and Michael Fortier. Both held extreme antigun control views and a hatred for the federal government. They would become McVeigh's closest friends, and Nichols and Fortier would play an integral part in the rest of McVeigh's free life.

Before McVeigh could test for an Army Special Forces unit, he found himself in Saudi Arabia battling a gruesome dictator, Saddam Hussein, in Operation Desert Storm. McVeigh thought that the United States should not bully other countries; however, he also thought that Hussein was a ruthless dictator who should be taught a lesson. Despite his apprehension, McVeigh thought it was his duty to serve his country. During the war, he also witnessed events that supported his negative feelings toward the government. Using McVeigh's own words, Michel and Herbeck describe how the soldier was negatively affected by the needless killing of women and children (2001, p. 69). He witnessed army officials lying to media about the number of innocent Iraqi villages destroyed (Michel and Herbeck, 2001, p. 70). Although he had shot guns all his life, he had never imagined killing anyone for any reason other than self-defense, and he did not consider these killings to be self-defense. McVeigh thought that he had become the bully he so much hated. Nevertheless, he moved forward, and he was promoted to sergeant during a brief break in combat.

After returning from the war with new medals pinned on his military fatigues, McVeigh finally received his chance to test for Army Special Forces. Unfortunately, he had lost his endurance sitting idle for so long in the Gulf, and he removed himself from

the grueling testing process (Michel and Herbeck, 2001, pp. 85–86). This was the last of McVeigh's military career, and he subsequently returned home to New York.

Disheartened, McVeigh planned to use his new military credentials to get a job that interested him. Unfortunately, the slow economy did not allow it, and he was forced to settle for the same security work that drove him to seek out the excitement and sense of purpose of the military (Michel and Herbeck, 2001, pp. 95–96). Discontented in New York, McVeigh had lost faith in his beloved army and in his country. Feeling guilty about the killing he had done in Iraq, his hatred for the government was growing. Unable to get suitable work, he left New York in a search for something bigger. Michel and Herbeck (2001) describe how McVeigh first landed in Florida, where his brother-in-law found him a construction job, but for the most part he spent his days bouncing back and forth from Arizona to Michigan where his two army buddies—Michael Fortier and Terry Nichols—lived. Delving deeper into the gun-show circuit, he supported himself by selling illegal firearms and explosives.

THE BEGINNING OF THE END: PLANNING THE BOMBING

Driving back and forth between Fortier's Arizona home and the Nichols' farm in Michigan, McVeigh became increasingly angry with the federal government. After witnessing the demolishment of the Branch Davidian compound in Waco, McVeigh vowed to seek revenge for the atrocities at Waco by blowing up a federal building with the help of his closest friends. McVeigh and Nichols began storing blasting caps and large amounts of ammonium nitrate in an Arizona storage unit near Fortier's house (Michel and Herbeck, 2001, p. 163). McVeigh soon became frustrated at Fortier's lack of interest in his plot to explode a federal building. Despite his hatred for the federal government, Fortier was being passive aggressive, and, according to McVeigh, he was just like all of the other radical right sympathizers. Nevertheless, McVeigh and Nichols continued with McVeigh's plan. Shortly thereafter, McVeigh took Fortier to his recently selected target, the Alfred P. Murrah Federal Building. They were both impressed with the seemingly endless amount of dark glass surrounding the hundreds of federal workers (Michel and Herbeck, 2001, p. 188). It is still a debate whether McVeigh and Fortier were aware of the day care center on the second floor of the massive Murrah building. Although McVeigh claimed he could not have seen the children through the tinted glass, others argue that it would have been unlikely for McVeigh and Fortier not to notice the children. After returning home, Fortier, along with his wife, hoped McVeigh's plan would eventually fail when no one would agree to help him. They were wrong.

For months McVeigh and Nichols prepared for the bombing by purchasing and storing explosive materials and, in some cases, illegally acquiring bomb-making materials. In one instance, McVeigh and Nichols together burglarized a rock quarry near the ranch where Nichols had recently begun working. After drilling the locks on the quarry's storage units, they were able to steal explosives and store them in their storage unit near Herington, Kansas. On April 18, Nichols and McVeigh unloaded the Herington storage explosives into the rented Ryder truck. They then drove a short distance north to the mixing site—Geary Lake, Kansas—which McVeigh had chosen because it was right off the highway; a moving truck would not look too suspicious right off the highway.[5] McVeigh mixed the nitromethane fluid with ammonium nitrite fertilizer, while Nichols measured the diesel fuel into 20-pound increments. In the end, each barrel weighed nearly 500 pounds.



Figure 11.2 Exterior shot of the Alfred P. Murrah Federal Building in Oklahoma City. Courtesy of FEMA.

Nichols and McVeigh left Geary Lake after washing up in the lake and leaving their soiled clothes and all other potential evidence in the back of the truck where they would be destroyed by the blast. It was the last time they would see each other as free men (Michel and Herbeck, 2001, p. 219). On April 19, 1995, McVeigh detonated the bomb that he and Nichols had carefully constructed.

THE RESPONSE OF THE CRIMINAL JUSTICE SYSTEM

Nearly 60 miles north of the dilapidated Murrah building, State Trooper Charles J. Hanger pulled McVeigh over for a missing license plate as he drove northbound from Oklahoma City.[6] Both men were on edge; McVeigh knew from the sound of the blast that the Murrah building had been destroyed, and, although Hanger was carrying out business as usual, his thoughts were on Oklahoma City. McVeigh contemplated killing Hanger, but he opted against it (Michel and Herbeck, 2001, p. 239). He had respect for a state trooper doing his job. As McVeigh reached for his license, Hanger noticed a bulge in his jacket. McVeigh willingly informed Hanger that he was carrying a gun. As they stood beside McVeigh's car, Hanger helped McVeigh remove his jacket. On his black sweatshirt read a quote from Thomas Jefferson: "The tree of liberty must be refreshed from time to time by the blood of tyrants and patriots" (Michel and Herbeck, 2001, p. 226). Concerned, Hanger aimed his revolver at McVeigh's head and demanded he put his hands on the trunk of his car. He removed McVeigh's .45-caliber Glock revolver, along with an extra clip and a six-inch straightedge knife. McVeigh was arrested for driving without a license plate, carrying concealed weapons, and violating other minor traffic laws. He was then

taken to Noble County Jail in Perry, Oklahoma. Soon after McVeigh arrived in Perry, Noble County Assistant District Attorney Mark Gibson met with McVeigh and took inventory of his belongings. McVeigh was issued an orange jumpsuit that would shortly be shown on the nightly news and in newspapers all over the United States. As McVeigh waited in his fourth-floor cell, Hanger took inventory of the items found in McVeigh's car. Found in the car were a pair of gloves, a large envelope, a toolbox, ear plugs, a cardboard sign he had placed on his windshield to keep his car from being towed, and a stack of papers. Included in the stack of papers was the Declaration of Independence and handwritten quotes from political philosophers. One such quote was from John Locke and spoke of the lawfulness of killing those who would take away your liberty. Although Hanger may have found the items out of the ordinary, it would be days before the significance of his arrest would be clear.

THE HUNT: THE NEWS MEDIA AND FBI

After the blast, FBI officials developed three possible profiles of the Oklahoma City bomber(s). They suspected the bombing could have been done by one of the following: an international terrorist, a South American drug gang, or a radical right-wing extremist group (Hamm, 1997). By the evening hours, investigators were tracking Ibraham Ahmad, an Oklahoma Arabic teacher and naturalized American of Palestinian descent. Ahmad fit the description faxed to airport authorities by witnesses who saw three Middle Eastern men driving away minutes before the blast. By this time, the news media were already predicting the number of casualties and speculating on who was responsible. The most popular explanation after the bombing involved some type of militant Islamic group or Arabic terrorist, similar to those that had bombed the New York World Trade Center in 1993. This time, however, the terrorists had struck in America's heartland. Television news reported that Ahmad had been apprehended by U.S. Customs officials and was being questioned by the FBI. Ahmad was released only to fly to Europe and be apprehended again by British immigration authorities. He was then forced to return to Washington and was questioned further. During his interrogation, trash was thrown on his lawn in Oklahoma, and his wife was spat on as she left her workplace. Also during this time, reports of militant Islamic cells embedded in Oklahoma City were being circulated by the media, which caused the nation to be on the lookout for Arabs who may look ''suspicious.'' Muslim groups in Oklahoma and throughout the nation pleaded for the media not to fan the flames of violence (Hamm, 1997).

Other FBI agents were following a different lead. A security camera had spotted a Ryder truck slowly moving towards the Murrah building. The vehicle information number (VIN) from the axle found at the blast was traced to Elliott's Body Shop in Junction City, Kansas, where McVeigh had rented the truck. After agents traveled to the body shop, they discovered the truck had been rented to a Robert Kling of Redfield, South Dakota. As agents looked more closely at McVeigh's faulty license, they realized that his date of birth and the date the license was issued were both April 19—the infamous day that most recently had symbolized the demolishment of the Branch Davidian in Waco, Texas. Evidence was now pointing in the direction of the radical right.

By April 20, FBI agents were scouring the rural streets of Junction City. A salesman at an army surplus store told the agents he had sold two men a bomb-making book like the one found in McVeigh's getaway car. More incriminating evidence came from Lea

McGown, owner of the Dreamland Motel. She told the authorities that she remembered a man driving a Ryder moving truck had checked into her motel on April 14. The man was registered as Timothy McVeigh from Decker, Michigan. In addition, a clerk at Elliot's Body Shop was able to provide an FBI sketch artist enough information to make a composite drawing of McVeigh and Nichols; the men in the sketch would become known as John Doe Number 1 and John Doe Number 2. On the evening of April 20, Waldon Kennedy, the FBI agent in charge of the investigation, called a press conference in Oklahoma City. Kennedy oversaw approximately 900 federal, state, and local law enforcement agents. During the press conference, Kennedy revealed the composite sketches to the world. He described the two fugitives as white males, thus slightly shifting public attention away from the Islamic groups.

As strong evidence pointed to the radical right, news reports were made about the possibility of the Oklahoma City bomber being involved in some type of right-wing militia group. Although all of the radical right militia groups despised the federal government, most were appalled at the needless mass killings in Oklahoma City (Chermak, 2002). Many radical groups publicly condemned McVeigh's act of terror via news media and organizational Web sites. Some consider the Oklahoma City bombing to be the downfall of the militia movement, causing some paramilitary groups to adopt more secretive cell-structured organizations.

BUILDING A CASE

Approximately 48 hours after the bombing, a former co-worker of McVeigh's in the security business called a hot line that had been set up by investigators to intake the large number of possible leads being phoned in by concerned citizens. The man accused McVeigh of being an angry army veteran who hated the federal government and who might have something to do with the bombing. This information, in addition to the evidence found in Junction City, led an ATF agent to request that McVeigh remain at the Noble County Jail on charges related to the Oklahoma City bombing.

Meanwhile, a swarm of FBI and ATF agents were searching the farm of Terry Nichols's brother, James Nichols, in Decker, Michigan. There they found ammonium nitrate and diesel fuel similar to that used in the bombing, along with blasting caps and other firearms. James Nichols denied that he or his brother had anything to do with the bombing. James Nichols was arrested by federal authorities at a roadblock near his Michigan farm. Terry Nichols, after seeing that he was wanted as a material witness in the case, turned himself into Herington police. Federal agents followed Nichols into the police station and questioned him. He denied that he had any knowledge of the bombing and suspected McVeigh of being the perpetrator. Despite his claims, Terry Nichols was arrested for being a material witness until more substantial charges could be filed. Inside Terry Nichols's Kansas house, federal authorities found the 55 gallon plastic barrels, the extra fertilizer, detonator cord, and other bombing equipment. Radical right literature was found in both James and Terry Nichols's homes. Investigators also searched the spring break residence McVeigh's sister was visiting in Florida. Jennifer McVeigh was burning papers as the agents arrived, and in her truck they found militant documents and a copy of *The Turner Diaries*. In addition, a search of Bill McVeigh's home in Pendleton turned up more incriminating letters written by McVeigh to Jennifer. Substantial evidence was mounting against McVeigh.

CONSPIRACY: JOHN DOE NUMBER 2 AND THE MIDDLE-EASTERN LINK

In *The Third Terrorist* (2004), former Oklahoma television news reporter Jayna Davis writes an alternate version of the Oklahoma City bombing story. Based on her own investigative work, Davis argues that there is a link between Middle Eastern terrorism and the Oklahoma City bombing. Her story begins with a description of the initial official reports following the bombing that stated authorities were searching for two suspected bombers and a brown Chevrolet truck that was seen leaving the bomb site the morning of the incident. She finds it problematic that authorities ceased their search for John Doe Number 2 and that more was not heard about the brown Chevy pickup truck following the arrest of McVeigh and Nichols. Based on the testimony of eye witnesses who saw another man with McVeigh on the morning of the bombing, as well as others who witnessed McVeigh and Nichols meeting with various Middle-Eastern men prior to the bombing, Davis believes she has identified the once sought-after John Doe Number 2. Moreover, Davis maintains that she has amassed evidence that proves the Oklahoma City bombing was linked to Middle East terrorism. Nonetheless, the FBI considers the case closed and refuses to consider the many affidavits and documents she has collected linking the Oklahoma City bombers to the Middle East.

Later that afternoon, four ATF and FBI agents met with McVeigh, and he was read his rights. He was then flown under tight security to a makeshift courtroom at the Tinker Air Force Base where he was assigned two federal attorneys, Susan Otto, a federal public defender, and John Coyle, a criminal lawyer from Oklahoma. He was charged with ''malicious danger and destroying by means of an explosive,'' to which the death penalty could be applied (Michel and Herbeck, 2001, p. 259).

Building a Defense

In a secretary's room on the military base, McVeigh confessed to his lawyers that he was the sole Oklahoma City bomber. On the morning of Friday, April 21, 1995, prosecutors brought the charges made against McVeigh to U.S. Magistrate Judge Ronald Howland. After the brief court appearance, the SWAT team escorted McVeigh to his own wing of the medium security federal prison in El Reno, Oklahoma, where he was held without bail.

Weeks later, Otto and Coyle stepped down from McVeigh's case. They thought that because they had been personally affected by the bombing it was not in the best interest of the case to continue as McVeigh's representatives. After a long search for someone to lead the defense team, Stephen Jones, from Enid, Oklahoma, accepted the position. Jones had a long history of defending notorious cases as well as celebrated death penalty cases. McVeigh hoped Jones would be able to present a ''necessity defense,'' claiming his actions were a response to the tyranny of Ruby Ridge and Waco (Michel and Herbeck, 2001, p. 286). Despite McVeigh's wishes, Jones would reject McVeigh's ''necessity defense,'' claiming that the jury simply would not buy it. Instead, Jones wanted to poke holes in

the prosecutors' claims of McVeigh acting alone. Against McVeigh's wishes, Jones began pursuing his own conspiracy theories. He would travel to the Philippines to look for international terrorists whom Terry Nichols may have communicated with on his trips there to visit his wife. Jones subsequently hired an international terrorist expert hoping to crack a bigger conspiracy.

Leaks to the Media

McVeigh became increasingly upset on March 1, 1997, when the *Dallas Morning News* reported that he had confessed to the bombing while incarcerated. Although prior reports had been made about his jailhouse confessions, the report in the *Dallas Morning News* described how McVeigh admitted to deliberately bombing the Murrah building during the day to increase casualties. The story was reprinted in a number of other media outlets across the United States. Jones reported to the media that the confession was a hoax (Michel and Herbeck, 2001, p. 301), but McVeigh thought otherwise. All of the information was an accurate account given to his defense team by McVeigh at some point during the investigation. Someone was selling his story. Although it is unclear how the internal information was leaked to the media, McVeigh was convinced that any chance of a fair trial had been nullified (Michel and Herbeck, 2001, p. 301). Jones asked Federal Judge Richard Matsch—a judge for nearly three decades known for keeping tight reigns on his courtroom—to delay the trial in light of the leaked confession. Matsch's refusal to delay the trial convinced McVeigh that the leaked confession had also convinced Judge Matsch of his undoubted guilt.

McVeigh became frustrated as he realized his ''necessity defense'' would not be used by Jones, and that his case had already been tainted by leaked information. On top of that, Michel and Herbeck write that McVeigh believed the recent acquittal of accused murderer and football star O.J. Simpson influenced his case. The Simpson trial had been broadcasted daily to American living rooms allowing the public to become a part of the celebrated case. When Simpson was acquitted of criminal charges, many Americans felt as if justice had not been served. The U.S. criminal justice system had lost credibility in the public eye after Simpson's acquittal, and finding McVeigh guilty was a good way to rebuild public confidence in the law. It became a question of whether the criminal justice system could effectively handle rare cases that reach the pinnacle of publicity. McVeigh was confident he would be found guilty and sentenced to death, but he wanted a fair trial, nevertheless (Michel and Herbeck, 2001).

Four months after the bombing, a federal grand jury handed the judge a 15-page indictment, claiming Timothy McVeigh and Terry Nichols used a truck bomb to kill and injure innocent persons and to damage U.S. property. Judge Matsch had learned valuable lessons from observing the O.J. Simpson media circus. Before the trial, he decided to keep cameras from having access to every part of the trial. Instead, the public would have to rely heavily on media sound-bite summaries for their information on the trial. During pretrial motions, the defense convinced court officials to move the case outside of Oklahoma City to Denver, Colorado. Matsch thought that it had been a mistake to keep the Simpson case in Los Angeles. He thought the case should be moved to Denver, which would make it easier to find jurors who were not personally connected to the Oklahoma City bombing. Although the defense had much going against them, they could count these as small victories. Nichols and McVeigh were moved to a federal prison in Colorado in March 1996, where pretrial motions proceeded for the next year.

The Trial

The 11-week trial began on April 24, 1997. The prosecution was led by Joseph Hartzler, a dynamic attorney from Illinois. Hartzler began the trial with a story of one of the youngest victims. He described how the young boy cried when his mother left him at the day care and walked across the street to her office. He described the other children and how their lives were tragically ended that morning. A stone-faced McVeigh sat through this and other testimonies from the witnesses and victims' family members. According to the ex-soldier, dying was a part of life and they needed to get over it. Most damaging to McVeigh's cases were the testimonies of Mike and Lori Fortier and McVeigh's sister, Jennifer. Lori Fortier described how McVeigh revealed his bomb configuration to her by stacking soup cans on the kitchen counter. Her testimony came freely, as she was granted immunity from prosecution. Jennifer's testimony was also damaging. She described how her brother wrote her letters about how ''something big'' was about to happen, and he gave her instructions on what to do if the government came after her. However, of all the testimony, Mike Fortier's was the most damaging to McVeigh's case. He described how angry McVeigh felt after Waco, and the process McVeigh went through as he planned his revenge for the Branch Davidian disaster. He explained how McVeigh thought the government had declared war on the American people, and, as a result, how they together looked into creating a militia group to protect themselves from the government. Most destructive was his admission that McVeigh told him he was going to bomb the Murrah building and even what type of bomb he planned on using. What McVeigh hoped would surface in Fortier's testimony was the fact that neither Fortier nor McVeigh was aware of the day care center on the second floor when they visited the Murrah building prior to the bombing. McVeigh thought if the jury knew he did not intend to kill the children, it would be harder for the prosecution and news media to label him a heartless baby killer. The topic was never discussed.

The jury comprised five men and seven women, and all were willing to vote for the death penalty. He was hoping for more blue-collar people who might understand his political position. Instead, he got what he viewed as wealthy conservatives. On top of that, three had heard leaks of McVeigh's confession to his lawyers. McVeigh was not happy with the jury selection. Stephen Jones's defense of McVeigh lasted only four days, and only 25 witnesses were called. Although Jones had spent millions of tax dollars sending lawyers to multiple foreign countries in search for evidence of his international terrorist conspiracy theory, Matsch ruled Jones's theory unsubstantiated. Also, Jones's strategy to discredit the FBI crime scene analysis was foiled when Matsch ruled the Justice Department's report, which indicated that the FBI's crime scene investigation was botched, irrelevant. In addition, the prosecution avoided calling to the stand those agents criticized in the report. Michel and Herbeck (2001) write that McVeigh was disturbed by the more than 50 lawyers working on his case, and at how they all seemed to be going in different directions.

Guilty Verdict

Matsch worked hard to keep the trial moving to avoid a long, drawn-out trial illustrated by the Simpson case. Nevertheless, at various points in the trial McVeigh became annoyed at the long, tedious processes he saw as a judicial charade and waste of tax dollars. He viewed the trial as a media event, but he hoped the media attention would work to his advantage. He believed the media attention would give him the opportunity to share his views about the tyrannous federal government.

The jury convicted McVeigh after deliberating for four days. McVeigh was fully aware that he would be found guilty and sentenced to death even before the jury handed him the verdict (Michel and Herbeck, 2001, p. 307). When the guilty verdict came, it received a large amount of media attention. Images of the dilapidated Murrah building, a rehashing of the initial investigation, and the damaging evidence against McVeigh filled the nightly news and newspapers. Reporters wrote that the verdict would give the public a sense of closure and send a message to potential terrorists.

The sentencing phase lasted eight days, and on June 13, 1997, the jury recommended McVeigh receive the death penalty. The jurors felt that none of the mitigating factors were worthy of sentencing McVeigh to a life in prison, and, according to McVeigh, death was a more preferable sentence than life in prison. Stephen Jones argued that the media had produced the verdict and the sentence. He blamed the media for publishing false stories about the case and preventing McVeigh from receiving a fair trial. He thought the media had helped create public acceptance of McVeigh's fate. When prompted by Judge Matsch, McVeigh spoke the words of U.S. Supreme Court Justice Louis D. Brandeis, an advocate of individual rights: ''Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example.'' McVeigh concluded with, ''that's all I have'' (Thomas, 1997).

THE CASE OF TERRY NICHOLS

Terry Nichols has been in federal custody since he turned himself in to police in Herington, Kansas, after hearing he was a suspect in the bombing. It was during that initial nine-hour interview with the FBI that Nichols first admitted to associating with McVeigh, but he denied knowing anything about the Oklahoma City bombing. Nichols maintained that he was at his Kansas home at the time of the bombing and that McVeigh, along with an unidentified John Doe Number 2, are responsible for the bombing. Nichols's defense team, headed by Michael Tigar, claimed that McVeigh used Nichols only to attain bombing supplies, and that, even if Nichols had been aware of the plan, he had backed out of it long before the bombing. Nichols's story was backed up by Michael Fortier, an army buddy of Nichols and McVeigh who had served as a star witness in both cases in exchange for a 12-year sentence.

Although Nichols and McVeigh received separate trials, in many respects the courtrooms were similar during the trials. Both trials took place in Judge Matsch's courtroom in Denver, Colorado. Larry Mackey, who worked for the prosecution team against McVeigh, headed the prosecution team against Nichols. Mackey's prosecution team resorted to the same emotional testimony of victims' family members, just as they had against McVeigh. After deliberating for 41 hours, a jury was not convinced Nichols had ''intent to kill'' and could not convict Nichols of the murder charges brought against him. On December 23, 1997, he was found guilty of involuntary manslaughter and conspiracy, thus escaping the death penalty. Six months later, Judge Matsch sentenced Nichols to life in prison.

DEATH ROW

Along with McVeigh, Nichols was sent to the ''Alcatraz of the Southwest,'' a federal prison in Florence, Colorado. The facility was considered the most secure federal prison

in the United States. McVeigh shared his unit with three men: Theodore Kaczynski, Ramzi Ahmed Yousef, and Louis Felipe.

The four prisoners spent 23 isolated hours in their cells; one hour each day was designated for recreation. Both Kaczynski, known as the Unabomber, and McVeigh shared a hatred for the federal government, and they became good friends. Yousef, the mastermind behind the first World Trade Center bombing in 1993, was sentenced to 240 years in prison. Felipe, a Cuban native, was sentenced to life in prison plus 40 more years.

Although they did not share the same unit, Nichols and McVeigh resided within the same prison walls of the federal prison until McVeigh was abruptly moved to the U.S. Penitentiary in Terre Haute, Indiana, in July 1999. Although the federal death row facility in Indiana was constructed in 1995, the government chose to not make it operational until there were 20 federal death row inmates. In 1999, the government had enough federal death row inmates for the facility to be cost-effective. McVeigh would be the 14th man to be federally executed since the federal death penalty was reenacted in 1988. McVeigh was convinced the government was in a hurry to put him to death (Michel and Herbeck, 2001, p. 374). In 2000 the federal courts denied McVeigh's appeal to have his conviction overturned in light of Jones's poor defense tactics. McVeigh did not plan to pursue an overturned sentence any further, especially with the inauguration of President George W. Bush (the person who would ultimately be deciding his fate). The State of Texas had a reputation for a high number of death penalty cases, and McVeigh thought that there was little chance he would be granted clemency by the incoming president.

Nichols also left the federal prison in Florence, Colorado, only to travel to Oklahoma in 2000 to face 160 murder charges that were filed against him by the State of Oklahoma. The Supreme Court had previously rejected Nichols's appeal to overturn his conviction, as Nichols claimed a key witness was excluded from his trial. The Supreme Court also ruled against Nichols, stating that the murder charges brought against him by the State of Oklahoma would not be classified as double jeopardy. Oklahoma would be permitted to bring 160 murder charges against Nichols that were not brought against him in his federal case. As a result, Oklahoma sought the death penalty against Nichols in the controversial case, but the jury deadlocked over his sentence.

McVEIGH'S MANIPULATION OF THE MEDIA

Millions of Americans had watched the horrible aftermath of the Oklahoma City bombing and the news coverage of Timothy McVeigh's trial. After the trial, many of these same Americans then witnessed Ed Bradley engage Timothy McVeigh in conversation on the news program *60 Minutes*. Beforehand, McVeigh set conditions of what could be discussed in the interview, thus barring his guilt and motivations for the bombing of the Murrah building from discussion. Instead, Bradley allowed McVeigh to compare the violence used in the Oklahoma City bombing to government actions in Sudan or Afghanistan and to the policies of the United States on the death penalty (Michel and Herbeck, 2001, p. 380). McVeigh had no apology for the victims' families and expressed no regret. One could argue that the interview was a chance for McVeigh to justify his actions and finally explain to Americans his political reasoning behind the bombing. Although McVeigh felt that the news media had worked hard to demonize him, this was his chance to use the celebrated nature of his case to his advantage. Until his death, McVeigh claimed his actions were needed to fight the wrongs of a corrupted U.S. government. Some may see his

actions as vengeance, but McVeigh believed he acted for larger good. He considered himself a true patriot and wanted to use his celebrity status to make sure America knew it.

McVeigh's relationship with the news media did not stop with the *60 Minutes* interview. From death row, McVeigh contacted major news networks, offering to have his execution nationally televised. He believed that televising the execution would be a way to show the public how his death was being made into a spectacle, especially those victims' family members pushing for a closed-circuit viewing of his execution (Michel and Herbeck, 2001, p. 378). His requests were denied but not until after his outlandish offer received significant media attention. One could argue that McVeigh's point may have been expressed, despite the rejection of his request for a nationally televised execution.

FBI FILES, MEDIA CIRCUS, AND DEATH

Approximately one week before McVeigh's execution, which was scheduled for May 16, 2001, the FBI turned over more than 3,000 pages of witness testimony and other evidence not available to McVeigh's attorneys during the trial. The uncovered evidence consisted of FBI reports of investigation, photographs, letters, and tapes. In light of the recovered FBI files, McVeigh's execution date was postponed until June 11, 2001, by Attorney General John Ashcroft. Along with the controversial files, the Justice Department sent a statement to McVeigh's lawyers stating that the Justice Department thought the uncovered files contained no new evidence that would cast any doubt over McVeigh's guilt.[7] Although McVeigh had confessed to the bombing and had a history of waiving appeals, he thought the FBI's withholding of evidence was unfair and damaging to his case. The uncovered files were more fuel for his suspicion and hatred toward the federal government. The FBI mishap tarnished what many considered to be a near perfectly handled case by the U.S. criminal justice system. The mistake leaves much doubt to the issue of whether the criminal justice system is able to properly process a celebrated case such as the Oklahoma City bombing.

Because of the passing of the Antiterrorism and Effective Death Penalty Act in 1996, the court can allow an appeal only if new evidence showed that McVeigh would not have been convicted if the defense had the evidence during the trial. After the prosecution, defense, and judge read through the files, there was disagreement about whether the files substantiated enough reason for an appeal; nevertheless, most legal analysts agreed that McVeigh's execution would again be postponed by Judge Matsch. On June 6, to the surprise of most legal analysts, the defense's request to again extend McVeigh's execution date was denied by Judge Matsch. Although the judge made it clear that he was furious at the FBI for their mistakes, he was certain that the evidence did not leave any lingering doubts over the guilt of either McVeigh or Terry Nichols.

It is easy to understand how the execution of the man responsible for the worst terrorist act on American soil would be an important media event. Although many other celebrated cases receive extensive media attention, the amount of media attention McVeigh's execution received is especially noteworthy. It is estimated that over 1,400 journalists traveled to Terre Haute, Indiana, to cover McVeigh's execution. On Sunday, June 10, news media outlets set up tents hundreds of yards away from the death chamber. Because the majority of animated death penalty advocates and protestors were kept at distant parks where they could be monitored, the news media personnel spent most of their time socializing with one another outside the prison walls. The news

THE SOCIAL CONSTRUCTION OF A HOMEGROWN TERRORIST

In one study, Parkin, Cavender, Kupchik, Altheide, and Hanson (2005) content analyze four U.S. newspapers to examine how the media constructed the identity of Timothy McVeigh as an American terrorist. They found that directly following the Oklahoma City bombing media were quick to frame the act of terror as linked to a broader international terrorism threat. However, after it was clear that Timothy McVeigh, an American-born military veteran, was the main suspect in the bombing, the media were forced to reframe or repackage their coverage of the perpetrator. In particular, Parkin et al. (2005) found that the new dominant media frame portrayed McVeigh as part of a broader militia movement, although in reality McVeigh was not associated with a particular militia organization (see Chermak, 2002). Moreover, Parkin et al. (2005, p. 93) found that media were much more likely to associate McVeigh with the militia movement than as a terrorist or with the broader issue of terrorism. They suggest that by negatively portraying particular aspects of his past, and by emphasizing his false connection to the militia movement, media constructed McVeigh's biography in such a way that would give him character, but also in such a way as to condemn him (Parkin et al., 2005, p. 88). In short, Parkin et al. (2005) show how media recycle old frames, repackage, and adopt new frames to portray serious incidents and perpetrators like Timothy McVeigh in order to make atrocities like the Oklahoma City bombing more comprehensible to citizens.

coverage of the execution lasted for hours on that notorious Monday morning, despite the fact that other than the ten reporters randomly selected to witness the execution in person, the media could only guess what was going on inside the prison. On June 11 at 7:14 a.m., federal authorities pronounced McVeigh dead by lethal injection. The stories of the ten reporters who witnessed the execution and the other family members of victims filled the airways with descriptions of McVeigh's final minutes of life. While some witnesses felt relieved, others stated that McVeigh's execution brought no closure to the death of their loved one. Interestingly, McVeigh's execution also became an international media event as foreign governments and protestors around the world rallied against the United States for their continuance of their "barbaric" capital punishment. Despite the outcry by foreign nations and the extended news coverage that Monday morning, the celebrated story of Timothy McVeigh quickly became less newsworthy after that fateful morning.

SOCIAL SIGNIFICANCE OF THE OKLAHOMA CITY BOMBING

The social significance of the Oklahoma City bombing was tremendous. On April 19, 1995, U.S. citizens were faced with the most devastating terrorist act ever on American soil. Other than the New York World Trade Center bombing in 1993, terrorism was something that other countries experienced. After the Oklahoma City bombing, the American public felt vulnerable to future attacks from within their own borders and now by their fellow Americans. The bombing affected the trust developed between Americans who before did not feel they had to look at neighbors as potential threats. Before it was known

that the Alfred P. Murrah Federal Building was destroyed by a homegrown terrorist, many Americans were quick to blame the popular scapegoats: Middle Eastern terrorists. When it was discovered that the bomber was actually an American, U.S. citizens were forced to adapt their social definitions of terrorism. Chermak (2002) suggested that the news media played an essential role in framing this new domestic terrorism as a larger threat coming from the right-wing militia movement. He argued that when the news media linked McVeigh to the militia movement, the public created new social perceptions and stereotypes of militia groups. In essence, the media were able to reshape public consciousness in a way similar to the way they have influenced the public's shared understanding of international terrorist threats after the September 11 attacks (Chermak, 2002).

The Oklahoma City bombing also forced the government to adapt to the new social definition of terrorism. As a result of the Oklahoma City bombing, President Clinton signed the Antiterrorism and Effective Death Penalty Act.[8] The bill became law with Clinton's signature on April 24, 1996, approximately one year after the bombing. The bill gives federal authorities the ability to better monitor individuals thought to be terrorists or suspected of conspiring to commit a terrorist act. It also clarifies less concretely defined acts, such as funding a terrorist group, as unlawful. Although many claim that the passing of the legislation will aid in the prevention of terrorism, others believe it restricts individual civil liberties and restricts personal freedoms.

McVeigh perceived the political effects of the bombing differently. For example, McVeigh believed that—as a result of the Oklahoma City bombing—federal agents began to use more peaceful negotiation tactics instead of the violence used in Ruby Ridge and Waco. He also believed that the U.S. federal government was beginning to compensate for its mistakes in previous years (Michel and Herbeck, 2001). In a settlement four months after the bombing, the federal government awarded Randy Weaver and his remaining children $3.1 million. Despite a Texas jury finding the federal government not responsible for the deaths in Waco, McVeigh was pleased to hear that President Clinton considered his decision to allow federal agents to invade the Branch Davidian a mistake, and that Clinton felt personally responsible for the incident.

One could argue that the Oklahoma City bombing laid the groundwork for the way the news media, government, and public would respond to the attacks on New York City and Washington, DC, on September 11, 2001. Subsequent legislation—the USA Patriot Act—has been passed since the recent terrorist acts on September 11. In addition to the liberties granted to federal authorities under the Antiterrorism and Effective Death Penalty Act, the USA Patriot Act gives federal authorities freer access to monitor the communication between suspected terrorists and those thought to be associating with them, as well as further outlining the penalties for terrorist activities. Because news media attention has shifted to the more recent terrorist attacks of September 11, the Oklahoma City bombing has taken a backseat in the public consciousness. Our primary public enemy now comes from the militant Muslims. Talk of neo-Nazis, *The Turner Diaries,* and truck bombs has settled, and, unfortunately, it will only be with another act of domestic terrorism from within U.S. boundaries that the media will speak again of the radical right threat.

RATIONALIZING THE TERROR

Although news media and government policy makers worked diligently to bring back social stability after the Oklahoma City bombing, the question of *why* still lingered for

many Americans. An examination of McVeigh's life provides no simple conclusions. It is known that he hated bullies, and that he viewed the federal government as the worst of them. It is also known that he loved guns and feared that gun control legislation would strip gun ownership rights away from U.S. citizens. For McVeigh, a decorated Gulf War veteran, the standoffs at Ruby Ridge and at Waco were enough proof that the government had waged war against gun owners, and they are considered crucial to the understanding of *why* he thought it necessary to destroy a federal building that housed many federal employees. He thought that he was not on the offensive but on the defensive side of the battle. The Oklahoma City bombing was vengeance, revenge for Ruby Ridge and Waco. It was also a political statement and a call to arms for fellow gun owners. Pierce's *The Turner Diaries* made the battle between the ''evil'' government and American gun owners clear in McVeigh's mind, and the book ultimately served as inspiration and a road map to the Murrah building. For McVeigh, the Oklahoma City bombing was just the beginning: more bombs and more warfare were sure to follow.

McVeigh knew the bombing would become a celebrated media event, and even before that notorious day he had imagined how the dilapidated Murrah building would look on the nightly news. He believed the bombing would be a call to arms to the radical right watching the bombing coverage on television. Instead, many right-wing groups scurried underground for the fear of being connected to McVeigh's actions. During his trial, McVeigh hoped the media would be an avenue for his political ideologies, and Americans would realize that he did this for the good of the country. Instead, the media demonized him by calling him a ''baby killer'' and a ''neo-Nazi.'' There is evidence that the media even bought stories from people close to McVeigh, reporting his jail cell confessions and crippling his chances for an unbiased trial. Michel and Herbeck (2001) tell us that McVeigh believed that, in addition to the leaked confessions, the intense media coverage of the O.J. Simpson trial and O.J.'s subsequent acquittal had embarrassed the U.S. criminal justice system and caused a loss of legitimacy in the public eye. As a result, McVeigh feared there would be increased pressure for the criminal justice system to convict him quickly to regain credibility. After his conviction and death sentence, McVeigh and his defense team blamed the media for an unfair trial. Although the media played an important role in the Oklahoma City bombing, it was not in the way McVeigh had hoped.

THE MEMORIAL

There is no doubt that the Oklahoma City bombing caused trauma and significant grief for citizens of Oklahoma City. Interestingly, the news media were instrumental in allowing the rest of the nation to share in the grief felt by residents of Oklahoma City. From April 19 through May, the public experienced the anguish of search and rescue efforts; public memorial services, including the opening of the Oklahoma City National Memorial on the fifth anniversary of the bombing; and televised funerals of the victims. Although the news media allowed millions to experience the pain and anguish of the bombing, they were also intent on finding closure for the American public. Whether it was after the death of Timothy McVeigh, the conviction of Terry Nichols, or the completion of the Oklahoma City National Memorial, the news media consistently hounded survivors and members of the victims' families, asking them if they had found closure since the bombing (Linenthal, 2001). Although many were pleased by the convictions and the memorial, nothing could bring their loved ones back. For them, closure was not just being able to go on with life.

In the wake of the disaster, Oklahoma City residents found a symbol of hope in a tree that survived the blast that had leveled the Murrah building (Michel and Herbeck, 2001, p. 385). One hundred and fifty feet away from the bomb site, and amidst the fiery debris, stood a hardy tree protruding from the asphalt, today known as the ''Survivor Tree.'' The Survivor Tree now stands on an overlook gazing onto the Oklahoma City National Memorial. Carved into the stone wall that curves around the outlook are the following words: ''The spirit of this city and this nation will not be defeated; our deeply rooted faith sustains us.'' Visitors standing beneath the ''Survivor Tree'' can look onto the ''Field of Empty Chairs,'' 168 bronze and stone chairs placed in rows where the Murrah building once sat. Whether or not the news media's simplistic attempts at finding national closure after the bombing were successful, many people have used the Oklahoma City National Memorial, if for nothing else, as a way to remember those who perished. As for closure, that may never be found by some. They just go on with life, surviving.

SUGGESTIONS FOR FURTHER READING

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NOTES

1. Discussion of McVeigh's activities on the morning of April 19, 1995 are based on excerpts from *American terrorist: Timothy McVeigh and the Oklahoma City bombing* (2001, pp. 229–232) by Lou Michel and Dan Herbeck.
2. In *American Terrorist* (2001), Lou Michel and Dan Herbeck, two *Buffalo News* reporters, tell the story of Timothy McVeigh and the Oklahoma City bombing after conducting over 75 hours of interviews with Timothy McVeigh, and also interviews with Timothy McVeigh's family, friends, co-workers, army buddies, and the legal actors involved in his case, among many others.
3. For two years, the Order, a white supremacist, anti-Semite organization acting out the fictitious story of *The Turner Diaries* went on a two-year terrorist rampage killing a Jew, Odinist (Mormon), and police officers. The group, led by Christian Identity follower Robert Mathews, also committed armed robbery, stealing millions and donating the money to various white-supremacist organizations. By 1985, all Order members had been killed or imprisoned. Mathews died in a shootout with police in which the house he was in burned down.
4. *First Blood* (1982), starring Sylvester Stallone, is a movie about a Green Beret Vietnam veteran who drifts from town to town searching for war buddies and food. After being arrested by a corrupt, abusive sheriff, Stallone escapes jail to start a one-man war by arming himself in the Oregon Mountains.
5. Details of the activities of McVeigh and Nichols directly prior to the bombing are extracted from Chapter 8 in Michel and Herbeck's *American Terrorist* (2001).
6. Details of McVeigh's arrest and booking are extracted from Michel and Herbeck (2001, pp. 238–246).
7. The statement by the Department of Justice Spokesperson, Mindy Tucker, can be found at http://usgovinfo.about.com/blagencyrelease06.htm

8. The Antiterrorism and Effective Death Penalty Act can be located under Pub. L. No.104-32 Title-VII 110 Stat.1216 (1996).

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12

JonBenet Ramsey: The Tragic Investigation of Murder, Perfection, Power, and the American Family

BRENT FUNDERBURK

You need to know that everyone in America is watching. The death of this child has broken all of our hearts, except—apparently—yours. It has left a permanent scar on our conscience. There must be accountability. There is going to be accountability in this case, I promise you. . . And I say to all of you that there will not be any. We will ensure that justice is served for this community, for this nation, and most important, for JonBenet.

—Alex Hunter, District Attorney, Boulder,
Colorado at a press conference on February 13, 1997
(from Wecht, 1998, pp. 206–7)

On December 26, 1996, early in the morning hours, a six-year-old beauty pageant star named JonBenet Ramsey was murdered in her home on 755 Fifteenth Street in Boulder, Colorado, in a wealthy suburb known as University Hill (Wecht, 1998; Thomas & Davis, 2000). Over the next several months, the investigation of the murder and its subsequent tabloid coverage would create a nationwide sensation. Even as the case failed to show much progress and remains unsolved, speculation and discussion has never been lacking. The crime involved many issues that immediately struck a nerve with the public: it

DID YOU KNOW?

The name ''JonBenet'' originated from the melding of the first and middle names of John Bennett Ramsey, JonBenet's father. The ''exotic'' allure of the name was chosen specifically with the world of pageants in mind, something to pique the interest of beauty pageant judges and the casual observer alike. In addition, JonBenet was given the first name of her mother, Patricia (''Patsy'') Ramsey, as her middle name. Patsy chose the name not only to symbolize both an adoration and a closeness to JonBenet but also to pass the torch to her daughter, as Patsy had been a former Miss West Virginia and a known national beauty pageant competitor (Gentile and Wright, 2003; Thomas and Davis, 2000; Singular, 1999; Wecht, 1998).

unfolded during the holidays, it involved a wealthy and socially prominent family, it possibly involved an unthinkably brutal crime between parent and child, and it occurred not long after the O.J. Simpson and Susan Smith cases, and the racially, sexually, and socially charged publicity that surrounded both of these cases (Singular, 1999; Rubacher, 2000; Songtag, 2002).

The case of JonBenet Ramsey would captivate the American public from late 1996 to 1999. Although many members of the public remained skeptical about whether or not the case would be solved, the words ''a new break in the Ramsey case'' continue to intrigue television viewers to this day (Croteau and Hoynes, 2003; Rapping, 2003). A December 1997 Gallup poll found that six in ten surveyed had followed the case very or somewhat closely and only ten percent had not followed it at all (Schiller, 1999). That same year, the first anniversary of JonBenet's death drew nationwide coverage, and vigils were held outside her home and the Boulder County courthouse (Wecht, 1998). The case also provided a glimpse into the largely unknown world of child beauty competitions, a highly lucrative industry with 3,100 competitions yearly and more than 100,000 competitors. The photographs and videos from the pageants offered images that disturbingly blended and blurred the lines between eroticism and childhood, innocence and sensationalism (Giroux, 1998; Rich, 1997; Wecht, 1998). The recent events surrounding the Ramsey case and the sizable sensational amounts of media coverage they received are a testament to the impact and resonance of JonBenet's murder on the American psyche (Giroux, 1998). In particular, the false murder confessions of John Mark Karr in August 2006 prompted a tangible sense of relief in the nation. Many news organizations immediately assumed Karr was the killer without any substantial proof (''Solved!'' declared the premature front headline of *The New York Daily News* on August 17, the day after the arrest of Karr), only to have to backtrack days later when DNA evidence cleared Karr of all charges (Bosman, 2006). Such emotional rushes to find justice for the beautiful six-year-old girl suggest the continuing relevance and poignancy of the case and its unsolved status.

THE MURDER

The investigation into the murder of JonBenet Ramsey began with a breathless phone call made by her mother, Patsy Ramsey, at 5:52 a.m. on December 26, 1996. Initially, the incident appeared to be a kidnapping as Patsy had come downstairs during her normal routine of making coffee and then waking her husband, John Bennett Ramsey, and the children, JonBenet and their nine-year-old son, Burke (Singular, 1999; Thomas and Davis, 2000; Wecht, 1998). The four of them had planned to board a private plane and travel to

THE RANSOM NOTE

Mr, Ramsey,

Listen carefully! We are a group of individuals that represent a small foreign faction. We [partially marked out] respect your business [sic] but not the country that it serves. At this time we have your daughter in our possession. She is safe and un harmed [sic] and if you want her to see 1997, you must follow our instructions to the letter.

You will withdraw $118,000 from your account. $100,000 will be in $100 bills and the remaining $18,000 in $20 bills. Make sure that you bring an adequate size attaché to the bank. When you get home you will put the money in a brown paper bag. I will call you between 8 and 10 am tomorrow to instruct you on delivery. The delivery will be exhausting so I advise you to be rested. If we monitor you getting the money early, we might call you arrange an earlier delivery of the {Page 2} money and hence a [sic] earlier (marked out) pick-up of your daug hter [sic].

Any deviation of [sic] my instructions will result in the immediate execution of your daughter. You will also be denied her remains for proper burial. The two gentlement watching over your daughter do not particularly like you so I advise you not to provoke them. Speaking to anyone about your situation, such as Police, F.B.I., etc., will result in your daughter being beheaded. If we catch you talking to a stray dog, she dies. If you alert bank authorities, she dies. If the money is in any way marked or tampered with, she dies. You will be scanned for electronic devices and if sany are found, she dies. You can try to deceive us but be warned that we are familiar with Law [sic] enforcement countermeasures and tactics. You stand a 99% chance of killing your daughter if you try to outsmart us. Follow our instructions {Page 3} and you stand a 100% chance of getting her back. You and your family are under constant scrutiny as well as the authorities. Don't try to grow a brain John. You aren't the only fat cat around so don't think killing will be difficult. Don't underestimate us John. Use that good southern common sense of yours. It is up to you now John!

Victory!

S.B.T.C.

Source: Thomas, S., & Davis, D. (2000). *JonBenet: Inside the Ramsey murder investigation.* New York: St. Martin's Press.

Charlevoix, Michigan, where a vacation home awaited; the family also planned a trip to Disney World within the next week (Schiller, 1999). Upon fully descending the staircase, approaching the kitchen, Patsy discovered a ransom note addressed to a "Mr. Ramsey" on three sheets of white-lined paper demanding a sum of $118,000 ($100,000 in hundreds and $18,000 in twenties). The note demanded the money within a day and said JonBenet would be killed if the demands were not met.

Patsy rushed upstairs to the second floor of the house and found JonBenet's bedroom empty (Hodges, 2000; Ramsey and Ramsey, 2000) and immediately dialed 911, claiming that a foreign crime organization abbreviated "S.B.T.C." was responsible for the abduction of her child. The investigation would be troubled from the beginning as the police of the small suburban section of Boulder had dealt with few serious crimes and had no kidnappings on record. Only an hour after Officer Rick French was dispatched to the

Ramsey home, Pete Hofstrom, the leader of the felony division at the district attorney's office in Boulder, became wary that the investigation was headed in the wrong direction. After the arrival of Officer French, more than two hours passed before the first detective began to gather evidence at a little after 8 a.m. Typically in cases involving a kidnapping such as this one, the protocol is to set up a command post away from the victim's home in order to avoid interference and destruction or loss of key evidence, but such a base was never created (Schiller, 1999; Thomas and Davis, 2000). In addition, the Federal Bureau of Investigation (FBI) is contacted in such cases for consultation but was not in this case. The lack of initial contact with the FBI was curious given that, since the passage of the Lindbergh law, the FBI has primary jurisdiction in kidnapping cases for fear that the perpetrator may cross state lines, cause confusion among local authorities, and require extradition procedures. Moreover, the police were grossly understaffed given the gravity of the situation. As a result, many members of the Ramsey's circle of friends, including their pastor Reverend Rol Hoverstock, were welcomed by Patsy into the sprawling, three-story house, making it difficult to keep track of all the individuals, much less control the crime scene and protect potential evidence. Hoverstock would later be permitted to deliver the ransom note to police headquarters, an action heavily criticized by many in the Boulder police department as well as the FBI (Schiller, 1999; Thomas and Davis, 2000). The on duty supervisor at the time, Sergeant Bob Whitson, after getting word of Patsy's 911 call, attempted to locate the Bureau's manual on procedure for kidnappings but could not find the document. Because of the idyllic reputation of University Hill, often referred to as ''Planet Boulder: twenty miles surrounded by reality,'' and lack of serious crime (the area averaged only one homicide per year) the police department had not officially adopted the Bureau's procedures regarding kidnappings, as they felt it an unnecessary exercise and use of resources (Brooke, 1997c; Singular, 1999; Smith, 1997; Derber 2002; Wecht, 1998).

Patsy would later put into words the feeling of surprise and shock the kidnapping sent throughout the quiet Boulder suburb, and the nation itself, during an interview on CNN's *Nightly News,* ''Boulder is a small, peaceful town, unlike Atlanta or New York, or LA, where this, God forbid, is a much more frequent occurrence. This does not happen in Boulder'' (from Lee, 2004, p. 121). As more police personnel arrived, along with two victim's advocates and four detectives, John Ramsey called Ron Westmoreland, a vice president of the Merrill Lynch investment firm and personal friend to the Ramseys, to arrange for the ransom money. The police became suspicious that John would contact an outsider about the money without consulting them first. The commander of the Boulder police department detective division, John Eller, was then called (he was out of town vacationing as many on the police force were), in order to apprise him of the situation and decide the best course of action. Eller also voiced surprise that the FBI had not been contacted.

One of the detectives dispatched to the case, Linda Arndt, an officer with a department-wide reputation for her empathy with victims, worked to console John, Patsy, and Burke. John was directed to handle any phone calls concerning the ransom, as the note stated that he would be contacted between eight and ten in the morning, and Arndt informed him to keep the kidnappers on the telephone as long as possible in order to get a trace on the call. John offered the names of several disgruntled ex-employees as possible suspects during Arndt's questioning (Schiller, 1999; Hodges, 1998; Smith, 1997). Arndt would then make one of the most crucial and controversial mistakes of the investigation. She failed to move

the unneeded visitors from the house and asked John and a close friend, Fleet White, to go through the house and look for signs of forced entry, something Officer French already reported he had not found. In addition, Arndt suggested that they look for any missing possessions from the house that could be searched for if a larger search for JonBenet outside the Ramsey home became necessary.



Figure 12.1 John and Patsy Ramsey speak during a news conference in Boulder, Colorado, 1997. © AP Photo/The Denver Post, Helen H. Davis.

Upon entering a playroom on the ground floor containing many of Burke's toy trains, a broken window was discovered. John quickly explained that he had locked himself out of the house some months earlier and had kicked in the pane to get at the lock and get back inside. Ramsey then decided to go to the basement. He was followed by White and another friend, John Fernie, who had been the first person to arrive at the house, even before Officer French.

Although several officers had searched the area in and around the basement earlier that morning, John Ramsey came upon the body of his daughter in a small room that was being converted into a wine cellar. The little girl was wrapped in a white blanket with a strip of duct tape over her mouth. John ran to the body, pursued by Officer Fernie, White, and Renee Lucas (another Ramsey family friend who had made her way into the basement behind them). White began shouting "Oh God!" repeatedly as he knelt in the doorway to the tiny room (Lee, 2004). John pulled the tape off JonBenet's mouth as he picked up the body. The body was ashen and stiff from rigor mortis, her lips blue and the skin cold to the touch. It appeared JonBenet had been dead for several hours.

Lucas repeatedly yelled up the stairs for an ambulance as John proceeded to carry the body from the basement up the stairs to the living room (Singular, 1999; Wecht, 1998). JonBenet was still wearing the clothes she had on at bedtime, a long sleeved white shirt with star sequins and long-john pants with the word "Wednesday" written on the waistband (Singular, 1999). Boulder police chief Tom Koby would later offer what many considered a weak explanation of why his own officers had apparently not carefully searched the house: "We had no reason to believe the child would be in the house at the time" (from Wecht, 1998, p. 180). It was believed by many critics, despite Koby's protests, that the police had mishandled the initial search of the house and overlooked important evidence. Death from asphyxiation, by use of a wire ligature, would be the eventual conclusion of the Boulder County coroner, John Meyer, and other consultants brought in including FBI profiler John Douglas (Gentile and Wright, 2003; Thomas and Davis, 2000). Many of the sordid details Meyer refused to mention, including evidence of prolonged sexual abuse and fetishism and evidence of a brutal blow to the girl's head, would be revealed to the public in the coming months (Lee, 2004; Wecht, 1998; Singular, 1999).

The Investigation

On December 31 JonBenet was laid to rest in Marietta, Georgia, just outside Atlanta (where her parents had originally met and where John's parents and brother, Jeff, were



Figure 12.2 A Boulder Police detective walks to the home of John and Patricia Ramsey as investigators sift through evidence, 1996. © AP Photo/David Zalubowski.

originally from). The murder investigation was only just beginning. Only days before the funeral of JonBenet, on December 27, Commander Eller had assigned almost one-third of the 100 officers under his command to the case. The police in and around University Hill had allowed the crime scene of the Ramsey murder to become immeasurably contaminated during the crucial early hours of the investigation. Between the seven hours and thirty-three minutes that elapsed between the initial 911 call and the decision to finally clear out the Ramsey's house by Detective-Sergeant Larry Mason, many of the key solutions to the case were, it appears, permanently lost. As one criminalist associated with the case noted, the scene of people milling about was "...like something out of an Agatha Christie novel" (Lee, 2004, p. 147). Unfortunately, the Ramseys had allowed many people to enter the house even before the first police officer arrived on the scene. In the process of finding the body of JonBenet, John Ramsey committed perhaps the most damaging acts toward the evidence by picking up the body, removing the duct tape, and taking JonBenet out of the small room in the basement (Wecht, 1998; Hodges, 2000; Schiller, 1999; Rubacher, 2000). The forensic investigation suggested that John probably destroyed evidence on and around JonBenet's body, such as tears, fingerprints, saliva, and other body tissues and fluids (Thomas and Davis, 2000; Wecht, 1998). In addition, the evidence on the blanket, which contained spots of some sort of bodily fluid (many investigators and writers on the case suspected semen), were also contaminated and could not be clearly analyzed.

Further errors were revealed, such as the initial lack of protective gloves used by detectives first arriving on the scene and by Officer French, the first to enter the Ramsey house. There were only two officers to handle the initial crowd in a house that covered 6,866 square feet, three stories, and a half acre of land. Another mistake concerned a large flashlight that could have easily been used to create the blunt trauma wound found on the top of JonBenet's head. The flashlight was only noticed and tagged as evidence the day after the investigation began, having sat on the kitchen counter unattended all day (Lee, 2004; Singular, 1999; Schiller, 1999; Wecht, 1998). Eleven weeks after the sizable missteps taken in the initial investigation, there was not a great deal of new evidence coming to the surface. John Ramsey's two older children from a previous marriage, John, Jr. and Melinda (a third, Beth, had died tragically in a 1991 car accident), were possible suspects briefly. Their names were cleared by evidence that both of them were in Georgia at the time of the murder (Brooke, 1997e; Hodges, 2000).

Compounding the lack of progress was a palpable sense of tension between the leaders of the Boulder police department and the office of the district attorney, specifically concerning whether or not to allow the continuing presence of the FBI in the case. Also, dissension between Boulder district attorney Alex Hunter and Police Chief Koby caused controversy, particularly with regard to publicity on the case. In statements to the media, Hunter wanted to appeal to the people for continued support of the investigation, whereas Koby wanted to keep the amount of press conference and interviews minimal. Commander Eller frequently conflicted with Hunter and Bill Wise, the chief assistant to Hunter, concerning the progress of the investigation. Specifically, Eller felt the current law enforcement personnel was sufficient, but Hunter and Wise felt the use of more experienced outside help, given University Hill's lack of violent crime, was necessary. Wise told the *New York Times* that an outside investigator needed to be consulted to bring a fresh perspective to a rocky and stalled investigation: ''We just need a good, experienced, probably retired police officer—probably—maybe even an FBI agent'' (''Colorado Case,'' 1997, p. A1; Hodges, 2000; Lee, 2004; Schiller, 1999).

Moreover, in January 1997 Koby revealed he had rejected offers of help from the Denver police on several occasions without consulting Eller or Hofstrom. Koby also continued his practice of giving news conferences and interviews that often glossed over police mistakes in favor of generalizations and reassurances. On one such occasion, Koby suggested the much-maligned police work on the case could not have ''done better'' and that the Ramseys' decision to quickly hire private attorneys was not problematic, an assertion that would garner much criticism:

> I've been in communication with police personnel around the country, and most legal experts will tell you we've done it just right. . . There's nothing that's been done, either by us or by the Ramsey family, that is out of order.

Koby went on to comment that the fascination with the case in the news media and tabloids was a ''sick curiosity'' (Schiller, 1999; from Wecht, 1998, p. 113). Later, David Michaud, the Denver police chief, revealed he had, as early as January 2, 1997, offered the resources of the department as well as a significant portion of detective force of 300 to Koby. Later, Koby would be plagued by two votes of no confidence by his own police force and would be forced to resign in October 1997.

However, there was one thing that Hofstrom and Wise, along with several others including Eller, could all agree on: the parents of JonBenet were prime suspects. There

TIMELINE

The following is a timeline for the events occurring on December 26, 1996, from the time Patsy Ramsey awoke to the discovery of JonBenet's body. Note that some times are approximate as they are based on nontestimonial evidence or could only be closely estimated in hindsight.

5:45 a.m. Patsy Ramsey descends the spiral staircase from her bedroom on the third story to the kitchen where she finds the ransom note at the bottom of the steps.

5:52 a.m. Patsy calls 911 stating that her six-year-old daughter, JonBenet, had been kidnapped. The operator and Patsy discuss the ransom note and when help will arrive.

5:56 a.m. The first police officer, Rick French, arrives at 755 Fifteenth Street and finds no sign of the missing girl or forced entry. He notes the presence of the Ramsey's friends already in the house but fails to clear them. John Ramsey then joins his wife and Officer French.

6:10 a.m. Three officers and four detectives are contacted; a second officer, Karl Veitch, arrives at the Ramsey home.

6:40 a.m. Sergeant Bob Whitson cannot find or contact one detective and one officer who had attended the Child Abduction Serial Killer Unit for instruction. Whitson cannot locate the manual from the training seminar either. Police Sergeant Paul Reichenbach, and Officers Barry Weiss and Sue Barcklow arrive.

7:10 a.m. The older brother of JonBenet Ramsey, Burke, is taken by a family friend, Sanford Lucas, to spend the day at his home. An FBI manual is located for Whitson but he realizes the Boulder police department had never adopted the procedures as official policies. John Ramsey attempts to make arrangements to pay the ransom.

8:10 a.m. Linda Arndt arrives on the scene, and a detective, Fred Patterson, begins questioning the Ramseys concerning what happened after they rose for the morning and if there was anyone they could think of who would want to harm JonBenet.

8:20 a.m. Arndt notes that John and Pasty are not sitting together or speaking. John is instructed to answer all phone calls because the ransom note was addressed to him. Police start searching JonBenet's bedroom.

8:30 a.m. John Ramsey mentions Todd Ogilvy, a disgruntled old friend he had laid off from Access Graphics, as a possible suspect. John phones friend Ron Westmoreland to arrange for the ransom money.

9:45 a.m. Detective Sergeant Larry Mason discovers that the FBI are at Boulder police headquarters. The kidnappers do not call by 10 a.m. and are never heard from.

10:15 a.m. Mason arrives at Boulder police headquarters and meets with FBI special agent Ron Walker. A profiler, Walker doubts the authenticity of the note due to the long length and strange amount of money demanded.

10:30 a.m. Patterson seals JonBenet's bedroom and tells Arndt to clear the house of all unnecessary personnel. Patterson leaves the Ramsey house to inform Commander John Eller of the situation. Arndt contacts Mason and states that more officers are needed.

11:45 a.m. Once at police headquarters Mason tells Eller that tracking dogs used to find JonBenet had not turned up anything significant.

12:55 p.m. Arndt tells Fleet White to lead John Ramsey on a tour of the house; other friends Renee Lucas and John Fernie follow. Ramsey is instructed to look for anything of JonBenet's that might be missing. A broken window is found in a playroom in the basement, which Ramsey explains he broke a few months previous when he locked himself out of the house. Ramsey then moved to a small door of a room to be used for a future wine cellar. John then notices a small white blanket with two small hands visible protruding out of the end. Upon John hitting the light switch, Lucas, Fernie, White, and Ramsey all see clearly it is the body of JonBenet. John kneels by his daughter and removes the tape from her mouth and removes the binding from one of her wrists. The body is in rigor mortis, and Lucas rushes up the stairs calling for an ambulance. John followed up the stairs, carrying JonBenet by the waist, shouting that he had found her.

Source: Lee, H.C. (2004). *Cracking more cases: The forensic science of solving crimes*. Amherst, NY: Prometheus Books.

were many reasons JonBenet's closest family rose quickly to the top of the list of possible murderers. First, no indications could be found of a forced entry into the house except for the broken window that John admitted was his fault. Not one person in the quiet and safe neighborhood of University Hill had reported anything verifiable or out of the ordinary the days leading up to and the day of the murder. In addition, a report to Hofstrom from the coroner pointed to semen on the body of JonBenet (and possibly on other evidence, including the blanket), suggesting the possible involvement of John Ramsey given the large percentage of child murders carried out by the father as opposed to a stranger (Hodges, 2000; Schiller, 1999; Singular, 1999). Also, there was the ''practice note'' as it would come to be known—a sheet of paper found in a pad in the Ramsey home with the first few words of another potential ransom note scrawled in the same block lettering with same felt tip pen. At 370 words the completed ransom note that was found—lampooned by one author as the *War and Peace* of ransom notes due to its long length—would prove to be a damning piece of evidence for the Ramseys. The amount demanded, $118,000, was nothing to a multimillionaire like John Ramsey (the author even referred to John as ''fat cat'' at one point, suggesting a knowledge of his wealth), creating doubt about the authenticity of this three-page document (Brennan, 1997; Schiller, 1999; Lee, 2004; Brooke, 1997a). Ted Rosack, a former special agent once in charge of the Denver branch of the FBI, remarked,

> This one [ransom amount] doesn't compute . . . It's too cheap . . . In the 1960s, we were getting notes asking for $250,000, which was a lot of money then. That's nothing today. (from Wecht, 1998, p. 41)

In addition, the amount of money was exactly the figure of John's yearly bonus paid to him by Lockheed Martin at Access Graphics, a coincidence that implied an intentional air of familiarity as opposed to an actual realistic dollar figure. Hofstrom also noted that writing a ransom note of this length while inside the victim's home was a deviation from previous cases he knew of and would be an unnecessary risk for a potential perpetrator. Moreover, one recent ruling in the Oklahoma City Bombing case, heard in nearby Denver, saw Timothy McVeigh's lawyer calling handwriting a ''false science'' without merit. Although the evidence, linking McVeigh to the rental contract for a truck used to transfer fertilizer and explosives, was admitted, none of the testimony put forward by experts would go on record (Hodges, 2000; Lee, 2004; Schiller, 1999).

Furthermore, after analysis by the Colorado Bureau of Investigation (CBI), several inconsistencies were noted in which the author seemed to misspell certain words in a format inconsistent with the rest of the note (Hodges, 2000; Smith, 1997; Schiller, 1999; Thomas & Davis, 2000). In contrast, use of the words ''hence'' and ''attaché'' suggest an educated person; some similarities were noted between the phrasing and patterns of the note and Patsy's written and spoken statements after the murder (Schiller, 1999; Hodges, 1998; Hodges, 2000; Singular, 1999; Wecht, 1998). The oddities in the note suggested someone attempting to make the kidnappers seem foreign and/or uneducated with poor English skills. The analysts also noted similarities between the use of certain phrases and action films shown recently on cable television in the area including *Dirty Harry* (''I don't care if it's a Pekinese pissing on a lamppost''), *Speed* (''Do not attempt to grow a brain''), and *Nick of Time,* which aired the night before the kidnapping and involves a plot concerning a young girl kidnapped by a group of foreign terrorists (Gentile & Wright, 2003; Lee, 2004; Schiller, 1999; Smith, 1998; Wecht, 1998). The CBI would later provide another crucial finding in the case when its analysts discovered that a small smear on JonBenet's thigh was blood; CBI would eventually use the blood to create the profile of the murderer that is largely followed to this day (an unknown white male).

Moreover, no kidnappers were ever heard from and JonBenet was discovered at her home, another rarity in cases of stranger-perpetrated abduction (Wecht, 1998; Hodges, 1998; Hodges, 2000; Schiller, 1999). The police were, according to the ransom note, not to be contacted, but Patsy did so immediately after finding the ransom note. The so-called ''practice note'' further harmed the credibility of the ransom missive, particularly after a handwriting analysis performed (from samples provided by the Ramseys) pointed to Patsy as a strong candidate for having authored it (Brennan, 1997). Chet Ubowski, the primary handwriting analyst at the CBI, suggested that Patsy absolutely could have written the ransom note. The Deputy Director of the CBI, Pete Mang, also believed the handwriting was likely that of JonBenet's mother. Judith Phillips, a longtime close friend and confidant of Patsy who had viewed the note, suggested that Patsy had switched hands to disguise the physical writing style: ''It was her penmanship, even though it might have been left-handed'' (Davis, 2004; Hodges, 1998; Gentile and Wright, 2003; Rubacher, 2000; from Wecht, 1998, p. 217). Other oddities included: the use of only objects inside the Ramsey home to create the nylon ligature that eventually killed JonBenet (wires and a paintbrush from remote locations in the home that would probably be difficult to find except to those familiar with the home) and the only conclusive footprints in the snow outside the perimeter of the house were those of John Ramsey.

The Ramseys further frustrated several investigators with erratic behavior the day of JonBenet's killing and for weeks afterwards, particularly John. These difficulties were cited

as reasons for the lack of progress in the case and certainly did not help John and Patsy's claims of innocence. Detective Sergeant Mason noted John's insistence on contacting Mike Archuleta, his private pilot and personal friend, in order to travel to Atlanta to be with family even as investigators made it clear this was not possible as he and the rest of the family were crucial components in understanding the case (Smith, 1997; Thomas & Davis, 2000; Schiller, 1999). Many investigators, including Detective Arndt, noticed a marked detachment in John Ramsey and his strange rush down the basement stairs to the exact location of JonBenet's body after a full search of the home had not turned up any signs of the girl. Upon first seeing JonBenet after her husband brought the body upstairs, Patsy threw herself on the body and cried, ''Jesus, you raised Lazarus from the dead. Raise my baby!'' She also reportedly paced nervously around the exact area where, just below, her deceased daughter lay (Gentile & Wright, 2003; Schiller, 1999; Wecht 1998).

Furthermore, upon the discovery of the first draft of the ransom note, Eller and Hofstrom knew that the parents of JonBenet must be interviewed. Detective Arndt, permitted under the U.S. Supreme Court decision *Schmerber v. California* that allows a judge to issue an order binding an individual to provide nontestimonial evidence or police to collect such evidence, had collected statements from John and Patsy regarding possible suspects and any events they could recall leading up to the murder, but the Ramseys, it seemed, were strenuously avoiding a formal interview with other detectives. Although the whole family—John, Patsy, Burke, John Andrew, and Melinda—had all submitted blood, hair, and fingernail samples, key testimonies about the events surrounding the murder were still missing.

Another frustrating issue for investigators was the aforementioned decision by John and Patsy Ramsey to hire their own team of lawyers and investigators only days after the murder of their daughter. Such actions suggested that there was something to hide; the Ramseys had been charged with nothing and were freely giving interviews to venues like CNN while shirking police requests for a sit-down. Michael Bynum, a close friend to John and a former deputy district attorney in Boulder, had originally suggested that both his wife and he cease giving statements to the police and hire criminal attorneys. Moreover, because of the Ramseys' wealth from John's computer firm, Access Graphics, they were able to hire some of the top legal talent in Colorado. The sale of Access Graphics, originally based in Atlanta and purchased by the corporation Lockheed Martin before the Ramseys moved to Boulder in 1991, made the couple over $6 million (Lee, 2004; Rubacher, 2000; Wecht, 1998). By mid-January 1997 the Ramseys had spent over $125,000 on their legal defense, which included nine professionals: three powerful area attorneys, a publicist from Washington, DC, a former FBI profiler, two private investigators hailing from Denver, and two handwriting analysts (Brennan, 1997; Schiller, 1999).

John had hired Bryan Morgan and Harold Haddon of the elite Denver firm Haddon, Foreman, and Morgan, and Patsy was to be represented by Patrick Burke, a lone attorney with offices in Denver and Boulder (Gentile and Wright, 2003; Schiller, 1999; Wecht, 1998). After retaining the services of their respective attorneys, the Ramseys further refused to allow either of John's older children, John Jr. or Melinda, to be interviewed, as well as younger nine-year-old son Burke or Jeff Ramsey, John's brother. The police felt the interviews to be a crucial component to the investigation because, as previously mentioned, in cases of child murder the immediate family members are usually automatic

suspects because of the high statistical likelihood they committed the crime as opposed to a stranger (Bureau of Justice Statistics, 2005). However, the Ramseys were not formally charged with any crimes (Brooke, 1997a; Lee, 2004; Schiller, 1999).

By February, Hunter, Eller, and Koby had come to an agreement that the ransom note provided enough key evidence to arrest and indict John and Patsy Ramsey, but they remained uncertain as to whether a conviction could be obtained. In addition, even if it could be proved that Patsy was an accessory to murder after the fact because of the note, under Colorado laws governing murder and manslaughter she could not be charged unless a primary perpetrator of the crime had been charged. Although a full autopsy report was still in the making, early results revealed blood on JonBenet's left thigh and undergarments, and two reddish marks on her torso indicated the possible use of a stun gun (Gentile & Wright, 2003; Singular, 1999; Thomas & Davis, 2000; Wecht, 1998). The issue of whether the full autopsy report should be made public was an issue of contention between Hunter, Burke, Haddon, and Morgan. The chances of getting a fair trial, should one be necessary, in such a well-publicized and sensational case would only be further damaged by the release of a report detailing sexual abuse, autoerotic asphyxiation (in which an individual asphyxiates his or herself and/or another to achieve greater sexual pleasure), and blunt trauma to the genitals and head of a six-year-old girl (Crain, 1999; Giroux, 1998; Singular, 1999; Wecht, 1998). The prejudicial publicity would make the jury selection process for a criminal trial difficult and result in time-consuming red tape, such as requests for change of venue. Even if the defendant was not one or both of the Ramseys, much of the public already believed they were guilty and the ubiquitous coverage would be a danger in biasing potential jurors. The FBI analysis of the fingerprints lifted by the Boulder police department off a pineapple bowl, used to give JonBenet something to eat before bedtime, yielded no significant results and no clear evidence could be found on the black duct tape that had been on her mouth. A print on the door to the small room in the basement where the body was found also could not be properly analyzed (Lee, 2004; Singular, 1999; Wecht, 1998).

It was not until April 23, 1997, that Patsy and John finally agreed to separate formal interviews with District Attorney Alex Hunter, Sheriff Epp, and his detective Steven Ainsworth. However, because of concerns over a significant time lag between the interviews lasting over two hours, giving Patsy, who was interviewed first, ample time to discuss the sessions with lawyers and her husband, Chief Koby canceled the interviews over concerns that the "...conditions were inconsistent with sound investigative practices and would not likely lead to a productive interview" (from Wecht, 1998, p. 199). Koby had feared that John would come in with stock answers created in consultation with his lawyers and Patsy. Haddon, Morgan, and Burke had requested copies of the police reports from the first day of the investigation as a token of good faith for the interviews but had not received them from Hunter before the interviews were called off. Finally, on April 30, almost 130 days after the investigation began, the Ramseys met with the police. The weekend before the interviews, they placed an ad in the local newspaper, *The Daily Camera,* offering a $100,000 reward to anyone with information concerning the murder of their daughter (Schiller, 1999; Thomas & Davis, 2000; Wecht, 1998). The Ramseys had received transcripts of their earlier statements with police as part of a deal between the Ramsey lawyers and Hunter.

The questioning of Patsy lasted just over six hours with only one lunch break at the midpoint. The interview produced no notable new information, but Patsy's story did

seem inconsistent. For instance, she commented that on the morning of JonBenet's disappearance she had put back on the same clothing that she had been wearing the day before on Christmas Day (Rubacher, 2000; Schiller, 1999; Singular, 1999; Smith, 1997). However, Patsy had fixed her makeup and hair before, allegedly, descending the staircase. It seemed odd to detectives Steve Thomas and Tom Trujillo, the police carrying out the interview, that she would ignore a walk-in closet full of fresh clothing. Also, awakening at 5:30 a.m. to catch a 6:30 a.m. flight to Minnesota to meet John Andrew and Melinda seemed infeasible, particularly with two children to prepare. Patsy stated that she did not read the entire ransom note, only the "first few" lines, but informed the police operator about the last line. During the intermissions, Hofstrom allowed Patsy to talk about the case with her lawyers; she agreed to take a polygraph but none was ever administered.

John Ramsey entered the police station in the mid-afternoon for his scheduled interview. Unlike his wife, John would produce a piece of intriguing new evidence (Thomas & Davis, 2000). Upon being questioned about the walk-through of the house he did with Fleet White, John Fernie, and Renee Lucas, John admitted to having been to the tiny room by the basement by himself earlier that morning after Officer French did his initial search of the house. In his account of the investigation, Detective Thomas states that he was certain after hearing this admission from John that the Ramseys were in some way involved. Thomas believes that Ramsey would have had ample time to move the body after French finished searching the house. According to Thomas's own account of the case, in the volume *JonBenet: Inside the Ramsey Murder Investigation,* his close friend and fellow detective Tom Trujillo also seems to think that both interviews only proved the Ramseys had something to hide (Brooke, 1997b; Schiller, 1999; Thomas and Davis, 2000).

The Grand Jury

After a second series of interviews conducted by District Attorney Alex Hunter and one of his assistants, Trip DeMuth, District Judge Joseph Bellipanni set April 22 as the date when the new grand jury would be convened. The grand jury would be culled from the 150 ordinary citizens who would be summoned to serve (Hodges, 2000; Lee, 2004; Schiller, 1999; Smith, 1997). By this point, Mark Beckner, a 20-year veteran with a reputation for excellent organizational skills who had once headed the Internal Affairs unit, had taken over the case as the new Boulder police chief. Chief Koby had resigned, a move that many in the department regarded as more political than practical despite Koby's turbulent relationship with the press and the district attorney's office (Thomas & Davis, 2000). Beckner had uttered the now-famous remark that John and Patsy remained under an "umbrella of suspicion" during a press conference in December 1997. Further evidence came from the panel of pediatric experts who were assembled at the request of Hunter. This panel concluded that JonBenet had indeed suffered vaginal trauma prior to her death; the injuries were "consistent with prior trauma and sexual abuse" and supported the notion of prior abuse that had been proposed by many noted forensic experts, such as Cyril Wecht (Gentile & Wright, 2003; Schiller, 1999; Smith, 1997; Thomas & Davis, 2000). The partial autopsy that had already been made public did not include where the body was found or the time of death but allowed the public to become privy to many of the most gruesome aspects of the murder (Brooke, 1997b, p. A8; Wecht, 1998). Also, public unrest with Hunter and the district attorney's office was rising over the perceived stagnation of the case and the rising cost (in November 1997, an officer reported to the *Rocky Mountain*

News that he had received over $22,700 in overtime since the start of the investigation) (Brooke, 1998; Hodges, 2000; McCullen, 1997).

When the grand jury session convened, Hunter first addressed the potential jurors with a ''history lesson'' on the creation, meaning, and importance of the grand jury, a process he dated back to 1166 with the reign of King Henry I in England. The lecture suggested that the purpose of selecting a grand jury was to find 12 ''true and lawful'' men and women to impartially evaluate the case. Such a notion of impartiality worried Hunter because he had recently learned from Robert L. Bernard, a judicial administrator, that over 130 news organizations around the world had inquired about the case (Brooke, 1998; Singular, 1999). Most of the questioning revolved around a prospective juror's knowledge of the case and whether or not he or she knew about the conflicts between the district attorney's office and the Boulder police department; most people were dismissed after 20 minutes. At the close of the session, Judge Bellipanni had dismissed all but 17—all of whom would be on the grand jury. The panel consisted of four women and eight men, as well as four alternates composed of four women and one man (Lee, 2004; Schiller, 1999; Thomas & Davis, 2000). Although the Ramsey case was one possibility on the docket, Bernard reminded the newly selected jurors that they were not a part of ''. . .the Ramsey grand jury'' (Brooke, 1998, p. A6). However, the increasing presence of ''celebrity'' forensic pathologists, such as Henry Lee and Barry Scheck, increasingly worried the Boulder police department in terms of being able to impanel an impartial jury. Lee and Scheck had worked on the O.J. Simpson case together but on opposite sides of the case, with Lee making the case of the government and Scheck assisting Johnnie Cochran (Giroux, 1998; Schiller, 1999).

The arguments for and against indicting John and Patsy Ramsey fell into seven main elements as far as the grand jury was concerned. The first concerned the pubic hair found on the white blanket from JonBenet's bedroom. Because of previous testing, the hair was almost destroyed. Thus the ''advanced mitochondrial'' test needed for a positive identification could not be performed in order to determine the origin of the hair (Rubacher, 2000; Schiller, 1999). The second aspect of the evidence was a shoe print that had recently been discovered in the small basement room where JonBenet was found. The imprint came from a Hi-Tec brand of boot; the police had contacted over 400 people who had visited the Ramsey's home in the preceding months before the murder. Not one of these people had ever worn such a boot or could remember anyone they knew wearing one (Hodges, 1998; Rubacher, 2000; Schiller, 1999). The small window to the basement room where the body was found was the third key component of the evidence presented to the grand jury. The window was open when John Ramsey, Fleet White, Rene Lucas, and Officer John Fernie entered the room that was to be a wine cellar; shards of glass were also present beneath the windowpane. Although there was a spider web present in the window, forensics were inconclusive as to whether someone had climbed in or out of the window. The sudden jump in temperature from the night to the morning could have possibly allowed a spider to emerge from hibernation and construct a web in a feasible amount of time but the issue of whether someone entered through the window was unsolved (Gentile & Wright, 2003; Lee, 2004; Schiller, 1999). The fourth issue relating to the evidence presented was a set of unidentified palm prints; one found on the door to the room where JonBenet was found and the other on the ransom note. None of the prints from the case or the FBI or national crime scene fingerprint database matched anyone who had been fingerprinted in the case, lending support to the idea of an intruder as the murderer

of JonBenet. In addition, the partial palm print on the door was an important piece of evidence in support of the intruder scenario. Supporters of an intruder theory suggested that the match for the palm print would have quickly been made to John and/or Patsy Ramsey but was not, suggesting someone not yet printed had made his or her way into the house and killed JonBenet (Schiller, 1999; Smith, 1997; Wecht, 1998). The fifth piece of evidence consisted of the DNA found on the underwear JonBenet was wearing. Forensics concluded that the DNA originated from JonBenet and a foreign source. The second (and possibly third) elements did not match any friends or relatives or the aforementioned national databases of DNA samples. The foreign DNA could have come from someone who had not given DNA in a case with so many potential perpetrators and information (Hodges, 1998; Hodges, 2000; Gentile & Wright, 20003; Schiller, 1999). The other possibility was, of course, the DNA belonged to the killer or killers. The sixth issue with the evidence presented was the possible use of a stun gun in subduing JonBenet. The markings that looked like those left by such weapons were new enough to have happened during the murder but no exhumation of JonBenet's body was ever carried out. Finally, the seventh aspect of the evidence related to the ransom note. One of the more bewildering aspects of the Ramsey murder suggests that no fingerprints, bends, or damage was present on the ransom note. The detectives on the case concluded that Patsy's story about finding the note at the bottom of the spiral staircase was impossible due to her claim of skipping a step. The police had found that it was impossible to hop a step on the massive stairs without losing one's balance and collapsing forward (Schiller, 1999; Wecht, 1998).

Ultimately, on October 13, 1999, Alex Hunter and the grand jury concluded that there was not enough evidence to formally indict John and Patsy Ramsey. Because Colorado law requires that both the jury foreman and the district attorney sign a letter recommending indictment, some critics, such as Detective Thomas, suggested that Hunter, not the actual grand jury, decided not to go after the Ramseys because he believed it would result in a loss in the courtroom and an embarrassment for this task force (Brooke, 1998; Rubacher, 2000; Schiller, 1999; Wecht, 1998). Although Hunter had attempted to bolster the case against the Ramseys by bringing in outside help, such as that of grand jury evidence specialist Michael Kane, Lee, and Scheck, the evidence simply did not tip the scale in favor of a possible conviction. Both Wise and Hunter, despite strong efforts, resigned from their respective jobs after an indictment did not come to fruition.

The Media

"We will see that justice is served in this case and that you pay for what you did and we have no doubt that will happen" (from Singular, 1999). The preceding quote illustrates the tack taken by Hunter and many others investigating the Ramsey murder—speaking directly to the "killer" as if he or she was watching the televised press conference. Many battles for public opinion and leverage would play out on television and the print media as Hunter and the Boulder police department trudged through the evidence to make some sort of progress. Moreover, few cases have received the frenzied and persistent media attention of the JonBenet Ramsey murder. Against the backdrop of the O.J. Simpson and Susan Smith murder cases, the Ramsey case continued the trend of sensationalized media coverage in the tabloids. Charles Brennan, a reporter for *The Rocky Mountain News,* recalled watching the Ramseys' CNN interview days after the death of their daughter. He remembered the words of Patsy sounding eerily familiar: "Brennan switched channels

from the football game he was watching and heard Patsy Ramsey say that a killer was on the loose. He thought immediately of Susan Smith, who had accused a black man of carjacking and kidnapping her two little boys but was later found to have killed them herself'' (Schiller, 1999, p. 95). Many local media celebrities, such as Denver radio talk show host Peter Boyles, regularly broadcast programs opining that John and Patsy Ramsey had murdered their daughter (Giroux, 1998; Ramsey & Ramsey, 2000; Schiller, 1999; Smith, 1997).

The case saw many respected news organizations covering the ''news'' in the tabloids, such as *The Globe* and *The National Enquirer*. A milestone for the latter came when *The New York Times* referred to the publication as the ''Bible of O.J. coverage'' (duCille, 1997; Giroux, 1998; Schiller, 1999; Smith, 1997). These laudatory words helped several of the reporters for *The National Enquirer* earn raises as a result of their coverage of the Simpson case (Schiller, 1999; Singular, 1999; Thomas & Davis, 2000). Thus, when the Ramsey case came along, the tabloids were in a powerful position that allowed them to dictate discourse and opinion within the realm of violent and sordid cases that enthralled the public and sold papers. It seemed that the case of JonBenet Ramsey was becoming part of the unique entity dubbed ''mass media'' and its close association with commerce and public opinion (Sorlin, 1994; Wecht, 1998). The media are uniquely part of not only the information but the *communication* process in the United States, and the JonBenet case illustrated an unprecedented level of agenda setting by the tabloids. The authorities were constantly on the defensive and had to keep up with the latest bits of information concerning the case. *The Globe,* which was beaten handily each week in circulation numbers by *The National Enquirer,* had hoped to find its ''own O.J.'' in the case of JonBenet Ramsey and eventually bring its circulation of 1.3 million weekly up to the rival *The National Enquirer*'s 5 million (Lee, 2004; Schiller, 1999; Singular, 1999). Many of the segments and images aired by national news programs, most obtained for a fee from photographers and people involved with the beauty pageant industry, caused much commotion. During one unscripted incident, a visibly shaken Dan Rather, the CBS anchorman, wondered aloud if had he just viewed ''kiddie porn'' (duCille, 1997; Giroux, 1998; Rapping, 2003; Wecht, 1998).

In fact, such images of the six-year-old beauty queen would become the subject of an inquiry into who leaked pictures to the various tabloids, including *Star, The National Enquirer, Hard Copy,* and *American Journal,* an odd weakness of the police department easily exploited by an insider in that the department used K-Mart Photo's ''two for one'' deal, not a private lab, to develop crime scene images. In fact, the first arrest in the case would relate to the illegal selling of photos to *The Globe* by private investigator Brett A. Sawyer. The police accused Sawyer of using his skills as a former crime photo lab employee to peddle five photos to the supermarket tabloid. One member of the ''Team Ramsey'' defense investigation team compared the editors of *The Globe* to ''jackals'' and accused them of ''checkbook journalism'' (Brooke, 1997b). Many citizens of University Hill met at the Chambers of the City Council to arrange a boycott of the sensational tabloid, which revealed it paid $5,500 to Sawyer for photos and matched the Ramseys' $100,000 offer for information leading to the capture of her killer (Brooke, 1997b; Schiller, 1999).

Many of the lead detectives and head figures at the Boulder police department, namely Eller, Thomas, and Koby, and the office of the district attorney were well aware of the media comparisons being made to the Simpson case. On one occasion, Wise remarked to a journalist, ''The people in L.A. tried to shoehorn the evidence to nail O.J. Simpson and some of it just didn't fit. We're trying to do something different here'' (from Singular,

1999, p. 24). Wise was making a jab at what some criminalists, such as the aforementioned Wecht and Lee, had concluded regarding the evidence in the ''trial of the century'': there were many signs linking Simpson to the murders of his wife and Ron Goldman but much of it pointed to the presence of more than one assailant, and not enough foreign DNA was present on Simpson or in his home consistent with the type of wounds on the victim (Wecht, 1998).

Although the first articles written concerning the Ramsey murder only hinted at the complex and controversial case within, it was not long before the most troubling media from the case emerged: the videos of the child pageant competitions. The film of JonBenet vying for pageant trophies would challenge America's perceptions of the boundaries between innocence and sexual maturity. Nevertheless, these categories of collapsed distinctions were both disturbing and fascinating and suggested a reshaping of gender and power in a realm of competition known only to a small segment of Americans before this case (Berger, 1997; Hodges, 2000; Schiller, 1999; Wecht, 1998). Before long, JonBenet's prowess in the beauty pageants would cause parents to not even enter their children if she was scheduled to compete. Hunter told interviewers in 1997 that,

> [e]veryone who knows about beauty pageants . . . has told us that JonBenet had ''the look''—that classic, southern, blonde-haired, blue-eyed look that everyone wants. (from Singular, 1999, p. 26)

The ''look'' described by Hunter captures the first images broadcast to the nation of JonBenet.

Patsy Ramsey was a former Miss West Virginia. Her mother, Nedra Paugh, was also a former Miss West Virginia and contestant in the Miss America competition (Giroux, 1998; Schiller, 1999; Wecht, 1998). JonBenet was groomed from an early age to be a beauty competition champion; many of the articles in the early phases of the investigation referred to JonBenet by her final title, ''America's Little Royal Miss'' (Brooke, 1997b; Brooke, 1998; Schiller, 1999). Kit Andre, the $100 an hour dance instructor for JonBenet, noted Patsy's impatience with the child and tendency to interrupt sessions. Andre was convinced that the little six-year-old was being set on the path to Miss America, a place where both her grandmother and mother had failed (Hodges, 2000; Schiller, 1999; Singular, 1999; Wecht, 1998). Andre believed such lofty goals were attainable as she had never worked with a girl more talented and intelligent than JonBenet, a sentiment echoed by her kindergarten and first grade teachers, the latter of which allowed JonBenet to dress as a giant Christmas package and sing carols to the class on the last day before the holiday recess and only a matter of days before her death. Andre soon realized a rather troubling truth after working with JonBenet hours on end: this was not the little girl's dream,

> But she [Andre] . . . understood that JonBenet was performing because her mother wanted her to, not because she wanted to. JonBenet wasn't one of those kids who had seen someone dance and decided, ''That's what I want to do.'' (from Schiller, 1999)

Randy Simons, a professional photographer hired by John and Patsy Ramsey to put together a portfolio for the beauty pageant entrance process, echoed the laudatory words of Andre, ''She was one of the best little girls I've ever worked with . . . special, unusually talented, unusually cooperative, very mature'' (from Wecht, 1998, p. 179). Moreover, Simons would later defend many of the sexually charged photos he took of JonBenet by

suggesting a flashy and ''mature-looking'' portfolio was the only way young girls could compete in events pitting them against other contests as old as 18.

Giroux (1998) notes the easy use of JonBenet, and children in general, by the media in cases of gross violation and criminal victimization in that they can rarely register opinions, and they symbolize the need for protection. They are repositories for the greatest fears of society, particularly its perceived inadequacies in protecting its most vulnerable members. Innocence is used to select who and what constitutes a threat to children. Such sentiments were effectively tapped into by the tabloids through their portrayals of JonBenet in an atypical setting: on the runway clad in one of the $700 outfits, belting out her ''southern belle''–inspired routine dubbed ''Cowboy Sweetheart'' in the competition registrar. Such headlines as ''Beauty Queen's Nightmare Life of Sex Abuse'' regularly caught the eyes of customers in the checkout lines of their local supermarkets (Towle, 1997; Schiller, 1999). Geraldo Rivera suggested, on his syndicated talk show, that JonBenet and other competitors were attractive fodder for pedophiles as many families paid top dollar for makeup artists that could make their girls ''look twenty-five'':

> This accelerated process—this pre-adolescent sexuality—there are a lot of very distressing, disturbing hints of abuse, even if the parents are absolutely innocent. . . She was tarted [sic] up and paraded in this neo-Lolita fashion that horrified us. (from Wecht, 1998)

After the murder investigation began, officials from the child beauty pageant industry began to chime in with moral rejoinders concerning the potential for sexual predators to harm the young competitors. Ted Cohen, president of Directory of Pageants, stated, ''They're an attractive package for someone looking to violate a young person'' (from Wecht, 1998, p. 167).

Others with direct experience, such as Miss America of 1958, Marilyn Van Derbur Atler, voiced strong opposition to beauty pageants for children in the months after Jon Benet's murder. Van Derbur Atler had turned down many requests to serve as a judge for child competitions. As a victim of sexual abuse by her father, she believed her work as a child beauty queen made her a tempting target. Van Derbur Atler also believed that the competitions promoted unhealthy lifestyles throughout life when competitors were inculcated so young:

> What the JonBenet cycle of beauty pageants does, in my opinion, is set them up for major cosmetic surgery, eating disorders, an obsession about how they look, why they're loved, who likes them—those kinds of things. And it's the wrong message in huge block print. . . The girls are certainly in a situation where they are in the limelight for [someone] looking for that type of person to abuse. (from Wecht, 1998, p. 174)

Giroux suggests that the 1987 McMartin preschool molestation trial catalyzed a decade-long series of reforms to protect children and zealously go after those who could potentially prove dangerous to them. Similarly, Rapping (2003) suggests the rhetoric used by Patsy and John, in interviews on CNN and other networks, pulled at the heartstrings of America by intimately linking threats to children and the nuclear family to a larger societal breakdown.

Patsy suggested, on more than one occasion, that America ''needed'' for JonBenet to be avenged in order to repair itself from the damage caused by the Smith and Simpson cases, suggesting there was still a phantom perpetrator on the loose who could do more harm:

> America has just been hurt so deeply with this—the tragic things that have happened. The young woman who drove her children into the water, and we don't know what happened with O.J. Simpson—America is suffering because it has lost faith in the American family... There is a killer on the loose. (from Schiller, 1999)

Thus the disappearance of children through victimization by the lowest offenders—pedophiles, abductors, pornographers, or anyone who preys upon children—suggests a threat to core American values and lays the shaky foundation for a moral panic (Croteau & Hoynes, 2003; Giroux, 1998; Rapping, 2003). Moreover, the Ramseys even hired a "crisis communications" expert named Patrick S. Korten, who had experience as the spokesman for the Department of Justice during the 1985 Achille Lauro highjacking and the Atlanta Cuban prison riot of 1987, to set up several photo opportunities that allowed the tabloids to photograph John and Patsy being comforted by clergymen, such as Bishop Jerry Winterrowd, in front of their local church, to add a religious depth to their national pleas for help in bringing the murderer of their daughter to justice (Brooke, 1997b; Singular, 1999).

Along with the potent images and rhetoric surrounding the crime that took JonBenet's life, issues of race and class were present soon after the explosive media tabloid coverage. Rapping (2003) suggests that the JonBenet Ramsey case received a kind of "prioritized" coverage given that she projected an image of wealth, beauty, innocence, and whiteness. Giroux (1998) suggested that the media adulation of JonBenet as an oddly sexualized object of beauty and privilege made the brutal tarnishing of her image all the more horrific. In addition, the strong feelings of the public that one or both of the parents were probably responsible for the death of their child ultimately makes the case all the more sensational, disturbing, and compelling:

> Innocence is primarily applied to children who are white and middle class, often tucked away in urban townhouses and the safe sanctuaries of suburban America. Innocence also mystifies the sexualization and commodification of young girls who are being taught to identify themselves through the pleasures and desires of adult gaze...the pedagogical and commercial practices at work in such a construction remain unexamined because they take place within the acceptable cultural forms such as children's beauty pageants. JonBenet's murder jolts the public because it shatters the assumption that the primary threat to innocence lies outside the family in the image of the sexual pervert. This murder also challenges the assumption that privileged families are immune to accusations of child abuse or neglect. (Giroux, 1998, p. 36)

Also, the packaging of childhood and youth presented in the case played on other recent violent crimes, such as the murder of Polly Klaas in California and the murder of six-year-old Meagan Kanka. The added dimension of the beauty pageant amplified the sort of celebrity status to the case that had kept the Simpson case in the headlines for months in the mid-1990s. Furthermore, JonBenet was portrayed more as an essence than a person with agency and dignity; few of the video depictions of her featured anything but a highly coordinated display perfectly attuned to the expectations of a panel of judges.

The Ramsey murder introduced America to the $5-billion-a-year industry of child beauty pageants. The most prestigious competitions, dominated by upper-middle class and elite families, carried sponsors such as Hawaiian Tropics and Procter and Gamble, generating huge amounts of revenue from the $500 to $1000 entry fees (duCille, 1997;

Giroux, 1998; Schiller, 1999). Practices such as the capping of teeth, "spray-on tan" skin treatments, fake eyelashes, and, more recently, plastic surgery have been common practice on the competition circuits for two decades, particularly after corporate sponsorship and larger money purses became involved in the late 1970s. More and more extreme measures were required for parents and others involved in the pageants to find a competitive edge (Giroux, 1998). Reports of physical abuse of children by parents for not dancing provocatively enough or not blowing kisses have been reported. Many parents hire talent agents for young children in order to enter the competitions that could ensure maximum amount of profit (Eder et al., 1997; Fox & van Sickel, 2001). The American public seemed instantly fascinated and the press was unstoppable in their continued depiction of the sexualized competitions. As Bill McReynolds, a Ramsey friend who played Santa Claus at a Christmas party attended by JonBenet just 48 hours before her death, who is also a journalism instructor at the University of Colorado, commented, the dogged pursuit of sensational imagery of JonBenet and her family caused him to question the very foundations of reporting:

> I have always taught that journalists should be very aggressive . . . But since I know the people in this case—the little girl and her family—I am changing my mind . . . I have seen what an impossible and driving force curiosity is. (from Brooke, 1997b)

LASTING IMPACT

The unsolved and haunting nature of the JonBenet case, as well as the shocking world of child beauty pageants it revealed, has made it one of the most storied crimes in American history (Lee, 2004). The critically applauded 2006 film *Little Miss Sunshine* dramatized many of the disturbing images and cosmetic procedures associated with the child pageants (Beugg, 2006). A first season episode of the popular television crime program *C.S.I.: Las Vegas,* broadcast in 2001, entitled "Gentle, Gentle," mirrored many of the general and minute details of the first days of the Ramsey investigation. This fictional scenario involved an accidental child murder carried out by a family member (Bruckheimer, 2001). Avant-garde artist and writer Joe Coleman, noted for his intricately detailed paintings depicting the events surrounding famous crimes, recently exhibited a painting in September 2006 featuring JonBenet in midroutine, striking one of her infamous poses. Walter Davis's 2004 play *An Evening With JonBenet Ramsey,* a speculation on how her life would have unfolded had she survived, garnered strong reviews. In late summer 2006, after John Mark Karr, a pedophile with a lingering obsession concerning JonBenet and the details of the case, falsely confessed to the murder, Davis also explored many of the pop culture phenomena about the murder that continue to flourish, particularly on the Internet. Several Web sites, such as www.supportramseytruth.com, continue to receive thousands of "hits" a week with continued speculation on what actually happened.

SUGGESTIONS FOR FURTHER READING

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13

Mary Kay LeTourneau: Gender and Criminal Justice

SEAN BAKER

While, by nature, the minority of criminal cases that are actually adjudicated have a succinct pattern: a crime, a trial, and a sentence, the Mary Kay LeTourneau case is a departure from this traditional model. Her trials were typical, but the media and social reactions to them were out of the ordinary. Media coverage of her case structured the social discourse about the case. There were no pressing legal issues, no allegations of criminal justice improprieties, nothing within the system that was out of the ordinary. However, media coverage of the case was and continues to be unique. In an era where nightly newscasts are seeming to cover female teachers having sexual relationships with their male students at higher rates, two noteworthy recent examples are Pam Smart and Debra LaFave. The LeTourneau case was the first to gain substantial media attention. In essence she is a ''mediated criminal.'' A mediated criminal is one whose case obtains national attention by diverse media outlets. Often the criminals and other players in the case are recognized by a substation portion of our population. Recent examples include the Duke Lacross scandal, the Elizabeth Smart case, the Scott Peterson case, the serial snipers, and the Amy Fischer case.

LeTourneau pleaded guilty to a Washington state law that restricts adults from having sexual contact with a minor who is not married to the perpetrator. This is commonly called statutory rape. The assumption is that, while a minor can ''agree'' to a sexual relationship, he or she may be manipulated into that relationship by an adult based upon his or her immaturity. Legal ages for driving and voting have similar legal basis. In Washington this criminal act is ''Rape of a child'' and has varying degrees. LeTourneau admitted to ''Rape of a child in the second degree,'' a felony defined as,

> the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

TIMELINE

Fall 1990	LeTourneau and Fualaau first met when she was his second grade teacher.
Summer 1996	LeTourneau/Fualaau relationship became sexual.
Feb. 26, 1997	LeTourneau arrested for rape.
May 29, 1997	Audry, their first child is born.
Aug. 7, 1997	LeTourneau pleaded guilty to two counts of second-degree child rape.
Nov. 14, 1997	LeTourneau ordered to serve 80 more days in jail, received suspended sentence, but told she must enroll in a treatment program and would not be allowed to see Fualaau.
Jan. 6, 1998	LeTourneau received an early release from jail for good behavior.
Feb. 3, 1998	LeTourneau arrested for violating the conditions of her suspended sentence when found in a car with Fualaau.
Feb. 6, 1998	LeTourneau's suspended sentence was revoked and her original 89-month sentence was reinstated.
Oct. 16, 1998	Georgia, their second child is born.
Jan. 18, 2000	*All-American Girl* premiers on USA Network.
Aug. 4, 2004	LeTourneau was released from prison.
Sept. 12, 2004	According to an interview on the syndicated television program, ''The Larry Elder Show,'' Vili Fualaau said he had been meeting with Mary Kay LeTourneau daily since she had been released from prison. He also said that they would like to marry.
Feb. 14, 2005	CNN reports that according to a Bon Macy's department store bridal registry, Mary Kay LeTourneau, 43, and Vili Fualaau, 22, set April 16 as their wedding date.
April 28, 2005	Mary Kay LeTourneau and Vili Fualaau gave exclusive rights to their planned wedding.
May 20, 2005	Mary Kay LeTourneau and Vili Fualaau stage an expensive media wedding for which they have reportedly been paid $750,000.

In 1997, Mary Kay LeTourneau, married and mother of three, was a grade school teacher in the Highline School District, just south of Seattle in Burien, Washington. She admitted having a nine-month sexual relationship with Vili Fualaau, then a 13-year-old male, and a former student of hers. She gave birth to their daughter in September 1997, before she was arrested, in September 1997. On November 14, 1997, LeTourneau was sentenced to 90 days in jail and mandatory treatment in a sexual offender program. After her release, she was arrested again on February 2, 1998, for violating her parole by having contact with Fualaau. The two had conceived a second child during her release. LeTourneau's original sentence of seven and one-half years in prison was reinstated, but she was not tried for her second admitted sexual conduct with Fualaau. She did not dispute the

allegations nor did she put up much of a defense during her trial, sentencing hearing, or parole violation hearing. Her attorney claimed that LeTourneau suffers from bipolar disorder and needed help from the criminal justice system rather than punishment. Fualaau's mother also testified that she approved of the relationship, that she trusted LeTourneau, and that her son was not harmed.



Figure 13.1 Mary Kay LeTourneau listens to testimony during her court hearing, 1998. © AP Photo/Alan Berner, Pool.

A number of events occurred during LeTourneau's incarceration that the media covered, bringing the case back to the public's attention and into popular culture. First, LeTourneau gave birth to her second child with Fualaau. The USA television network aired a film based on the case. The network scheduled a live interview from Purdy, Washington, where LeTourneau was in prison. Prison officials eventually canceled this, citing that it would disrupt prison activities. Shortly before her release numerous media outlets revisited the case by interviewing Fualaau about the status of their relationship upon LeTourneau's release.

LeTourneau was released from prison on August 4, 2004. After a battery of coverage, the couple's marriage plans were discovered by a Seattle reporter who found their names on a wedding gift registry. They were married on May 20, 2005, again sparking media attention.

LeTourneau's case provides a distinctive look into the process of gender construction in the mass media and society. Rarely do we see a case with a female criminal that obtains extensive media attention. The rarity provides an unprecedented examination into representations of gender, crime, and criminal justice.

Women, Crime, and the News

Women are underrepresented in the news, and female criminals, suspects, and defendants are rarely covered in the news (Shoemaker & Reese, 1996; Flanders, 1997). In fact, Surette (1992) concluded that the only female criminals who receive media attention are those who challenge dominant cultural perspectives about womanhood. Women who are covered tend to be involved in welfare abuses, infanticide, or other offenses that defy the feminine stereotype of the madonna (Flanders, 1997). Thus, newsworthiness is dependent on their cultural violations rather than their criminal actions. Also, these representations tend to frame the stories in terms of their effect on children or as an indication of the failing nuclear family instead of an ongoing crime problem (Surette, 1992). Many female criminals receive increased media attention that highlights their nontraditional behaviors, which in turn allows the discourse to criticize them in terms of the fallen woman who needs to become a better mother, caregiver, and homemaker.

Research on news media portrayals of female offenders is very limited and comes primarily from media coverage of prostitution. Many studies have focused on depictions of



Figure 13.2 Vili Fualaau, 18, who fathered two daughters with his sixth-grade teacher, Mary Kay LeTourneau, watches court proceedings following opening arguments in a $1 million lawsuit filed by his mother, Soona Vili, 2002. © AP Photo/Elaine Thompson.

female prostitutes as HIV/AIDS carriers and transmission agents (Bloor, 1996). Basically, medical evidence about HIV transmission has been vast, but diffusion of this information into the social sector has been very limited. In fact, news accounts of prostitution often promote stereotypical misrepresentations of prostitutes as transmitters of the infection. Bloor (1996) concluded that even though medical research states that prostitutes are victims of HIV rather than spreaders, they have been framed as disease transmitters in news coverage.

King (1990) demonstrated that reporting on prostitution in *The New York Times* and the *Washington Post* also misrepresented the role of prostitution on HIV transmission. Despite contradictory evidence from medical experts that prostitutes were not disease vectors, the newspapers misrepresented prostitutes as AIDS transmitters to heterosexual men. In addition, news texts were less than sympathetic to health risks faced by female prostitutes and analogous results were found in a Canadian study. Brock (1989) concluded that news reports of prostitution and AIDS were inconsistent with actual rates within Canadian populations.

Numerous explanations of female criminality are highlighted in the news media. Naylor (1995) lists six "common sense" crime stories (media frames) regarding female offending. They are:

1. Madonna/Whore
2. Sexual passion/love as an "excuse" for crime
3. Reproduction or madness
4. The figure of evil—the witch—the monster
5. The criminal woman as "not-woman"
6. The female as devious and manipulative (p. 81).

The Madonna/Whore duality is an expansive representation that women are either incapable of criminal behavior or are promiscuously involved in deviant behaviors like prostitution. The sexual passion characterization asserts that women are victims of "love madness" and that emotional frailties caused their criminal actions. Also in this category are women whose deviance is sexualized. These women are inversions of the ideal good mother and are described as oversexed or undersexed and in need of a male figure to control them. A variant on the frailty representation, the reproduction/madness explanation depicts biological imperfections causing mental illness, thereby excusing illegal conduct (Naylor, 1995).

The figure of evil—the witch—the monster and the "not-woman" image attempts to illuminate situations that are seemingly inexplicable. Here, discourse about cases locates female criminals outside of true womanhood, thus allowing them to receive masculine treatment from the criminal justice system. Also, lesbian criminals are placed into this

representation with characterizations that emphasize masculine women (Faith, 1993; Daly & Chasteen, 1997). Often everyday behaviors by lesbians are criminalized in the media by marginalizing their morality as something different from the norm (Faith, 1993; Daly & Chasteen, 1997). Lesbians may be described as nonmaternal, unnatural, and antifamily women who have fallen short of the female standard (Naylor, 1995).

Benedict (1992) describes how the Madonna/Whore duality is often attributed to female rape victims as well by demonstrating that crime news often starts with sympathetic representations of the victim and then shifts to a critical portrayal. This occurs by channeling the defense's legal arguments on the case. Initially, prosecutors and police records are used as sources that tend to provide information that is in favor of the victim. Over time as the hearing develops journalists rely on the defense for information while attempting to present an objective examination of the case facts. The effect is a mediated assessment of the victim's integrity that acts as a second ''trial'' (Benedict, 1992).

In sum, mediated representations of female criminals tend to characterize them as fallen women who are ethically corrupt (Frigon, 1995). Female criminality is described as a contradiction of gender roles where the offender is either physically or morally deficient. Frigon (1995) states that representations of violent women are rooted in sex-based stereotypes. Discourse tends to blame the inherent irrationality of women, illustrate mental abnormalities, sexualize their behavior, and excuse the behavior because of hormonal imbalances (the PMS defense) (Frigon, 1995). Media representations of female criminals tend to scrutinize women for breaking social taboos about femininity and define their actions in terms of appropriate gender roles while detracting from their actual criminality (Wykes, 1995). The effects are representations that defer accountability from the specific woman to preconceived stereotypes regarding all women.

It is evident that mediated representations of female criminals are encoded with constructed stereotypes of appropriate gender roles and social identity. The media tend to sexualize female criminality or devalue their actions by excusing them with factors external to the offender (e.g., the ''not-woman'') and/or by internal problems (hormonal imbalances). Ideologically, these representations are part of cultural structures and mechanisms that create and define meaning regarding gender and ''normal behaviors.''

MEDIA RESPONSES TO THE CASE

Much media attention was focused on the case. From LeTourneau's initial arrest in February 1997 until her sentencing hearing in February 1998, local and national news organizations paid substantial attention to the case. LeTourneau was featured on nearly every nightly newscast on Seattle television, and the *Seattle Times* featured daily updates of her story. All national networks covered the sentencing on their nightly news in addition to cable news outlets such as CNN and Northwest Cable News. Over time, the LeTourneau case has resurfaced in Seattle news with coverage that coincided with new events in her life.

There has been substantial media treatment of the case other than news. Both television and print news magazines have paid attention to it. Two months after her second arrest, *Time* and *People* magazines featured the case with cover stories, and the Arts and Entertainment (A&E) cable network aired an hour documentary on the case on its program, *Investigative Reports,* nearly a year and a half later. *The Oprah Winfrey Show* dedicated two programs to LeTourneau. The first was prior to LeTourneau's incarceration where

she and Winfrey talked on the telephone, and the second was a follow-up shortly after her imprisonment. Numerous tabloid style television programs and publications have featured the story. Gregg Olsen's true crime book, *If Loving You is Wrong,* was published by St. Martin's, and the USA cable television network presented an original movie, *All-American Girl.* Both occurred almost two years after the initial coverage. Many lengthy biographical accounts that retold the complete case history were created by outlets such as Court TV, A&E, *Dateline,* and *20/20.* Other representations include comedic depictions on *The Tonight Show, Saturday Night Live,* and Comedy Central's *The Daily Show.* A self-proclaimed ''official'' Web site, www.marykayLeTourneau.com, has been created by an anonymous supporter of LeTourneau. In the weeks surrounding her release in August 2004 many media outlets revisited the case. Some include a one-hour special on *20/20;* numerous interviews of Fualaau, his mother, LeTourneau's lawyer, and other key players in the case on the *Today Show;* and stories in *Time* and *People* magazines. LeTourneau and Fualaau married in May 2005, and *Entertainment Tonight* featured a week-long series that highlighted the wedding activities.

Initially the media positioned LeTourneau as a criminal. Reactions and functions of criminal justice agencies and other public officials were the main components of this coverage. Both television and newspaper stories described the processes of statutory rape investigations and trials. Actions taken by police, courts, and the penal system characterized this frame. Generally, news accounts emphasized official responses and focused on specific trial participants, as well as actions taken by LeTourneau and prison officials after her incarceration.

Early news accounts of the case focused on actual functions and processes of the criminal justice system and other official responses to the LeTourneau case. Some element of the criminal justice system was evident in nearly every early story. This type of coverage is expected in crime news. Journalists tend to rely on official sources, especially criminal justice agencies, for facts about legal cases. Crimes and trials are superb media events readily accessible to journalists. A crime occurs, the system responds, and an outcome is produced. For journalists this is an accommodating story line, complete with interesting facts and final closure to an often complex set of incidents. Hence, the narrative that focused on the operations of criminal justice organizations was expected as a news production technique. Here, LeTourneau was represented as a criminal deserving of punishment. She was treated like other lawbreakers with official reactions validating both her transgression and the system's authority to punish her for it.

Print and televised news magazines and infotainment television programs relied on the criminal justice system for information regarding the LeTourneau case during the early stages. Accordingly, much of the preliminary representations focused on LeTourneau as a criminal. After her second arrest it was evident from the news coverage that the system adequately responded to LeTourneau's potential recidivism when law enforcement officials watched her until she was caught violating her parole. By focusing on official responses to the case, the news media legitimized the criminal justice system by characterizing LeTourneau's social identity as a criminal. The end result was society returning to a normal state in which LeTourneau, a predatory criminal, was incarcerated.

However, these characterizations of LeTourneau did not last long. Once she was incarcerated, many media outlets focused on other aspects of her personal history. For example, the *Seattle Times* and local television news relied on two other themes while

covering LeTourneau. One emphasized personal aspects of her case through dramatic characterizations and portrayals of LeTourneau and her actions. News content tended to move away from channeling official information to interpretations centered outside of normal objective news by using stories, anecdotes, and characterizations by people not directly involved in the case. In contrast to routine news stories, much of this sensational content focused on unfounded allegations and involved other less ethical news practices.

Soon after LeTourneau was incarcerated, the *Seattle Times* produced content that detracted from her status as a criminal. Much of the discourse focused on LeTourneau's identity as a mother, teacher, and social victim. These representations drew attention away from her criminal actions by characterizing her within stereotypic representations of women or by excusing her behavior altogether. For example, the *Seattle Times* highlighted her pregnancy and discussed the future of her baby while she was in prison. In effect, this positioned LeTourneau as devoted mother while downplaying her criminal identity as a convicted rapist. The photographs exemplified this even further. Editors chose to use images where LeTourneau was either crying or clinging to her lawyer in a helpless condition. Other substantial photos represented LeTourneau as a loving and nurturing mother overwhelmed with misfortune. Combining the images and text, LeTourneau was depicted as an emotionally and mentally unstable mother who succumbed to an overpowering need for companionship.

Even further, many accounts of the case brought up issues from LeTourneau's past. She had recently suffered from a miscarriage, which put a strain on her marriage. The case was often contextualized by referring to her father, John Schmitz, who had an affair with a college student whom he taught. She was consistently described as a ''devoted and excellent'' teacher who made wonderful connections with her students. These representations tended to excuse LeTourneau's criminal actions by placing blame outside of her control.

Seattle Times journalists used vivid descriptions of LeTourneau's prison experience and presented her as caring, regretful, compassionate, and at times so emotional that she nearly suffered from a nervous breakdown. Also, the tendency to focus on her psychological and personal problems, including an uncaring husband and a father who is also an adulterer and who suffered from cancer, sensationalized the case and presented LeTourneau as a tragic casualty of a chaotic world.

News discourse also focused attention on LeTourneau's bipolar diagnosis and the failure of her mandatory sexual offender treatment program. With this focus, her actions were beginning to be placed outside of the crime control arena and into that of mental health, effectively deferring blame from LeTourneau's own values and morals. This theme was substantiated with the connection between John Schmitz's adultery and LeTourneau's.

Throughout LeTourneau's second pregnancy, the discourse focused on her status as a mother while limiting the reliance on official sources. Here, infotainment programs took the lead by creating extensive and dramatic accounts of the case. This content was then reiterated by news agencies that seemed to be searching for additional angles on the case. The effect was a package of diverse media forms that had the same message and were televised in a short time frame. Maternal themes were rampant during these representations. The validity of LeTourneau's criminal actions were questioned by discourse that forced her into the domestic sphere as a mother. Fualaau was also located as father rather than victim. At this point the case reached an iconic position where inconsequential updates

were televised as breaking news. Also, the news content became similar to infotainment characterizations caused by the reliance on tabloids for story information.

Last, news organizations focused on atypical sources and presented LeTourneau as a famous media figure, created and reinforced within news content. This framing fed on other media sources that focused on the more dramatic aspects of her case. As a consequence, LeTourneau the criminal was transformed into a media icon in a process reminiscent of the treatment of O.J. Simpson.

As the coverage developed, the emphasis shifted even more to personalized narratives emerging from other media forms and LeTourneau's personal history. Accordingly, mediated accounts tapped entertainment values found in representations that occurred on television such as *The Oprah Winfrey Show* and *Inside Edition,* a tabloid television news magazine. Thus, the social discourse about the case elevated LeTourneau into a celebrity creating a larger disconnect from her status as a criminal. In these representations, LeTourneau was cast as a larger than life media icon, whose criminal behavior was substituted by discussions of her social identity and celebrity. In that way her story became fictionalized by the news.

Often news organizations summarized other media accounts of the case. In addition to legitimizing its own position, this procedure framed LeTourneau as a media icon. Even further, news about the release of the television movie combined LeTourneau's identity with the actress who played her in the movie. This discursive blending of representations contributed to the celebrity frame and provided content that could be easily decoded to coincide with the stereotypes presented in the *Seattle Times* coverage.

Fualaau's celebrity status was enhanced during the discourse surrounding release in France of the tell-all book that was co-authored by Fualaau and LeTourneau. The attention by multiple television organizations significantly increased Fualaau's fame. Many news outlets were waiting at the airport for his arrival from a book tour in France, reminiscent of a famous popular singer or actor returning home to vast media attention. The television movie discourse fixed the icon status meaning by shifting the social identity of LeTourneau and Fualaau into the region of fictional representations. Even though the movie was based on the case, the tendency to associate LeTourneau and Fualaau with the film actors positioned them as Hollywood entities and not as criminal and victim. In fact, on the front page of *The Seattle Times* entertainment section the image of Penelope Ann Miller (who played LeTourneau) in character was juxtaposed with LeTourneau. These media frenzies continued throughout various stages of LeTourneau's incarceration. This coverage created a distinct separation from the criminal acts by creating multiple layers of discourse and representations that were exclusively about the notoriety of the case.

Some biographical content provided the whole case histories while serial coverage gave individual parts over time. Also, biographical accounts represented LeTourneau in stereotypic gender roles more dramatically than local news. The TV movie and other mediated case histories were not constrained by daily news cycles as television news and newspaper are. Thus, the depth of coverage was much greater, allowing for detailed accounts of LeTourneau and her history. It was evident that this increased freedom in biographical representations allowed LeTourneau's positioning as a woman rather than as a criminal to be exaggerated when compared to other coverage. Potential effects on audiences were expanded with the totality of coverage since contextual factors were included in each of the representations.

LeTourneau was ''forgotten'' about a year after her incarceration began. In early 2000 media accounts of the case diminished and tended to occur as the occasional joke on late night television by Jay Leno or David Letterman or as a comparison to other similar cases.

During the weeks prior to and including LeTourneau's release from prison, there was a substantial amount of local and national news coverage on her life behind bars, her freedom, and the possibilities of a life with Fualaau. Short local news reports on the upcoming release of LeTourneau summarized past events with a collection of photographs of both LeTourneau and Fualaau. The ''happy couple'' image of LeTourneau and Fualaau was used several times on all three major local stations. In addition, photographs of LeTourneau with her children were consistently aired on the reports.

Most news and entertainment outlets utilized interviews with LeTourneau's friends, lawyers, and other pro-LeTourneau guests. A consistent figure interviewed by the news stations was an ex-convict, Christina Dress, a friend of LeTourneau's in prison and co-author of the book, *Mass with Mary*. Dress discussed how, although she knew LeTourneau was a child rapist, she still felt sorry for the woman and they gradually developed a friendship. Dress's book and appearances in the media are particularly relevant since she is the only source who discussed LeTourneau's behaviors and psychological state while in prison. Interviews like these brought both attention and an in-depth look into how LeTourneau survived in prison, how she spent her time, and how her feelings for Fualaau had not wavered during her seven years behind bars. Prior to her release, there was a marked lack of negative attention to the LeTourneau case from media. This abundance of positive LeTourneau footage strengthened the premise that LeTourneau was somehow a victim of circumstance and was truly in love with Fualaau.

Other news organizations focused on pro-LeTourenau interviews with Soriano, Fualaau's friend, and Ann Bremmer, LeTourneau's friend. These positive commentaries, combined with pro-LeTourneau visuals, suggested that an innocent woman and mother had been punished for falling in love. Interview footage of Fualaau during the time of LeTourneau's release further cemented this picture. In one interview with Matt Lauer, when asked what he would do when he sees her, Fualaau stated, ''Go on a boat—somewhere tropical or somewhere really cold. When I was with her I was happy.'' Again, the ''happy couple'' photograph was flashed on the screen as Fualaau made this remark. Lauer stated on the *Today Show* that after seven years Fualaau's love for LeTourneau never faded and asked, ''Does Fualaau believe in happy endings?'' Throughout many of these national and local programs, no one discussed the possible emotional damage that could have occurred to a 13-year-old boy after he was the victim of statutory rape by his 34-year-old teacher.

In October 2004, two months after her release, LeTourneau announced her engagement to Fualaau during appearances on *20/20* and *Larry King Live*. Although their engagement was broadcast on national programs, it did not receive as much media attention as when the couple's Macy's registration was made public in the beginning of 2005. Although some programs did show visuals of LeTourneau registering as a sex offender or in prison attire, these negative images were not prevalent.

Many of the broadcasts about LeTourneau's engagement aired the ''happy couple'' image during each program. This, in addition to pro-LeTrouneau audio clips examining her troubled past, painted the portrait of LeTourneau as a victim of circumstance. During footage of LeTourneau's interview, Barbara Walters stated, ''She was thirty-four with four

children and a failing marriage. He was just twelve and ready for love.'' Comments such as these further strengthened social stereotypes that women cannot be sexual criminals and/or sexial predators. Instead, LeTourneau was again described as a woman in love. Conversely, Fualaau was portrayed as a boy who was old for his years and who knew what he wanted.

In May 2005 *Entertainment Tonight (ET)* aired a weeklong special prior to their wedding. LeTourneau and Fualaau were reportedly paid $750,000 by *ET* for the exclusive rights to cover the ceremony. *ET* highlighted many ''events'' in the days prior to the wedding. One episode featured LeTourneau picking out her dress while Fualaau discussed how their relationship overcame insurmountable odds. The finale was a live broadcast of the ceremony complete with dramatic sound and special effects. After the marriage, news stories appeared that emphasized that ceremony and the happiness of the newlyweds.

One year after the LeTerneau and Fualaau wedding, *Dateline* and *Today* aired interviews with the newlyweds. Both programs displayed the ''happy couple'' image that had been providing the consistent couple-in-love theme throughout the media coverage of this case. During the *Today* program, the couple was asked how they would address those who were opposed to their relationship. In response to this question, Fualaau made an interesting comment stating, ''I would say that she has done her time. She has done seven years and there are a lot of male rapists that only do six months.'' This statement proved that Fualaau was aware that a crime had been committed against him, yet this had not altered his feelings toward LeTourneau. A large portion of the final images of this couple was that of romance and family life, which included their two daughters.

CONCLUSIONS

LeTourneau does not look like a criminal. With her curly blond hair, slim figure, poised demeanor, teaching abilities, marriage and four children, and vibrant personality, she lived the role of a modern day madonna. Her gender identity fit the title of the television movie *All-American Girl.* She is not supposed to commit crime or be an adulteress, and she is definitely not supposed to rape. When her involvement with Fualaau was discovered, people were shocked; apparently the media were as well. Her case was framed as a typical crime story until it was evident that culturally, socially, criminally, and, especially, womanly she did not fit into that mold. The media attempted to position LeTourneau into several stereotypical representations in order to bring the discourse back into a ''normal'' social identity for LeTourneau.

During the preliminary stages of the case, the media tended to follow official responses to LeTourneau's crime. Local newspapers and television news paid attention to the case and framed it as a typical crime news story. LeTourneau was a criminal who was caught. She pleaded guilty and received a lenient sentence, a common occurrence for a first time offender who admitted her guilt and asked for help. Her repentant address to the court enticed news agencies. The image of an attractive woman who tearfully addressed the court saying, ''I did something that I had no right to do, morally or legally. It was wrong and I am sorry. Please, please help me. Help us; help us all'' is very powerful. Not only did LeTourneau not look like a criminal, she also did not act like one. Her courtroom responses and actions matched culturally constructed norms regarding female behavior. The coverage focused on her trial as LeTourneau acted and behaved according to her ''appropriate'' gender identity.

The media supported this version of the case by producing content that emphasized LeTourneau's crime and her ''proper'' reactions. Her story corresponded to usual crime news narratives that focus on the crime itself and then official responses to it. The LeTourneau case was packaged according to cultural norms and news values resulting in an overall representation that was familiar and commonsensical. LeTourneau offended, was remorseful, and received help from the criminal justice system in the form of a sexual offender treatment program. Essentially, suitable actions were taken and society returned to a state of normalcy.

Overall, news organizations' treatment of LeTourneau within the context of her social identity and celebrity statue fell on the madonna side of the Madonna/Whore duality. Madonnas do not intentionally participate in criminal activity. Instead, their offending is understood as a consequence of personal or social ills that force women into criminality by some external source. Historically, males were thought of as the outside factor. Contemporary stereotypes explain female crime as a consequence of diseases/disorders, menstrual cycles, emotions, and unsatisfied sexual desire. The newspaper used dramatic and emotional discourse when framing the LeTourneau case. The emotional depictions, statements of love between LeTourneau and Fualaau, and the maternal theme reinforce the madonna stereotype. Linking the case to her father's affair and commenting on her psychological welfare defers blame to circumstance beyond LeTourneau's control. In sum, the tendency to frame this case in terms of stereotypic sex roles contributes to biased and artificial gender construction that exists in our society.

It was evident that the content placed LeTourneau into existing stereotypes regarding appropriated gender roles. In doing so deviant and criminal representations were reduced. LeTourneau was a teacher, a mother, an emotionally distressed and psychologically ill woman whose only course of action was to fall in love with a 13-year-old student who nonetheless was actively pursuing a relationship with her. By positioning LeTourneau into an ''appropriate'' and constructed gender role, the media assisted in the manufacturing and upholding of our culture by rectifying counterintuitive events.

Television discourse located LeTourneau outside of official control by representing her within dominant gender stereotypes. It was LeTourneau's gender that brought the case to public notice; at the same time her gender shaped representations of LeTourneau into human-interest stories rather than crime news. She was both an ''all American girl'' and a convicted child rapist, two identities that drastically clash. Her physical appearance and personal history indicated that she was mother, woman, and good wife while her involvement with Fualaau designated her as a criminal. Thus, for LeTourneau it was the disagreement with these two social identities that stirred media attention to the case. Essentially she could not be a woman and a rapist at the same time, and the media chose to present her as a woman. If her story had continued as crime news, her social identity would have been fragmented into conflicting representations hindering the sense of normalcy that characterizes the news. Also, her images and narratives question social constructs about what the meaning of ''woman'' is. To bring her back into her previous role as an exemplary woman, the media constructed her social identity as a teacher, mother, and victim . . . all within normal conceptions of female gender identity. Thus, her criminal actions were excused and explained by LeTourneau's life circumstances. Culturally, LeTourneau's crime did not make sense, so much that the media altered her identity to correlate with dominant gender roles. Unfortunately, the product of this relationship

between media, crime, and gender is representations of women that define, shape, and reinforce sex-based stereotypes.

LeTourneau was, for the most part, consistent across each media form. LeTourneau was continually and repeatedly positioned within traditional feminine stereotypes causing the criminality of her actions to be diminished while excusing her behavior. The tendency to present her as a well-regarded teacher who was concerned about her students initiated the categorization of LeTourneau as a woman, not a criminal. Occupationally, she behaved as a traditionally proper woman should by working in a nurturing profession. Also, the depiction that she put forth tremendous effort and was well received as a teacher allowed the audience to understand how Fualaau could maneuver his way into her life when she gained an appreciation for his talents as an artist.

The tendency to describe LeTourneau in terms of her role as a mother created a distinction between the criminal and domestic aspects of her sexual relationship with Fualaau. Their offspring on one level was the embodiment of LeTourneau's legal transgression. In fact, it was her pregnancy that forced this case into the public eye. However, the personification of her as a textbook mother who lovingly cares for their babies lessened the criminal representation while escalating her domestic role within a traditional family. Her sexual relationship jointly created LeTourneau the criminal and LeTourneau the mother.

Similarly, the emphasis on LeTourneau's emotional problems demonstrated how the discourse represented her as a madonna who was incapable of committing a crime. Here, her failed marriage, terminally ill father, and recent miscarriage exemplified that LeTourneau needed emotional support and guidance that was missing in her home life. Fualaau happened to fill the void and, according to some portrayals, consciously pursued this relationship. Hence, it is sensible that LeTourneau would fall in love with him, thereby justifying their sexual relationship. This was also substantiated by the abundant references to Fualaau's emotional and physical maturity level. At the same time LeTourneau's love was contextualized within the framework of emotional and psychological problems. In doing so, the relationship was both validated and excused since it was the result of issues that were beyond LeTourneau's immediate control. Thus, her only crime was that she succumbed to her uncontrollable and irrational emotions.

This situation was enhanced when both LeTourneau and Fualaau declared their love for each other. Now, it was possible that they are involved in a unique relationship where the criminal justice system was not the most appropriate response to these circumstances. If Fualaau were of consenting age, LeTourneau would be acting only inappropriately, not criminally. The various justifications of LeTourneau's actions questioned her ability to rationally understand and control her feelings. Thus, love may overcome her legal trouble by portraying her similar to Fualaau where she was not capable to consent herself.

References to her father added another excusing representation. Not only was LeTourneau personally unfulfilled and psychologically incapacitated, she had learned these behaviors from her father. The connection between the two produced a clear mechanism for audiences to situate LeTourneau as a domestic tragedy. The victimization of LeTourneau added to the questionability of her capacity to reasonably conduct herself. This complex process contributed to the representation of LeTourneau as the madonna who was unable to break the law.

Her release and subsequent marriage to Fualaau advances her social position as the madonna. While LeTourneau did commit a criminal act, her criminality is now negated by the marriage. Images of the blissful couple were rampant across many media sources. The case received national attention and a "happy ending" was provided. In particular, this was accomplished by the utilization of entertainment value when covering the case. It no longer resided within the criminal justice system. Rather, they became a social entity that brought media attention simply based on their fame. The net effect is that a social problem was fixed by media responses that consistently excused the crime. As the representations placed LeTourneau outside of criminal justice and into a social sphere, the case facts coincided with this treatment. Essentially, LeTourneau and Fualaau are living out a mediated taboo love story.

When LeTourneau re-offended it seemed that the media did not know what to do with her. She was not supposed to be a criminal, and the media had a hard time positioning LeTourneau as a rapist. The criminal justice system clearly knew the next steps and penalized LeTourneau. However, this time the media did not directly follow the system as was done for her first offense. In fact, the coverage was sympathetic towards LeTourneau by portraying her as anything other than a criminal. The coverage focused on several aspects of her social identity that agreed with sex-based stereotypes. She was turned into a teacher, a mother, and an emotional victim, and finally her representation evolved into a media icon. It is evident that the media did not frame LeTourneau as a typical crime story and utilized other narratives to excuse her crime in terms of feminine stereotypes.

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14

The Columbine High School Shootings

GLENN W. MUSCHERT AND RALPH W. LARKIN

The April 20, 1999, massacre at Columbine High School in Colorado is among the most infamous of crimes perpetrated in an American school. The attack was executed by two students, Eric Harris (aged 18) and Dylan Klebold (aged 17), as an expression of their rejection of their school and community. While the shooters failed to carry out their intentions to blow up their school and kill hundreds, they nonetheless killed 12 fellow students, one teacher, and themselves. On the ground, many events occurred simultaneously. In separate sections, we discuss the details of the attack, the police response, and the mass media coverage of the Columbine shootings. In addition, we examine the effects this crime had on the social and cultural life at the turn of the twenty-first century. Columbine is among the best-known among school-related shootings to occur in the twentieth century, and it has strongly affected public discourse about American youth and juvenile delinquency.

The Setting and Crime

Columbine High School is located in southern Jefferson County, Colorado [Jeffco], an upper-middle class white suburb 20 miles south of Denver. What distinguishes this area from the rest of the United States is its rock-ribbed cultural and political conservatism. It is heavily religious with approximately one church for every 250 persons, with 30 to 40 percent of the population being Christian evangelicals.

Columbine had a reputation for strong academics, well-behaved students, and one of the most decorated sports programs in Colorado. Practically every year between 1990 and 2006, one of Columbine's sports teams won a state championship, and the school was a consistent winner of its league's sportsmanship award. The Columbine High School Rebel football team won state championships in 1999, 2000, and 2003. Academics were



Figure 14.2 Eric Harris and Dylan Klebold are shown in this image made from video released by the Jefferson County Sheriff's department in 2004. This video was made prior to the killings at Columbine High School, but there remains an uncanny similarity. © AP Photo/HO.

also important, and approximately 85 percent of Columbine graduates went on to further education, many attending selective schools.

This idyllic environment was shattered on Tuesday, April 20, 1999, when Harris and Klebold attempted to blow up their school with bombs made from 20 gallon propane tanks placed in the cafeteria near the football team's table. When the bombs failed to detonate, Harris and Klebold attacked the school with semiautomatic weapons, shotguns, and handmade bombs. At the onset of the assault, they shot at students outside the building, and then ran inside shooting down hallways. Early in the attack, they killed two students, wounded six others, and fatally wounded one teacher who slowly bled to death over a period of three hours.

The more devastating part of the attack occurred ten minutes after it began, when Harris and Klebold entered the school library, shouting, ''Get up! All athletes stand up,'' and, ''Anybody with a white hat [typically worn by student athletes] or a sports emblem on it is dead. Today is your day to die.'' During this deadliest phase of their attack, they killed 10 students and injured 12 others, all the while laughing and enjoying themselves. Some girls were overheard to ask, ''Why are you doing this?'' They answered, ''We've always wanted to do this. This is payback. We've dreamed of doing this for four years. This is for all the shit you put us through. This is what you deserve.'' As one student was pleading for her life, Harris laughed and said, ''Everyone's gonna die. We're gonna blow up the school anyway.''

Also in the library, Klebold spied Isaiah Shoels, the only black student fatally wounded in the attack, and said, ''Hey look, there's that little nigger.'' Harris shot Isaiah point blank three times, killing him. Klebold commented, ''Man, I didn't know black brains could fly that far.'' Also in the library, the seriously wounded Valeen Schnurr cried out, ''Oh my God, oh my God.'' Overhearing Valeen's pleas, Klebold asked, ''Do you believe in God?'' She responded, ''Yes.'' Walking away, he said, ''Why?'' As a result of this exchange, an apparently erroneous rumor spread that Cassie Bernall, who had been fatally shot several minutes earlier, had been asked if she believed in God by one of the shooters. As the rumor goes, she responded, ''Yes,'' and then was shot point blank.

ERIC HARRIS

The Harris family moved around the country. Eric Harris's father was an Air Force pilot, who after 20 years of military service, retired and moved back to his home territory in Jeffco. At the time of the attack, Eric was a good-looking 18-year-old, blond haired, a bit shorter than average in height, slight of build, extremely bright and sensitive, and shy. He was diagnosed alternatively as having bipolar personality disorder, obsessive-compulsive personality disorder, and psychopathology, now identified as antisocial personality disorder. Eric himself confessed to being depressed. Although not a member of the now infamous Trench Coat Mafia, he identified with the group. Eric expressed his feelings in voluminous writings, and it seems that he viscerally hated his peers for the bullying, harassment, and humiliation he experienced from the athletic crowd and Christian cliques at Columbine. In the Columbine massacre, Eric was the leader who conceptualized the assault and wrote about it in his journal (Larkin, 2007).

Harris noticed somebody under an adjacent table. He shouted, ''Who is under the table? Identify yourself!'' John Savage, a former friend of Klebold, identified himself, and asked the shooters what they were doing. Klebold responded, ''Oh, just killing people.'' Savage asked, ''Are you going to kill me?'' Klebold hesitated and told Savage to get out of there, which he did.

After their killing spree in the library, the shooters returned to the cafeteria to attempt to detonate their defective propane bomb. Harris knelt on one knee, resting his rifle on the banister to the stairs leading into the cafeteria and firing several shots at the bomb. After the device again failed to go off, Klebold returned to the bomb and fiddled with it. He then stepped away from the bomb and threw a pipe bomb toward it, which exploded and started a fire. After the propane bomb failed to explode, the shooters returned to the library, where they carried out their mutual suicide pact by shooting themselves in their heads. Forty-nine minutes after it began, the attack was over. Ultimately,

DYLAN KLEBOLD

Dylan Klebold, 17 years old, lived in southern Jeffco all of his life. He was tall, socially awkward, and ungainly. Although diagnosed ex post facto as having depressive personality disorder, Dylan's depression was most likely a consequence of his low peer status and the teasing he experienced at the hands of student athletes. In addition, Dylan was experiencing an identity crisis on two fronts. First, he came from mixed Christian-Jewish parentage, and his reaction to his Jewish heritage was a self-hateful anti-Semitism and worship of Adolf Hitler. Second, Dylan apparently questioned his sexual orientation. In school, Dylan was identified as gifted, although in high school his academic motivation declined. Dylan was Eric Harris's willing follower in the assault (Larkin, 2007).

12 students, one teacher, and the two shooters died in the attack, and an additional 25 others were seriously wounded (Columbine Research Site, 2003; Larkin, 2007; Zoba, 2000).

Criminal Justice Response

Within five minutes of the first shots, law enforcement officials were on the scene (Jefferson County Colorado Sheriff, 2000; West, 1999). By the time the shooters killed themselves, emergency response teams and criminal justice personnel had arrived from numerous agencies, including the Jefferson County Sheriff's Office, the FBI, the ATF, SWAT teams from several local police agencies, EMS teams, and fire departments. News media commentators routinely praised the police in their efforts to control the crime scene and maintain order, yet from the beginning, law enforcement personnel were confronted with problems. For example, police lacked intelligence about the attack, and rumors were indistinguishable from facts. Details necessary to respond were unavailable, including the number and location of the shooters. As students streamed from the doors of the school, police were afraid that the shooters would hide among them. In addition, they feared the school had been booby-trapped. Inside the school, unexploded bombs lay strewn about, fire alarms sounded, and the sprinkler system in the cafeteria doused fires started by pipe bombs.

Columbine was a new sort of attack, and law enforcement agencies were caught off guard in their ability to respond. Those with military experience equated the Columbine attack with contemporary styles of urban warfare. Thus, Sheriff John Stone instructed officers to secure the perimeter of the building, while SWAT teams swept the school. The problem with this approach was that it ignored indications that some of the wounded needed immediate care, something that contributed to the public impression that the police were more concerned with their own safety than of those trapped inside. Despite students putting signs in the window of a science room indicating the need for medical attention for a wounded teacher, police did not respond, fearing that it was a ruse. The teacher, Dave Sanders, was not discovered by SWAT teams until 2:20 p.m., and EMS arrived 20 minutes later. By that time it was too late to save him, and he died from loss of blood. Despite the disorganized nature of the police response, the scene was eventually secured.

Once the smoke cleared, Columbine High School became a massive crime scene. Under the supervision of the lead investigator Kate Battan, the Columbine Task Force consisting of 80 investigators broke into several teams, each investigating a facet of the case. A threats team investigated potential threats in the local area including copycat attempts, while an associates team identified and interviewed the shooters' friends. The ATF team traced the weapons that were used in the assault. Another team investigated the shootings on the school grounds, while the cafeteria and library teams were charged with developing a second by second sequence of events in their respective areas. The shooters' online habits and usage were investigated by a computer team. Finally, the crime scene team gathered evidence throughout the school. The research conducted by the Task Force culminated in the issuance of the 11,000 page Columbine Report in May 2000 (Jefferson County Colorado Sheriff, 2000), a valuable asset to anyone who wants to explore the Columbine shootings, which contains the best available and most objective description of the crime itself. One major conclusion contained in the report is that Harris and

TIMELINE

April 1998	Begin of planning, acquiring weaponry, scouting out the cafeteria to see when it would be the fullest, and making videotapes explaining their motivation for the shootings.
April 18, 1999	Harris and Klebold attend the Columbine High School senior prom.
April 20, 1999: 6:00 a.m.–11:00 a.m.	Final preparations: synchronizing watches, booby-trapping cars, putting bombs in the trunks of their cars, planting diversionary bombs in a nearby park, and driving to school.
11:07 a.m.	Harris and Klebold haul two bombs into the Columbine High School cafeteria, locating them at the table where the jocks sit. The bombs are made of 20-pound propane tanks hooked up to gallon cans of gasoline and detonators timed to explode at 11:17 a.m. The boys return to their cars, which are strategically located to provide crossfire directed at the south entrance to the high school.
11:19 a.m.	Two minutes past the time when the bombs were set to explode, Harris and Klebold realize there is something wrong. They signal to each other and from the respective positions in the north and south parking lots, run up the stairs to the west entrance of the school and begin shooting. During this part of the siege, two students are killed and six are wounded.
11:24 a.m.	Sheriff's Deputy Gardner, alerted to the shootings, pulls into the parking lot and exchanges fire with Harris. The shooters enter the school through the west doors.
11:27 a.m.	Harris and Klebold walk down the halls randomly shooting and throwing pipe bombs. One student and a teacher, Dave Sanders, are wounded.
11:29 a.m.	Harris and Klebold enter the library where 56 students are hiding under tables. In the next 7-1/2 minutes, 10 students are killed and 12 are injured.
11:36 a.m.	Harris and Klebold leave the library and walk toward the science area in the east wing of the building. They wander the halls, shooting randomly and throwing pipe bombs.
11:44 a.m.	The shooters go downstairs and enter the cafeteria. Harris shoots at one of the propane bombs, without result. Klebold goes over to the bomb and fiddles with it, backs away, and throws a pipe bomb toward it. They return to the library.
11:54 a.m.	CNN begins its six-hour live coverage of Columbine.
12:08 p.m.	Harris and Klebold commit suicide.
2:42 p.m.	SWAT teams find the wounded teacher, Dave Sanders, receiving triage from students in a classroom.
3:02 p.m.	Sanders dies.
April 25, 1999	Vice President Al Gore speaks at a Columbine memorial service attended by 70,000 mourners.
May 3, 1999	Deadly tornado occurs in Oklahoma, and news vans leave Columbine.
May 2000	*Columbine Report* released.

(*Source:* Larkin, 2007)

Klebold were the only perpetrators in the attack; however, the investigation remains officially open.

COVERING COLUMBINE

For most Americans, the Columbine shootings were more of a media spectacle than an historical event, making it important to understand Columbine as it emerged in the mass media. Few stories have sparked such high levels of public interest and debate, and in this section we explain the role of the mass media in the making of the Columbine story. Although Columbine's newsworthiness may be explained in part due to the magnitude of the attack, other elements contributed to the salience of the story. At the time of the shootings, mass media personnel were in Boulder, Colorado, approximately 40 miles away, awaiting breaking news in the JonBenet Ramsey case. When news spread of the attack at Columbine, news crews were immediately dispatched. In many cases, news personnel arrived before law enforcement. For example, CNN broadcast live a call to the sheriff's public information officer, requesting details about the attack. He could do little more than verify that an attack had occurred and that he was still en route to the scene.

From the site, news cameras broadcast live images of horrified students running out of the school, searching for their friends and families. The injured received triage on the front lawns of suburban houses, while parents wandered amid droves of students, searching for their sons and daughters. Viewers remained glued to their television sets as the media captured heart wrenching images, both joyous and tragic. Parents reunited with their children released sobs of joy. Then, the media showed the clumsy rescue of an injured student who escaped from a broken second-story window, trailing blood behind him.

Besides broadcasting such images, ironically the news media on the site were also participants in the response to the shootings. Although the perpetrators were dead within 49 minutes following their commencement of the attack, this fact did not emerge until SWAT teams were able to sweep the school three hours later. During this time, the news media received phone calls from students who were still hiding inside the school, and media personnel began to realize that the attackers might be able to watch their live broadcasts from the cable-equipped televisions inside the school. This prompted news cameras on the ground and in helicopters to pull back, so as to avoid tipping off the perpetrators to police actions outside. The sheriff spoke on-air with a reporter at a Denver television news station, suggesting that media coverage of the event might spark copycat crimes. The reporter agreed, responding, ''And the conflict is that you can't not cover it'' (Savidge et al., 1999).

And cover it they did. Throughout the day, media personnel continued to arrive in droves, and they were directed by local authorities to set up shop in the 285-acre Clement Park, adjacent to Columbine High. Ultimately, the media presence included an estimated 400 to 500 reporters, 75 to 90 satellite trucks, and 60 television cameras. To feed the media's thirst for information, the Jefferson County Sheriff's Office held hourly press conferences (Jefferson County Colorado Sheriff's Office, 2000). By various measures, Columbine was one of the most salient stories of 1999, or even the entire decade. By CNN ratings, Columbine was the largest news story of the year, and the story was closely followed by 68 percent of the U.S. viewing public (Pew Research Center for the People and the Press, 1999). Relative to any other school shooting incident in U.S. history, Columbine attracted more intensive coverage (Maguire, Weatherby & Mathers, 2002).

Although the media undoubtedly fulfill an important role in society, the actions of some media personnel were not above reproach. In some ephemeral way, the news media may have been part of the equation in which two youth executed such a horrible attack in order to gain infamy. In addition, social science research indicates that communities experience a secondary disruption at the hands of the media. However, such accusations are abstract, and we limit our description of the media's more specific failings. In the rush to cover Columbine, media crews flooded the community, contacting an estimated 50 to 75 percent of students from the school. We question the ethics of interviewing youth who have been witnesses to horrible crimes, particularly if they are asked to recount details. For example, on *Good Morning America* the day following the shootings, Charles Gibson asked a student who had narrowly escaped being targeted, ''Did you think, maybe, I'm going to die here?'' The student replied, ''Yeah. I was just hoping they wouldn't come over and shoot us'' (Gibson and Sawyer, 1999).

There are numerous cases where the news reported erroneous facts. For example, Richard Costaldo, the young man in the wheelchair who in ''Bowling for Columbine'' attempted to return the bullet lodged in his spine to the store where it was purchased, was reported by one newspaper to have been fatally shot. In addition, some eyewitness accounts broadcast live appear to have been hoaxes. For example, a spokesperson at a hospital treating wounded students later identified himself as Howard Stern, and a caller who claimed to have been a student witness provided a name that did not match any known student at the school.

Nonetheless, we cannot fault all media personnel and organizations for contributing to the secondary victimization of the community. National Public Radio's reportage was the most detailed, among the least intrusive, and most sustained of all national news sources. However, it is the local news sources, both print and broadcast, that stood out as most laudable. Perhaps because they are rooted in the community, many of them residents, local news personnel were more sensitive to the impact that their organizational practices may have on persons and groups already traumatized by the attack itself. While locals at Columbine were left to deal with the long-term effects of the attack, the national news media entourage stayed only until the next big story hit. On May 3, 1999, the strongest and deadliest tornado since 1979 touched down in Oklahoma, killing 36 people and causing $1.1 billion in property damage. At this, the media entourage pulled out of Colorado, heading east towards Oklahoma.

THE AFTERMATH AT COLUMBINE

Closer to home, the fallout from the Columbine shootings was broader and longer lasting. President William Clinton addressed the nation on the shootings; Vice President Al Gore was dispatched to Colorado to attend the April 25 memorial services for the victims. Ongoing debates about bullying, access to guns, violent video games and television shows, rock-and-roll music, parenting, and school security were rejoined. Attributions of blame for the assaults focused on gun culture and the ease by which weaponry can be obtained, the so-called ''Goth'' youth subculture, lack of parental supervision, and ''lack of values.'' Residents asked how Harris and Klebold were able to arm themselves with semiautomatic weapons. Accusations about the harassment of students at Columbine High School by athletes and the laissez-faire attitude of the staff toward such behaviors were trumpeted in the media. Others questioned whether the shooters' parents were to blame.



Figure 14.2 Mourners visit a memorial of crosses on a hill overlooking Columbine High School in Littleton, Colorado, 1999. © AP Photo/Ed Andrieski.

Sheriff Stone was not above reproach. Although publicly praised at the outset, within 24 hours following the attack, critics began to question the appropriateness of the police response to the Columbine attack. Reporters discovered that Harris and Klebold had been arrested for vandalism and had been placed in a diversion program that they had successfully completed. The most persistent among the accusations of police inadequacy came from Judy and Randy Brown, the parents of Columbine student Brooks Brown, who claimed that they had filed a complaint against Harris for making death threats against their son on his ''Trench Coat Mafia Website.'' The Browns also claimed to have reported Harris's bomb making, and had alerted the Sheriff that he could be violent. In response to allegation raised by the Brown family, Sheriff Stone, claimed that the department was investigating co-conspirators Harris and Klebold, and that Brooks Brown was under investigation. He stated that the sheriff's department had no record of a complaint by the Browns. When a grand jury investigated, the Brown complaint had mysteriously disappeared from the desk of the responsible officer.

The department also had an unexecuted search warrant for the Harris house. Further, Sheriff Stone was accused of impeding the Columbine investigation, attempting to cover up the prior knowledge of the contacts the department had with Harris and Klebold, and allowing the media to view the tapes the boys had made prior to the shootings, later excerpted in *Time* magazine. Stone served out his term as sheriff and did not run for reelection. In 2005, under a successor, the department found two prior complaints against Eric Harris filed by the Browns in 1997 and 1998; the latter one filed a year before the attack on Columbine High.

SOCIAL, POLITICAL, LEGAL ISSUES

In the weeks following the Columbine shootings, schools across the country experienced thousands of bomb threats, scores of attempted bombings, and several attempted copycat killings, one resulting in a fatality. In the wake of the shootings, a new term has emerged, called the ''Columbine Effect,'' which refers to the increased willingness of students to inform authorities when they hear of an act of violence about to be committed by their peers. In the post-Columbine period, numerous plans of violent adolescents have been disrupted, and several rampage shootings have consciously mimicked Columbine.

Despite Columbine's brief duration as a dominant media story, social and political effects of the case were longer-lasting. Columbine joined a list of familiar place names where school shootings have occurred, and, in fact, the term ''Columbine'' has become a keyword that brings to mind complex and contested issues surrounding youth, religion, gun control, and other social dimensions. Earlier school shootings, including Pearl, Paducah, and Jonesboro, had raised the issue of school violence as a social problem; however, Columbine stands out as fundamentally different because of its dramatic severity and level of premeditation. While there have been subsequent shootings in such places as Conyers, Santee, el Cajon, and Red Lake, Columbine stands out as the quintessential school shooting. When it comes to the discussion of what is right and wrong with youth in society, Columbine is often recognized as an agenda-setting case, a key referent for public discourse.

Despite the rarity of rampage school shooting attacks, Harris and Klebold have become the poster children for juvenile delinquents and disaffected youth. Following the shootings, public opinion polls indicated that many parents were fearful that a Columbine-type attack could occur in their children's schools, and they demanded action. This heightened fear and outcry ran somewhat counter to reliable evidence about the risks of such an attack. In 1999, the probability that an American school child would be fatally wounded in firearms violence at school was one in two million, roughly the probability of being struck by lightning. All reliable sources of evidence about youth victimization indicate that schools are among the safest places for youth, and that children are at higher risk of being victimized at home. More, research (Addington, 2003) indicated that students' fear of victimization did not increase following the Columbine incident.

On a more practical level, there have been changes in school policies and juvenile justice practices to respond to school shooting attacks and, to a lesser extent, to address the underlying causes. Many suburban and rural schools have installed surveillance systems, such as video cameras, mandatory use ID cards, and metal detectors. Punitive policies have expanded greatly, including zero-tolerance policies for rule transgressions, often leading to expulsion. In the news media, we have observed ridiculous cases where administrators have gotten caught up in the hype, such as the suspension of a primary school student for holding a banana as if it were a gun. Meditative responses have also expanded, although at a slower rate than punitive measures. Schools have expanded peer conflict resolution programs and have established better systems for students to report rumors of planned or threatened attacks. Since 1999, dozens of Columbine-type attacks, at various levels of development and sophistication, have been thwarted nationwide.

In the two years following Columbine, school shootings remained an issue on the public agenda; however, the 2001 terrorist attacks on the United States changed this focus. The attention moved away from American youth, and the general anxiety about school shootings has declined. As a result of the attention garnered by Columbine, most schools

DID YOU KNOW?

In contemporary usage, ''Columbine Massacre'' refers to the 1999 school shooting incident, but historically the term referred to a deadly labor dispute. In 1927, striking coal miners were gunned down by a special state police force, and this event was known as the Columbine Mine Massacre. Six workers died, and are still memorialized in Lafayette, Colorado, on a roadside monument at the junction of Colorado Highway 7 and Interstate 25 (Shuler, 1986).

in the United States have disaster plans that may be carried out in case of an attack or disaster. Emergency first responders are part of these plans, and they have clear protocols for how to act in a variety of scenarios. Despite some residual fear of Columbine-style attacks, American children really are relatively safe at school. Still, there is no way to completely safeguard against such attacks.

Framing the Issue

In their coverage of Columbine, journalists struggled to come to terms with this emergent form of violent behavior. Initial media reportage focused narrowly on the facts of the case, the perpetrators, victims, and details of the attack. Within a week, all the victims had been buried, and the news media began to focus on possible causes of the attack, with attention to the incident's connection to key social issues.

When a social problem, such as school shootings, becomes a significant public concern, spokespersons from various groups and social causes compete to characterize the problem as relating to their social/political issues. These discussions are by no means new, and many familiar commentators rushed to speak on behalf of their social causes. For example, commentators from various sides of the gun control issue commented on the Columbine attack. There are multiple social dimensions on which Columbine might have been characterized, including the gender dynamic in which nearly all school shootings are executed by boys, as a problem arising from suburban life, as a problem arising from exposure to mass media violence, or as a result of poor parenting. Given the racially and religiously loaded stories that emerged concerning some of the victims, many leaders from African American and evangelical Christian groups were cited widely in mainstream media as they attempted to seize upon the opportunity to advance their causes (Muschert, 2007).

The discourse of Columbine reveals the most salient social issues circulating at the time of the attack. Early in the coverage, spokespersons from various domains competed to be the dominant frame of understanding the problem. Despite the existence of numerous possible frames of reference for understanding Columbine, it is the Christian spiritual and psychological versions of the story that prevailed. Columbine became a battleground in the American culture wars as the religious and cultural right defined the massacre as the outcome of a liberal, crime-tolerating, secular, anti-Christian society that fails to teach traditional values, prevents children from praying in school, and refuses to display the Ten Commandments in public schools (Epperhart, 2002; Porter, 1999; Scott & Rabey, 2001; Zoba, 2000). Evangelical groups felt that Columbine was an attack on their values, while mainstream groups were more horrified about the magnitude of the crime and its seeming senselessness.

The evangelical Christian characterization of school shootings as indicative of a spiritual problem in American youth has been very powerful. One of the most dramatic elements of the Columbine story was that of Cassie Bernall, the student victim and an

evangelical Christian who had allegedly affirmed her belief in God. Cassie's affirmation stood out in opposition to the shooters' nihilism, and became the subject of a book (Bernall, 1999) and video (*She Said Yes,* 1999) published by a religious press. Among evangelical youth, the story of Cassie Bernall remains poignant.

Those seeking a secular characterization of what happened at Columbine have been unable to find such a neatly circumscribed explanation. Within American culture there is a well-diffused popular understanding of psychology and a tendency to individualize the sources of social problems. More, social science research suggests that youth often acts as a noteworthy mitigating factor, and that ''it's not as simple as it seems'' to explicate the culpability of youth offenders (Spencer, 2005). Therefore, the most effective and persistent secular characterization of the Columbine shooters' actions has been to explain the attack in terms of their unmet mental health needs.

Columbine has been most strongly defined in terms of its expression of the need for improvement in either of two areas: addressing the spiritual needs or the mental health needs of American youth. These two discourses are illustrated in a CNN *Larry King Live* program featuring then Vice President Gore and his wife Tipper. On the one hand, Mr. Gore spoke about the problem of evil as at the root of Columbine, ''Sometimes there's a more basic issue between good and evil, and we have to confront the kind of—of evil that does exist in the world'' (King, 1999). In contrast, Mrs. Gore spoke about meeting the mental health needs of youth, ''I think this is a wake-up call to all Americans, to parents, and also to other teenagers, because they often are the first to know who is the most troubled and they need to be supported. They need to have a place to go to: an adult, a mental health center'' (King, 1999). This dual characterization of the problem of Columbine, as either a religious or mental health issue, continues as dominant framing for this event in the public discourse.

IMPACT ON LEGAL ISSUES AND POP CULTURE

In the Columbine community, lawsuits proliferated: the parents of Isaiah Shoels filed suits against the Harris and Klebold families; the school district and the sheriff's office were sued for negligence in their failure to provide sufficient security and for failure to act on the early warning signs of Harris and Klebold's violent attitudes. The shooters' parents sued the sheriff's department over the ownership of their sons' videotapes made prior to the assault. The sheriff's department was additionally sued by numerous complainants, including the parents of Daniel Rohrbaugh, who contended that their son was shot not by Klebold, but by law-enforcement fire. The wife of Dave Sanders, the murdered teacher, sued over the delay in allowing emergency medical services personnel to minister to her husband's wounds, letting him bleed to death. Parents of the victims sued the three persons who procured weapons for Harris and Klebold. Two of them were convicted of illegal gun trafficking and received stiff sentences.

Ironically, the wider legal implications of the Columbine shootings were nugatory. Despite the evidence that much of the weaponry used by Harris and Klebold was purchased at gun shows, no changes were made to the gun show exception to the Brady gun control bill (News Batch, 2005). The controversy about violent first-person video games resulted in several states passing legislation to ban such games; however, because of First Amendment concerns they were not enacted (Wikipedia, 2006). Finally, several states passed ''parental responsibility'' laws that made parents liable for the felonious

WHY 4/20?

There are a number of urban legends surrounding 4/20, and the rumors about the Columbine shooters' selection of April 20 for their attack are among the latest additions. The term ''4/20'' is synonymous with marijuana, and its likely origin is from a group of youth in California who congregate to smoke at 4:20 in the afternoon (Adams, 1986). There is no direct evidence that supports the marijuana connection with Harris and Klebold, and a more likely connection is that Adolf Hitler was born on 4/20/1889.

behavior of their children, even though there was no evidence of parental culpability in the Columbine shootings (Keen & Brank, 2005).

The Columbine shootings were and continue to be media-driven. Harris and Klebold had especially strong media savvy and awareness. Harris set up the ''Trench Coat Mafia'' Web page on AOL in which he advertised his xenophobic, racist, and anti-Semitic beliefs and told of his intentions to blow up the school. When they made their videotapes prior to the massacre, Eric Harris sat in a chair swigging a bottle of Jack Daniels and holding in his lap a sawed-off shotgun named Arlene, after a favorite character in the Doom video game. The boys were quite facile in the use of video games. They played Doom for hours on end. Eric Harris created new ''wads'' (combat interiors) for the game and posted them on the Internet for other players. He complained about not receiving feedback about his wads; however, other players complained about their difficulty and violence level.

Klebold was enamored by the anticipated social consequence of the attack, and seemed to be enthralled by the notoriety that they would receive. He mused over which movie director could best be trusted with the script of their story; Quentin Tarantino topped their list (Gibbs & Roche, 1999). Both shooters wanted the story to have a lot of ''dramatic irony,'' but instead, they got Gus van Sant's ''Elephant,'' which was dramatically flat. In 2003, several television series, including *Law & Order, ER,* and *Boston Public,* contained episodes that included Columbine-style rampage shootings. A play by P. J. Paparelli, titled ''columbinus,'' explored the motivations for the shootings toward the country and received a rave review in *The New York Times* (Isherwood, 2006). An online version of a video game that was a model of the Columbine shootings generated controversy in 2006, and was quickly pulled off the Internet (Farrell, 2006).

Although Harris and Klebold have not been extensively portrayed, their actions have stimulated more wide-ranging discussion. The most significant appearance the two have made in popular culture was as the inspiration for Michael Moore's 2002 documentary film *Bowling for Columbine.* The title stems from the erroneous story that the shooters attended their early morning bowling class prior to executing their plans for mass murder. Despite this inaccuracy, the point is well-placed—that the Columbine shootings were particularly troubling because they were carried out by what appeared to be normal youth expressing a disconcerting nihilism. This generalized angst touched a nerve, which Moore used as a point of departure for an exploration of gun culture and the climate of fear in the United States. The film was widely applauded, and in 2003 won an Academy Award for Best Documentary Feature.

The Internet contains several memorial Web sites dedicated to the victims, especially Rachel Scott and Cassie Bernall. The myth that Cassie was killed defending her faith spread across the country like wildfire. National media picked up the story; during the month of May 1999, *Time* and *Newsweek* ran cover stories on the Columbine massacres that mentioned her martyrdom; feature articles on Cassie appeared in the *Weekly*

Standard and Salon.com. Her parents appeared on Christian talk shows claiming that her death was a victory of Jesus Christ over Satan and an affirmation of the family's evangelical beliefs.

In addition, countless Web sites have sprung up as open forums for expressing opinions about issues related to the shootings, including debates over gun control, bullying, parental responsibility, proper actions of the police and school administration, the psychology of the shooters, and drug use. One of the most common themes in the Web sites was whether or not Harris and Klebold should be forgiven for their deeds. Several sites have been maintained as information clearinghouses on the shootings themselves. Over five years after the shooting, there still exists the ''Eric Harris Worship Site'' (''Trench,'' 2005) and www.dylanklebold.com on which relevant issues are still debated. The personages of Eric Harris and Dylan Klebold maintain an underground existence. For many young people who find themselves in similar positions in their schools as Harris and Klebold, the boys strike a resonating chord. Some people in chat rooms regard them as heroes; most regard them as villains. In rare cases, they are exemplars.

Since April 20, 1999, numerous rampage shootings have occurred in middle schools, high schools, and colleges across North America. For every shooting carried out, several have been discovered and thwarted before their execution. In most cases, the Columbine shootings were used as a template, an inspiration, or a record to be surpassed. A small sampling includes Tabor, Alberta (1 dead), Baton Rouge, Louisiana (1 injured), Conyers, Georgia (6 injured), and Red Lake, Minnesota (9 dead, including the perpetrator). Several thwarted shootings mimicked Columbine, including an attempt at a Port Huron, Michigan, middle school, De Anza College in California, New Bedford, Massachusetts, and Riverton, Kansas. Clearly, Columbine has made schools and students feel more vulnerable, and since 1999 there have been an average of about three rampage shootings a year in American schools. In 2006, several children were killed in two school invasions by sexual predators. The Columbine shootings exist in American popular culture as both a dark moment and a source of fascination. Columbine was shocking when it occurred, and it still ranks as one of the great American traumas of the past century.

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15

Martha Stewart: Just Deserts or Just a Victim?

MELISSA L. JARRELL AND ISABEL ARAIZA

Martha Stewart. Domestic icon. Self-made millionaire. Control freak. Mean-spirited. People either seem to love Martha Stewart or hate her (Oppenheimer, 1997). Martha Stewart has been praised as well as vilified by the media since her rise as America's premier homemaking expert. Over the course of 20 years, Stewart created an industry centered around her own image and in the process earned hundreds of 7millions of dollars of new wealth. Along the way, Martha Stewart gained a reputation as a difficult and demanding woman. When news of Stewart's alleged involvement in the ImClone stock scandal arose, many people were thrilled to see Stewart's reputation sullied. People were tired of reading about how Martha treated her employees, friends, and family members. Martha was not without her supporters though, who were outraged that federal prosecutors took a nonexistent case so far on flimsy evidence. Some people criticized her for not showing remorse or admitting guilt. Media coverage was unfounded. Legal analysis abounded. And the case dragged on for more than two years. Media coverage of the Martha Stewart case was enormous, and everyone had an opinion. Legal analysts questioned the validity of the case while celebrity columnists questioned Stewart's choice of fashion designer Versace over Armani. Without a doubt, the Martha Stewart stock scandal was major news across the country. But who is Martha Stewart? Most Americans actually know little about the personal history of the domestic diva.

Background

Martha Helen Stewart was born Martha Kostyra on August 3, 1941, to middle class Polish immigrant parents in Jersey City, New Jersey. Martha was the second child of Edward Kostyra, a public school physical education teacher, and Martha Ruszkowski Kostyra, a housewife (Oppenheimer, 1997). Martha and her five siblings were raised in

Nutley, New Jersey. Her mother taught her to cook and sew; her father taught her to garden. Martha was a gifted student and active in many extracurricular activities. Throughout her high school and college years, Martha won a number of modeling jobs. In 1961, while a sophomore at Barnard, Martha married Andy Stewart, a Yale Law student. That same year, Martha was selected as one of the ten best-dressed college girls in America by *Glamour* magazine (Oppenheimer, 1997). In 1964, Martha graduated from Barnard with a degree in art history. In 1965, their only child, Alexis (Lexi), was born. Martha soon realized that her dreams of becoming a sought after model were not going to materialize.

For a few years, during the late 1960s and early 1970s, Martha Stewart worked as a stockbroker in New York. According to Oppenheimer (1997), a scandal involving a furniture company may have contributed to her decision to quit selling stocks. Several brokers at the firm allegedly received kickbacks from the furniture company for selling stock in the financially troubled company. Although Stewart was not directly involved in receiving kickbacks, according to friends and family members, she was increasingly depressed and anxious because she knew that her company was engaged in such activities. She had sold a great deal of stocks to friends and family members but sold her own stock in the furniture company when she discovered the company's financial troubles. Her disillusionment with the company led her to leave at the age of 32, but not before she alienated many of her closest friends. In 1972, the Stewarts moved to Westport, Connecticut, and began major renovations of an old farmhouse. Martha found that she truly enjoyed cooking, decorating, and gardening, skills she developed throughout her childhood. In 1976, Martha decided to go into a catering business with various female friends. She was also hired as the manager of a gourmet food store, The Market Basket at the Common Market, which was enormously successful.

While running her successful catering business, Martha's first cookbook, *Entertaining,* became an instant best seller and essentially launched her career as America's homemaking expert. Although her husband's position as president of a major publishing company certainly helped Martha succeed in publishing her books, it was Martha who was responsible for the majority of the publicity. She made sure her photos appeared in magazines and news articles. She gave interviews from coast to coast. Following the success of *Entertaining,* Stewart released several more books, authored numerous newspaper columns and magazine articles, and made several television appearances. In 1987, Martha achieved national exposure as the new spokesperson for Kmart, launching her own line, Martha Stewart Everyday. In 1990, her husband, Andy, filed for divorce. That same year, Martha became editor-in-chief of a new magazine, *Martha Stewart Living.* In 1993, Martha began appearing on daily TV programs. In 1995, the cover of *New York Magazine* presented Martha Stewart as "the definitive American woman of our time" (Oppenheimer, 1997).

In 1997, Martha Stewart consolidated all of her business endeavors into a new company, Martha Stewart Living Omnimedia and added a Web site, marthastewart.com, and a catalogue business, Martha by Mail. On October 19, 1999, Martha Stewart Living Omnimedia went public on the New York Stock Exchange. Although the initial public offering was set at $18 per share, it rose to $38 by the end of the day. Martha Stewart became a billionaire on paper as a result of the total market value of the assets she owned in her company. By 2000, Stewart made Forbes magazine's list of America's 400 wealthiest people.

BEFORE THE CRIME

Martha Stewart developed her fortune and fame as a result of marketing her very image; consequently, media coverage of Martha prior to the ImClone stock scandal was already extremely high. As a national celebrity, Stewart appeared in the media on a daily basis. According to Christopher Byron (2002, p. 8), ''on a strictly public image basis, the mere mention of her name could polarize any group of people and start an argument that would quickly escalate to surreal dimensions.'' Media coverage of Martha prior to the stock scandal ran the gamut. Media coverage criticized and satirized her overly perfectionist image as well as praised her for providing home, cooking, entertaining, gardening, craft, and wedding ideas. Like most national celebrities, Martha Stewart was often the target of tenacious reporters wanting to dig up as much personal information as possible. Consequently, even the most mundane incidents in Martha's life became fodder for the national media.

In 1997, Jerry Oppenheimer, a celebrity biographer, decided to make Martha Stewart the focus of his latest biographical efforts. In his introduction, Oppenheimer states that he decided to write about Martha because she seemed too perfect. He wanted to find out if the idealistic picture she painted in her books and during her TV appearances was based on reality. For the biography, Oppenheimer conducted over 400 interviews with siblings, relatives, associates, friends, colleagues, and employees. He stated in the introduction that he had no opinion of Martha prior to conducting the interviews but was intrigued by her image of perfection: the perfect childhood, the perfect education, the perfect marriage, etc. According to Oppenheimer, despite the appearance of perfection as illustrated in her magazine and TV commentaries, Martha's childhood and marriage were far from idyllic. Christopher Byron's biography, which appeared five years later, echoed many of Oppenheimer's statements; ''time and time again, things in Martha's past turned out to be different from what Martha had claimed.'' Despite her reputation as a homemaking genius, Stewart has often been regarded as cold, mean, and overly ambitious (Oppenheimer, 1997; Byron, 2002). Both authors, backed by hundreds of personal interviews, reported that Martha Stewart manipulated and severely criticized many of her friends, employees, and family members in her quest for fame and fortune. According to Mike Duff (2002), Martha's ''personal reputation has never been as wholesome as her television persona.''

THE ALLEGED CRIME

In June 2002, the public first learned that domestic icon Martha Stewart was under suspicion for insider trading when the *Wall Street Journal* published an article about her advance sale of ImClone stocks. The story, though, really began in October 2001 when ImClone, a biotechnology company, submitted an application to the Food and Drug Administration (FDA) for approval of a new cancer drug, Erbitux. On December 6, 2001, shares of ImClone hit their highest price since 2000, selling at $75.45 per share. However, just 20 days later on December 26, 2001, Sam Waksal, cofounder of ImClone and a close personal friend of Martha Stewart, learned that the FDA would be rejecting the Erbitux license. On December 27, Stewart sold her 3,928 shares of ImClone at an average price of $58.43. On December 28, the FDA publicly acknowledged its decision to reject the Erbitux license based on poorly designed clinical trials. ImClone stock abruptly fell 18 percent to a low of $43.34 a share. By selling her stock on December 27 rather than

TIMELINE

2001

October

ImClone Stock submits its application to FDA for approval of a new cancer drug, Erbitux.

December

On December 12, ImClone registers it highest prices.

On December 26, Sam Waksal (cofounder of ImClone and friend of Stewart) learns the FDA will reject its application for a license for Erbitux.

Stewart sells 3,928 shares of ImClone (avoids $51,000 in losses).

On December 28, the FDA publicly acknowledges decision to reject cancer drug license.

2002

January

SEC, FBI, and federal prosecutors begin investigation into sales of ImClone stocks.

The SEC interviews Stewart's stock broker Bacanovic of Merrill Lynch (Bacanovic tells them he and Stewart agree to sell stock if price dips below $60).

February

Stewart corroborates Bacanovic's story.

June

Waksal arrested and charged with insider trading.

Wall Street Journal reveals Stewart is under suspicion for insider trading.

Stewart issues public statement addressing order to sell stocks.

September

House Panel asks Justice Department to investigate whether Stewart lied.

October

SEC informs Stewart it will pursue fraud charges.

Martha resigns from post at New York Stock Exchange.

Douglas Faneuil strikes deal with prosecutors, pleads guilty to misdemeanor in exchange for testifying against Stewart and Bacanovic.

Waksal pleads guilty to six criminal charges of securities fraud, perjury, bank fraud, obstruction of justice.

2003

June

Waksal is ordered to spend seven years, three months in prison and pay $4 million in fines and back taxes.

Stewart and Bacanovic indicted on nine counts of obstruction, securities fraud, lying to investigators, and altering key documents.

2004

January

Jury is selected; trial begins.

February

Judge Goldman Cedarbaum throws out most serious charge.

March

Stewart found guilty on all four counts of conspiracy, obstruction, and lying. Bacanovic is found guilty on all charges and perjury for lying under oath.

July

Stewart is sentenced to five months in prison and five months of home detention, two years of probation, and $30,000 in fines.

September

Stewart holds press conference indicating she will begin serving her sentence as soon as possible.

October

Stewart begins serving her sentence at Alderman Federal Women's Prison in West Virginia.

2005

March

Stewart released from prison and begins her five-month home detention (which was extended for three weeks due to term violations of her confinement).

August

SEC announced civil settlement agreement reached with Stewart, without admission of guilt, the maximum penalty would be $195,000, a five year ban from serving as director of a public company; Stewart would be prohibited from participating in financial reporting, financial disclosures, internal control audits, or SEC filings and monitoring compliance with federal securities laws.

November

Martha Stewart Living Omnimedia announces that Stewart will contribute $5 million of her own money to settle a $30 million class action lawsuit brought by investors who alleged Stewart lied about the 2001 stock sales of ImClone shares; the company stated it would pay $15 million and insurers would pay the rest

December 31, Stewart avoided $51,000 in losses; a large sum of money to the average citizen but a paltry sum for a multimillionaire.

In early January 2002, as the result of a House Energy and Commerce Committee inquiry, the SEC, FBI, and federal prosecutors begin an investigation into sales of ImClone stock that occurred prior to the public announcement by the FDA. Securities and Exchange Commission (SEC) investigators interviewed Stewart's stockbroker, Peter Bacanovic of Merrill Lynch, on January 7, 2002. According to Bacanovic, he and Stewart discussed the sale of her stocks in ImClone a week prior to the sale, agreeing to sell if stock prices dropped below $60. When investigators interviewed Stewart in February, she corroborated Bacanovic's account of their stock conversation and the $60 selling limit.

In June 2002, Sam Waksal, ImClone's founder, was arrested and charged with insider trading, after netting over $7 million from his stock sales. On the same day of Waksal's arrest, Martha issued a public statement addressing her order to Bacanovic to sell the stocks if they fell below $60. In September 2002, a House panel asked the Justice Department to investigate whether Stewart lied to SEC investigators. On October 15, 2002, Waksal pled guilty to six criminal charges of securities fraud, perjury, bank fraud, and obstruction of justice.

In October 2002, SEC investigators informed Stewart that they intended to pursue securities fraud charges against her. In June 2003, Waksal was sentenced to seven years and three months in prison and ordered to pay over $4 million in fines and back taxes. That same month, Stewart and her stockbroker, Peter Bacanovic, were indicted on nine federal counts including charges pertaining to obstruction, lying to investigators, and securities fraud. Prosecutors alleged that Stewart and Bacanovic conspired to obstruct a probe into her stock sales by lying to investigators and also altered a key document in order to support their lies. *Despite profiting from her advance sales of ImClone stock, Stewart was never criminally charged with insider trading.* On January 26, 2004, a jury of eight women and four men were selected.

THE TRIAL

The lead prosecutor in the case against Martha Stewart and Peter Bacanovic, Karen Patton Seymour, was also head of the criminal division of the U.S. Attorney's office. Robert Morvillo, one of the most recognized white-collar criminal lawyers in the United States, represented Martha Stewart. Bacanovic's counsel, Richard Strassberg, had also earned a reputation as one of the best white collar defense attorneys in the country. Judge Miriam Goldman Cedarbaum presided over the case.

According to federal prosecutors, Martha Stewart conspired with her broker, Peter Bacanovic, to cover up evidence involving her sale of ImClone stocks. Furthermore, prosecutors claimed Stewart lied publicly about her involvement in the stock scandal in order to protect the stock price of her own company, Martha Stewart Omnimedia (Steinhaus, 2004). Prosecutors played up Martha's relationship with Sam Waksal while Morvillo, Stewart's attorney, suggested that Martha was a victim of overzealous prosecutors.

The Phone Call

The prosecution stated that on December 27, 2001, Bacanovic received a phone call from his assistant, Douglas Faneuil. At the time, Bacanovic was vacationing in Miami.

Faneuil told Bacanovic that their client, Sam Waksal, wanted to sell all of his shares of ImClone stock. According to prosecutors, Bacanovic immediately contacted Stewart. A message log from Stewart's assistant documented the call from Bacanovic: ''Peter Bacanovic thinks ImClone is going to start trading downward.'' Upon receiving the message from Bacanovic, Stewart contacted Douglas Faneuil, who told Martha that Sam Waksal was selling his shares of ImClone stock. According to the prosecution, Stewart told Faneuil to sell her stocks immediately. In addition, prosecutors stated that Stewart and Bacanovic never actually spoke to one another on December 27. The prosecution claimed that Stewart and Bacanovic created a fictitious story about the phone call and selling agreement. The prosecution also claimed that Stewart lied to avoid damage to her own company.



Figure 15.1 Martha Stewart enters Manhattan federal court with her attorney John Tigue, 2004. Jury deliberations continued in her conspiracy and obstruction of justice trial. © AP Photo/ Louis Lanzano.

According to the defense, however, Martha did speak with Peter Bacanovic on December 27, 2001, but the conversation differed from the prosecution's claims. During the conversation, Bacanovic told Martha that ImClone stocks had dropped below $60 per share. Martha told Bacanovic to sell her shares and referred to a previous conversation held on December 20 in which they discussed selling her stocks if they fell below $60. Martha claimed that she did not remember discussing Sam Waksal or Waksal's sale of his own ImClone stocks. She remembered discussing her corporation, Martha Stewart Living Omnimedia, as well as her involvement with Kmart. Martha did not remember speaking with Douglas Faneuil, Bacanovic's assistant.

Douglas Faneuil, a star witness for the prosecution, made a deal with federal prosecutors in October 2002, pleading guilty to a misdemeanor in exchange for his testimony against Bacanovic and Stewart. Faneuil pleaded guilty to misdemeanor charges that he accepted payments, including an extra week of vacation and airline tickets, in order to keep quiet about why Martha Stewart suddenly sold her ImClone stocks. At the trial, Faneuil testified that Bacanovic ordered him to tell Stewart that Waksal was selling his stock. Faneuil further testified that Bacanovic repeatedly told him to cover it up. Defense lawyers cross-examined Faneuil and presented emails from Faneuil to his friends that described him boasting about ''putting Ms. Martha in her place'' (CourtTV.com, 2004).

Stewart's assistant, Ann Armstrong, testified that Stewart altered the log of the message received by Bacanovic on the day Stewart sold her stocks. The original message dictated by

Armstrong stated, "Peter Bacanovic thinks ImClone is going to start trading downward." Armstrong was asked to alter the message to read, "Peter Bacanovic re ImClone." According to Armstrong, however, Stewart then ordered the message changed back to its original form before handing the records over to investigators and that Stewart never asked Armstrong to lie.

The Worksheet

Peter Bacanovic turned over a worksheet to investigators that he used during the ImClone selling discussion with Martha Stewart. Next to the ImClone stock note, there was a handwritten notation, "@60," which, according to Bacanovic, was written to indicate sales of the stock when they fell below $60 per share. According to the prosecution, the "@60" was only added to the stock worksheet after investigators ordered Bacanovic to turn over evidence of the stock sale. The prosecution presented expert testimony pertaining to the ink used on Stewart's stock portfolio. According to the expert, the notation referring to selling the stock if it fell below $60 per share, "@60," was "scientifically distinguishable" from other inks on the document. Therefore, according to the prosecution, the "@60" notation was added later in order to corroborate claims that Bacanovic and Stewart discussed selling the stocks if they fell below $60 per share. An ink expert for the defense suggested that the ink used for the "@60" notation may have matched ink from a dash mark on the worksheet; suggesting that the notation was not added at a later date in order to mislead investigators.

Other Witnesses

A friend of Martha Stewart's, Mariana Pasternak, claimed at trial that Martha told her about Waksal's sale of ImClone stocks and also added, "Isn't it nice to have brokers who tell you those things?" However, under cross-examination, Pasternak agreed that it was possible that the "isn't it nice" remark was something she thought herself.

Defense attorneys for Martha Stewart and Peter Bacanovic called only a few witnesses, but neither Stewart nor Bacanovic took the stand. Jeremiah Gutman, a former attorney for Douglas Faneuil, was initially called as a witness for Bacanovic. Gutman's testimony did not help the defense and only supported Faneuil's testimony. Sadly, Gutman died from an apparent heart attack just two days after providing testimony (CourtTV.com, 2004).

Heidi DeLuca, one of Martha's business managers, said she remembered Bacanovic discussing plans to sell the shares at $60. On rebuttal, the prosecution played a tape in which Bacanovic states that he never discussed the $60 plan with DeLuca. Stewart's lawyers called only one witness, Steven Pearl, a former Stewart attorney. Pearl had been an associate at the law firm that represented Martha Stewart when she was interviewed by federal authorities in February 2002. Pearl was assigned to take notes during the interview. The interview provided prosecutors with evidence for charges that Stewart made false statements to investigators. One key part of Pearl's notes contradicted a report written by an FBI agent who also took notes during the interview (CourtTV.com, 2004).

THE VERDICT AND SENTENCE

On February 27, 2004, Judge Miriam Goldman Cedarbaum threw out the most serious charge against Martha, securities fraud, which carried a maximum penalty of ten years in prison and a $1 million fine. The charge accused Stewart of deceiving investors in her own company when she claimed publicly that she sold the ImClone stocks due to the $60

agreement. The jury deliberated for three days following the five week trial before reaching its verdict. On March 5, 2004, Martha Stewart was found guilty on all four counts of conspiracy, obstruction, and lying to federal investigators. Peter Bacanovic was found guilty of the same charges and an additional charge of perjury for lying under oath to the SEC Commission. Bacanovic was acquitted on one charge of making false documents. One of the jurors stated, ''This is a victory for the little guys. No one is above the law'' (CNNMoney.com, 2004).

After the verdict, Stewart released a statement on her Web site, proclaiming her innocence,

> Dear Friends: I am obviously distressed by the jury's verdict but I continue to take comfort in knowing that I have done nothing wrong and that I have the enduring support of my family and friends.

Stewart went on to say, ''I believe in the fairness of the judicial system and remain confident that I will ultimately prevail'' (MSNBC.com, 2004). On July 16, 2004, U.S. District Court Judge Goldman Cedarbaum sentenced Martha Stewart to five months in prison, five months of home confinement, two years of probation, and $30,000 in fines. Cederbaum ordered a stay on Stewart's sentence pending appeal. Upon leaving the courthouse, Stewart remarked, ''Today is a shameful day.'' On September 15, 2004, Stewart held a press conference to announce her decision to begin serving her sentence as soon as possible while vowing to continue ahead with her appeal.



Figure 15.2 Peter Bacanovic exits Manhattan federal court after the verdict was announced in the Martha Stewart trial, 2004. Bacanovic, Martha Stewart's ex-stockbroker, was convicted of conspiracy, perjury, making a false statement, and obstruction of justice, but was acquitted of making a false document. © AP Photo/ Louis Lanzano.

MARTHA IN PRISON

According to some marketing experts, Stewart's decision to serve her prison sentence immediately was smart because it signaled the beginning of the end of the whole debacle (Krishnamoorty, 2004). Media coverage of her impending arrival in prison was enormous. *The New York Post* headlines announced ''4 DAYS 'TIL JAIL: Martha's Agony'' and stated: ''With her final moments of freedom ticking away, Martha Stewart looked downright downtrodden yesterday as she made her last splash in the Bahamian surf'' (Krishnamoorty, 2004).

On October 8, 2004, Martha Stewart began serving her sentence at the Alderson

Federal Women's Prison in West Virginia as inmate 55170-054. Alderson is a minimum security prison with no fences; inmates are allowed to walk around the prison grounds. Stewart stated that she got along quite well with the other inmates and kept herself busy with domestic tasks including cleaning toilets, decorating her cell, and teaching other inmates how to croquet and perform yoga (CBSnews.com, 2005). Stewart periodically posted messages on her Web site in order to keep fans informed as to her well-being.

On March 4, Stewart was released from Alderson and began serving her five month home detention sentence at her 153-acre estate in New York. During the confinement she was allowed to leave her estate for up to 48 hours a week to conduct business, but was required to wear an electronic ankle bracelet transmitter to monitor her location. Her home confinement was extended for three weeks because she reportedly violated terms of the confinement by riding around her New York estate on a four-wheel drive vehicle and attending a nearby yoga class (MSNBC.MSN.com, 2005).

AFTER THE PUNISHMENT

On August 7, 2006, the SEC announced that a civil settlement had been reached with respect to the insider trading charges involving Stewart and Bacanovic (U.S. SEC, 2006). Although Stewart was never criminally charged with insider trading, the SEC pursued civil charges of insider trading against Stewart. Criminal cases require a much higher burden of proof than civil cases, and the prosecution did not believe they had the evidence to support a criminal charge of insider trading. The civil suit against Stewart was filed the same day Stewart was indicted but was stayed until criminal proceedings were completed (ABCNews.go.com, 2006).

Under the settlement, Stewart agreed, without admission of guilt, to the maximum penalty of $195,000, a five year ban from serving as director of a public company, and a five year limitation on the scope of her service as an officer or employee of a public company. Stewart is prohibited from participating in financial reporting, financial disclosure, internal controls, audits, SEC filings, and monitoring compliance with the federal securities laws.

On November 8, 2006, Martha Stewart Living Omnimedia announced that Martha would contribute $5 million of her own money to settle a $30 million class-action lawsuit brought by investors who alleged Stewart lied about a 2001 stock sale of ImClone shares. In a filing with the Securities and Exchange Commission, the company stated it would pay $15 million for its part of the settlement, while insurers would pay the remaining $10 million.

IMPACT ON MARTHA STEWART LIVING OMNIMEDIA

The price of Martha Stewart Living Omnimedia (MSO) stock fell abruptly when news of her involvement in the ImClone stock scandal hit the press. Prior to public release of the alleged crimes, MSO stock was selling at approximately $19 per share. On October 3, 2002, the day Douglas Faneuil cut a deal with federal prosecutors, MSO stock closed at $6.21, a drop of 67 percent in just four months (Steinhaus, 2004).

Martha Stewart resigned her post with the New York Stock Exchange on October 3, 2002. On June 4, 2003, hours after learning she had been indicted on obstruction of justice, lying, and securities fraud, Martha Stewart resigned as chairman and CEO of Martha Stewart Living Omnimedia. Advertising sales and circulation for Stewart's magazine,

Martha Stewart Living, continued to sink as news of her crime and impending trial made headlines.

MARTHA SPEAKS

From the time the news first broke about Martha Stewart's alleged involvement in stock fraud until the day she left prison, Stewart maintained her innocence. On the day news broke about Stewart's sale of ImClone stocks, during her regularly scheduled appearance on CBS's *Early Show,* Martha was asked by host Jane Clayson about the stock probe. Martha declared, ''I will be exonerated of any ridiculousness.'' When Clayson continued to inquire about Stewart's involvement, Stewart curtly replied, ''I want to focus on my salad because that's why I'm here.'' On November 7, 2003, Martha told ABC News that while she was terrified of prison, ''I don't think I will be going there'' (Steinhaus, 2004).

MEDIA COVERAGE

On any given day, there are hundreds, if not thousands, of newsworthy events. Yet, the coverage of the Martha Stewart stock scandal unequivocally demonstrates that not all events are considered equally newsworthy. According to the report, *An American Progress Action Fund* (2005), each year, ABC, CBS, and NBC devote approximately 25,000 minutes to news. Analysis of 2004 coverage revealed that ABC, CBS, and NBC network nightly newscasts aired a total of 26 minutes on the Darfur crisis, an ongoing armed conflict in the Darfur region of western Sudan that has resulted in the deaths of over 400,000 people. In contrast, the Martha Stewart stock scandal received 130 minutes of evening news coverage.

The Martha Stewart stock scandal garnered more attention than other white collar crime. As it is, white collar crimes, such as those involving Martha Stewart, rarely make headlines. They are complex and not as easy to report as street crimes, which tend to have clearly defined perpetrators and victims. Bysong and Lidinsky (2003) conducted a search in a periodical database for articles about Kenneth Lay of Enron and found 434 articles. A search for articles pertaining to Martha Stewart produced 2,775 articles. Comparatively speaking, the coverage of the Martha Stewart case relative to that garnered by Kenneth Lay appears excessive, considering the extent of victimization in the Enron case.

The ubiquity of the Stewart case in the media coverage raises the question, ''Why... Why are Martha Stewart's offenses worthy of so much attention?'' To this question, there are multiple answers. Some have called attention to the gender biases still plaguing our society; others have pointed to her fame; yet, one can also argue that the profit-making interests of media organizations may be the core of the copious coverage.

The Role of Gender

A number of reporters have suggested that coverage of Martha Stewart during her trial was as intense as coverage of Hillary Clinton during her grand jury appearance. Clinton was the first First Lady to be subpoenaed by a grand jury when she testified about the Whitewater affair in 1996, a political controversy concerning the real estate involvements of Bill and Hillary Clinton and their associates in the Whitewater Development Agency. Matthew Hiltzik, senior vice president of Miramax, told reporters, ''Having worked for Hillary, I can say that there is a double standard for women'' (Carr, 2003).

Linda Wells, editor in chief of *Allure* magazine, made the compelling statement in the *New York Times,*

> Women tend to be forgiven for their ambition if they apologize for it. Martha refuses to apologize and she still hasn't, and she is paying the price for that. (Carr 2003)

In an article entitled, ''Martha and the Media: Soufflé, Scandal, and Sex Roles,'' authors Bysong and Lidinsky (2003) suggest that media coverage of Martha Stewart, before and after the stock scandal, ''reflects the larger problem of America's continued distaste for successful women and the gender biases that exist in this progressive age.'' Bysong and Lidinsky ask the question, ''Why are newspapers, television programs, and magazines so interested in destroying her image?'' According to Teresa Wajda, professor of Women's and American Studies at Kent State University, in her article, ''Kmartha,'' many Americans are uncomfortable with Martha Stewart because she represents an ideal that we have difficulty achieving. Stewart seems to easily balance all domestic chores and, at the same time, runs a successful business. We all want to balance family life and work life but it does not seem as easy as Martha Stewart makes it look. Wajda suggests that we do not necessarily enjoy seeing Martha handle everything so well and that, inevitably, we are a little jealous. Consequently, we may be a little happy that someone like Martha, or Martha herself, fails in some capacity.

According to Bysong and Lidinsky, ''our media reflects society's distaste for her perfection by reporting every foible Martha possesses or difficulty that comes her way.'' As a result, we do not have to strive for perfection anymore ourselves, because if little ''Ms. Perfect'' cannot achieve it, how can we? As Bysong and Lidinsky so eloquently put it, ''media coverage then simply shows us what we want to hear.'' Media coverage before and after the stock scandal focused primarily on trying to uncover Martha's imperfections and emphasize her failings.

David Carr (2003) of the *New York Times* suggested,

> Timeless themes of greed and deception may take on an added resonance when juxtaposed with a woman who has held out her lifestyle and her products as exemplars of perfection.

Yet, the media's overcoverage of Martha Stewart's stock scandal may be less about perfection and more about American's inability to embrace powerful women in business. Historically, a woman in a position of power has had to demonstrate that ''she is 'one of the boys' even while struggling to maintain her sense of femininity'' (Zweigenhaft and Domhoff, 1998).

Despite advancements in the workplace, women are still a small minority in leadership positions for major corporations. In 2005, only ten women ran a Fortune 500 company and only 20 women ran a Fortune 1000 company; moreover, the proportion of women running these types of corporations has remained relatively stable for several years (Fortune 2006). ''[T]he confident, highly successful business woman is not the norm, and we, as a society, cannot necessarily relate to her nor are we particularly ready to do so'' (Bysong and Lidinsky, 2003). Bysong and Lidinsky further assert that the media coverage of the stock scandal ''serves as a fatherly finger-wagging reminder not to break with gender roles, especially in business.''

The Role of Celebrity

While gendered expectations may have played a role in the attention Martha Stewart's case garnered, others would argue that Martha Stewart's fame drove her case to the media spotlight. Although Prosecutor James Comey told reporters, ''Martha Stewart is being prosecuted not for who she is. But because of what she did'' (Healey, 2004), there was a great deal of speculation in the press that it was, in fact, *who* she was, not what she did, that got Stewart in trouble. Judith Briles (2003), in the *Denver Business Journal,* echoed Carr's statements stating, ''the more visible you are and the more successful you are, or perceived to be, the more often people will try to take you down.'' Because Martha Stewart is a ''high profile, success-obsessed entrepreneur'' this makes her ''an attractive target for prosecutors'' (Steinhaus, 2004). Fredrick Pollack (2004) stated in the *Independent Newspaper* at Harvard that ''it would seem that Ms. Stewart's gross offense against society—the one for which she faces years in a federal penitentiary—is being an arrogant, take-no-prisoners successful businesswoman . . . easy to dislike, rich and famous, the securities fraud equivalent of Leona Helmsley, with ten years as a stockbroker to boot.''

LEONA HELMSLEY

Leona Helmsley and her husband were real estate giants, owning luxurious hotels and prime real estate in New York. Leona Helmsley became a household name as a result of her successful campaigns to boost the occupancy of her luxurious hotels. Leona's obsession for perfection was well known, and she earned notoriety for the way she derided those who worked for her; gossip columnists called her the ''Queen of Mean.'' The manner in which she conducted herself with employees and contractors would later come to haunt her. In 1983, the Helmsleys purchased a Greenwich, Connecticut, estate known as Dunnellen Hall. They invested millions of dollars in renovations, falsified business expenses in order to evade paying taxes, and often attempted to avoid paying people who worked for the Helmsleys by claiming they overcharged or those who worked on the repairs to their property did a substandard job. Eventually, contractors sent invoices to the *New York Post,* the manner in which the Helmsleys comported their business was revealed, and, eventually, the couple faced 188 counts of tax fraud.

Compound her economic power with her name recognition, and one gets a perfect formula for newsworthiness. Jeffrey Toobin, a *New Yorker* writer and legal analyst for CNN told the *New York Times,*

> This is the most famous criminal defendant in the United States since O.J. Simpson; Toobin went on to say, ''with the Martha story you are going to have the *Wall Street Journal* slugging it out with the *National Inquirer.* This is a business story, a criminal story, a sociological story, and a decorating story.'' (Carr, 2003)

In essence, what Toobin's comment is speaking to is the wide audience who would recognize and who can be drawn into the Martha Stewart scandal. Obviously, the *Wall Street Journal* allusion points to Martha Stewart's prominent position in the corporate world. The criminal story alludes to the prominence of scandalous stories in the contemporary news media. The sociological story taps into the general population's awareness of the shifting gender roles with which many Americans are trying to strike a balance. Many know Martha because ''she highlights our [women's] struggle for independence and a loving home''; her products and programs make ''the impossible purchasable,'' where there is ''a one-stop shop, for everything from bed to kitchen to garden, where one thing

stylishly builds on another'' (Neuman, 1996), and make women, struggling to balance work and home obligations, feel their obligations (and ideals) for the home do not have to be compromised by their obligations at work. Thus, a news story with Martha Stewart would capture the attention of those who believe Martha enabled domestic ideals to be attainable. Similarly, the decorating story alludes to the peripheral, inconsequential coverage that appeals to those who view news as a form of entertainment. Martha is a celebrity whose fame is premised on her ability to sell style; thus, it comes as no surprise that one was able to witness ''news accounts'' of Stewart's arrival at the federal courthouse in Manhattan focusing primarily on Stewart's attire and accessories (Anderson, 2003). The media had multiple audiences to which they could appeal.

The Role of Profit-Making

The role of celebrity speaks to something insidious about the media. The reason the Martha Stewart scandal was so ubiquitous was not because of newsworthiness of the story; it was because of the large audience the media could capture. In 1911, Will Irwin wrote,

> The American newspaper has become a great commercial enterprise. . . It has followed inevitably that the controlling head of most newspapers, the so called publisher is not an editor but a businessman.

Because the publishers are businessmen,

> When the Publishers Association meets in the national convention, it does not discuss methods of news-gathering nor editorial problems. The addresses treat of the price of white paper, of new machinery, of organization for extending circulation, of the advertising rate. (Irwin, 1911, p. 122)

What was true in 1911 is true in the twenty-first century; the news media—be it in print, on television, or the Internet—is in the business of making a profit.

Profits, according to Charlotte Ryan (1991), however, ''are not derived from quality and quantity of news but from the quality and quantity of the audience in terms of buying power'' (p. 121). The primary goal of the news business is not to deliver news but to deliver an audience to advertisers. And, Toobin's statement regarding the multitude of stories embedded in the Martha Stewart scandal allude to the multitude of audiences that impacts advertising dollars, which is media revenue.

Martha Stewart's celebrity also feeds into the profit-making goal of mainstream news media because of the way media corporations operate to maximize profits. According, to Ryan (1991), there are common notions of what is newsworthy that facilitate news production and the maximization of profits for the news organization. Ryan suggests that the criteria for newsworthiness fall into three general categories—''publicness or public recognition, importance, and interest'' (p. 31). The Martha Stewart scandal satisfies all three criteria.

The first criterion, publicness, speaks to the need of public recognition that there exists a problem. A few years before the Martha Stewart scandal broke, a host of white-collar crimes were making mainstream headline news. In 2002 Penelope Patsuris of *Forbes Magazine* provided a ''Corporate Scandal Sheet'' that listed corporations involved in scandals, the dates when the scandals went public, the allegations against the corporations, and the latest developments at the time of the publication of the article; 22 corporations were

included in the list, with the perhaps most egregious and most notorious scandal associated with Enron, when in October 2001 it became known that Enron boosted profits, hid debts, manipulated the Texas and California power markets, and bribed foreign governments to win contracts. During October, November, and December of 2001, mainstream media offered a steady stream of reporting on the unscrupulous behavior of Enron's executives. White collar criminal activity was beginning to look less like isolated incidents. Martha's Stewart's ImClone stock sales seem to be ripe for scrutiny; the public had been well-groomed to see white collar crime as a social problem; and the media were in a position to pander to the news fad—stock market scandals, even if Martha's transgression seemed inconsequential compared to the other allegations circulating about other corporations.

A reason why the Stewart stock sales garnered so much attention may also be due to Ryan's second criterion of newsworthiness—importance. According to Ryan, ''an event's newsworthiness depends on the importance of the institutions or people involved'' (p. 32); she goes further to say that, ''Often. . .media focus not on the institution but on the institution's most visible leaders. Assignment editors make coverage decisions based on the 'famous face' criterion'' (p. 33). This would explain why articles covering Martha Stewart's allegations surpassed coverage of Enron's scandals by more than six articles to one. What the other corporate scandals lacked, the Martha Stewart scandal had an abundance of—name and face recognition. Martha Stewart's ubiquity in the media prior to the scandal made any event with which she was associated newsworthy. Martha's cookbooks were best sellers; she authored newspaper columns, magazine articles; she was a spokesperson for Kmart; she was editor in chief of a magazine; she had her own television show; she had a Web site and a catalog business. In 1996, *Time* identified her as one of the 25 most influential people of the year. Her name was synonymous with her corporation—Martha Stewart Living Omnimedia.

The third criterion for newsworthiness is interest, meaning that the

> [m]ainstream media want a good story, U.S.-style good story that is—fast, dramatic conflict with a clear resolution. . .that elicits strong emotions, not just ideas. (p. 34)

And, again, Martha's scandal provided all of that. To make a story engaging, the editors need basic facts and a story that can grab an audience and is amenable to sound bites, succinct statements that can relate to a story and tap into emotions.

Many of the previous corporate scandals alleged fraudulent accounting practices that are sometimes difficult to relay in short sound bites. Martha's improper stock sales, however, centered on what could be conveyed as a simple, either-or issue—Did Martha Stewart lie to investigators? Were documents altered to support her lies? Thus, the media did not have to talk about fraudulent account practices; they simply had to talk about phone calls, phone messages, and ''doctoring'' the records—things with which just about every American is familiar, things to which just about every American can relate. Thus, the story is easy to convey and captures the attention of a diverse audience.

Relying on the three criteria—publicness, importance, and interest—are cost-saving and cost-reducing practices. By focusing on things that are already on the public's radar screen, the media does not have to invest resources in uncovering and understanding new themes/issues that may be of interest or may become of interest to the public; news organizations can simply continue with the news fad of the time. The Martha coverage

was simply riding the crest of white collar scandals. By focusing on importance—specifically famous faces—editors and reporters limit their attention to those who already garner much attention; thus they do not have to invest resources in legitimating coverage of unknown figures. Because of her name recognition, Martha was a prime target. But the story to be told about was also relatively easy to tell. Stories that are easy to convey and elicit emotion require little time and resources. Standing outside the courthouse, recounting the events of the day, describing what Martha was wearing and how she was looking was relatively cost effective for the size of audience whose attention would be captured. Very little background work had to be done to tell this story about Martha Stewart, and that could be translated into revenue for the media.

Criticism of the Federal Judicial System and the Media

''While it is fashionable to say that the press has 'missed the story,' in this case it absolutely is true. The 'real story' here is that the government once again is abusing its powers and that the press is greasing the skids. Free press, indeed'' (Anderson, 2003). According to William L. Anderson, economics professor at Frostburg State University, in his article *Martha and the Media,* the Martha Stewart case became famous only because someone on the Congressional committee investigating her sales of ImClone stock ''illegally leaked'' information about the case to the *New York Times.* Anderson expressed concern as to why no one expressed interest ''in solving what is perhaps the only real crime committed in this whole sorry affair.''

Martha Stewart did not receive a fair trial. Although Martha Stewart was never formally charged with insider trading, she might as well have been (Mahoney, 2004). The securities fraud charge against Stewart essentially accused her of committing a crime when she publicly proclaimed her innocence of the crime of insider trading. Because her claims of innocence had a positive impact on stock prices of her own company, prosecutors charged her with securities fraud. During opening statements, the prosecution repeatedly referred to Stewart's violation of insider trading laws. Judge Goldman Cedarbaum ruled that Stewart could not argue that she had not committed insider trading despite not being charged with insider trading.

> By preventing the defense from even addressing the motive that the prosecution cleverly, but indirectly, dangled before the jury, Judge Cedarbaum crippled the defense. Since neither side tackled the insider trading issue, the jury no doubt assumed that Stewart has committed the crime. It would be natural for a jury to conclude that if the defense wasn't contesting illegality of the ImClone stock sale, Stewart must be guilty of insider trading. (Mahoney, 2004)

The mainstream press never questioned the criminalization of Martha's defense. According to Anderson,

> the legal, not to mention Constitutional, ramifications of this charge are immense, yet nowhere does any mainstream journalist in either print or broadcast media mention this. Instead, we hear the ''new twist'' description (Stewart's charge of securities fraud), when in fact what we are seeing is absolute abuse of the law.

Mahoney (2004) states that

> the Federal Justice System is not a level playing field where even-handed prosecutors pursue real criminals. Federal prosecutors enjoy a 98% conviction rate, not because they are brilliant or even above-average legal minds or pursue only the truly guilty, but because the rules in Federal District Court are slanted so far in their favor that their victory is nearly guaranteed.

Gene Healy (2004), senior editor at the Cato Institute, a nonprofit public policy research foundation, agrees,

> Whatever one thinks of the doyenne of domesticity, her case holds important lessons. Not about the arrogance of the rich or the dangers of being a powerful woman in America. Instead, the Stewart case is a cautionary tale about the ever-expanding power of federal prosecutors.

Interestingly enough, according to Healy, it is not the first time James Comey, the federal prosecutor driving the Stewart case, contemplated taking down a high-profile defendant. ''In mid-2003, Comey considered prosecuting fabulist Jayson Blair for the hitherto unknown crime of making stuff up in the New York Times.'' Healy, like Mahoney, suggests that the federal judicial system is so rife with problems that anyone is fair game for prosecution by the federal government. In a commentary piece entitled, ''The Real Lesson of the Martha Stewart Case,'' Healy discusses a famous speech given in 1940 by then-Attorney General Robert Jackson, warning federal prosecutors,

> with the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. ''The great danger,'' according to Jackson, ''was that the prosecutor will pick people that he thinks he should get, rather than pick cases that need to be prosecuted.''

Almost 70 years later, there are more than 4,000 federal crimes described in the U.S. Code, an increase of over one-third since 1980 (Healy, 2004).

> Martha Stewart is hardly the only American to feel the full weight of the federal government come down on her for an offense that merits a civil penalty at worst.

MARTHA STEWART LIVES ON

Prior to the onslaught of media attention to the case, many people had very derisive opinions about Martha Stewart. Fans of her magazine, TV show, recipes, and the like adored Martha. But others, referring to media reports of her treatment of employees, friends, and family members, would likely refer to Martha in more denigrating ways. A made-for-television film starring Cybill Shepherd as Martha Stewart did not paint Martha in a flattering light. Earlier biographies about Martha Stewart told the story of a woman who would make it to the top no matter who she had to step on in the process.

In many ways, Martha Stewart's legal trouble actually gained her more popularity in the eyes of the public and more sympathy. A recent biography, *Being Martha: The Inside Story of Martha Stewart and Her Amazing Life* (2006), by Lloyd Allen, a personal friend of Martha's, describes Martha as charismatic, complex, determined, and passionate. Allen sympathizes with Martha and presents a more compassionate story than has been presented in previous biographies. Martha's image as well as her business suffered immensely

in the months and years immediately following the announcement of criminal charges. However, since her release from prison in 2004, Martha and her image have risen from the ashes. She has regained national prominence. She has expanded her Kmart line, released two new books, and is a regular contributor on NBC's *The Today Show*. In October 2005, Martha Stewart Living Omnimedia launched a line of Martha Stewart homes to be constructed by KB Homes. Today, Martha hosts a TV talk show that was recently renewed for a third season in October 2006 and recently launched a new line of products with Kodak. Martha Stewart is proving that even negative publicity will not slow her down.

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16

The Scott Peterson Trial: The Drama that Shaped Legislation

TIMOTHY R. LAUGER

At 5:47 on Christmas Eve 2002, Ron Grantski called the Modesto, California, Police Department to report that his stepdaughter was missing. The dispatcher recorded a simple description of the missing woman: Laci Peterson, white female, 26 years old, 5 feet 1 inch, dark hair and dark eyes, eight months pregnant (Crier, 2005). Her family, including husband Scott Peterson, had begun to search a nearby park where Laci frequently walked their golden retriever. Modesto police quickly arrived on the scene and attempted to assemble a basic understanding of the events leading to Laci's disappearance.

Scott Peterson had been the last person to see Laci, and questions quickly turned towards Scott's activities earlier that day. Scott Peterson told police that he had spent most of Christmas Eve day fishing nearly 90 miles away off the shores of Berkeley, California. After watching *Martha Stewart Living* with his wife, Scott said he left the house at about 9:30 that morning as Laci mopped their entryway. She planned to walk the dog and prepare for Christmas day activities. Scott stopped by his nearby work-related warehouse to pick up his recently purchased boat. He left the warehouse between 11:00 and 11:30 and, according to a parking receipt, arrived at the Marina at 1:00. Police quickly identified the substantial gap between Scott's arriving and leaving the warehouse. Scott said he spent that time checking his email, sending a holiday note to his employer, and assembling a woodworking tool. Though Peterson said he was fishing for sturgeon and striper, the purpose of the trip was primarily to get his new boat in the water. He did not spend much time offshore as he left Berkeley Marina around 2:15. Upon leaving the Marina, Scott called Laci and left a message; he would leave one more message before arriving at the couple's home. After quick stops at a gas station and the warehouse, Scott returned home at approximately 4:30 to find the couple's dog roaming the yard with a dirty leash still attached to its collar. Noting the seawater on his clothing and having missed lunch, Scott ate some leftover pizza, put his jeans and sweatshirt into the laundry, and took a shower. He then called his in-laws to ask if Laci was there. After hearing she was not Scott said, ''Laci's car is at the house, and McKenzie is in the backyard with his leash on, Laci is missing'' (Crier, 2005)

What began as a simple missing person report and a suspicious husband would soon turn into a melodrama that captivated the entire country. On December 26, a local newspaper, the *Modesto Bee,* covered Laci's disappearance. Later that week on January 1, 2003, the *San Francisco Chronicle* ran the first of over 300 stories covering the case. The story became a national media event drawing attention from major television personalities. Within the first week of Laci's disappearance the Modesto Police chief had done interviews with ABC's *Good Morning America,* NBC's *Today,* and CBS's *The Early Show,* and CNN interrupted its programming one afternoon to show the Police Department's news conference live (Phillips, 2002b). Six months later media attention had not subsided. By July 2003 the case had been analyzed 37 times on Fox's *The O'Reilly Factor,* 34 times on CNN's *Larry King Live,* and 20 times on MSNBC's *Hardball* (Kurtz, 2003). The following February, months before trial, the USA network broadcasted *The Perfect Husband: The Laci Peterson Story* and attracted the biggest made-for-television movie audience in two years with more than five million viewers (Booth & Edds, 2004). Media and public interest remained for the duration of Scott Peterson's trial. By November 2004 the end of the trial continued to dominate cable news despite an ensuing presidential election (Booth & Edds, 2004).

Almost two years passed before a jury convicted Scott Peterson of murdering his pregnant wife and sentenced him to death by the State of California. Given the case's ability to remain in the public's consciousness during those years, a salient concern of this chapter is to understand the forces behind such momentum. Events following the disappearance of Laci Peterson resembled a well written drama designed to keep the audience's attention throughout the duration of the story, and the media was given ample opportunity to develop a thorough characterization of relevant participants. Laci Peterson proved to be an ideal newsworthy victim who captured the sympathy of a vast audience. Scott Peterson, in contrast, evolved into a detestable figure demonized by the emotional masses. The Peterson trial helped solidify the narrative by reinforcing each actor's role and providing a more concrete reconstruction of the events before, during, and after Laci's death. More significantly, the case offered a tangible example of a criminal homicide involving a pregnant woman, and it reopened political discussions of fetal homicide. Should the fetus be considered a second victim in a homicide? Widespread media coverage fueled public outrage about Laci's murder, and such sentiment translated to strong support for politically conservative federal laws that determined a fetus to be a separate victim of a homicide. Pro-choice advocates considered these laws to be a major setback in the fight to uphold *Roe v. Wade.*

Prearrest Events: A Character-Driven Plot

Laci Peterson: The ''Ideal'' Victim

Unlike other California-based high profile cases that involved celebrities, such as O.J. Simpson or Michael Jackson, or highlighted racial antagonism as in the Rodney King case, the disappearance of Laci Peterson involved only nondescript, albeit sympathetic, actors and had no initially apparent connection to pressing social issues. In addition, disappearances are relatively common. In 2002 and 2003, the years in which Laci was considered missing, the FBI recorded approximately 1.6 million reported missing person's cases (U.S. Department of Justice, 2005). During these years California recorded just over 9,000 persons missing due to suspicious or unknown circumstances (State of California

Department of Justice, 2005). Stanislaus County, where Laci disappeared, reported 266 persons missing due to suspicious or unknown circumstances (State of California Department of Justice, 2005). While media decision-makers generally focus on more serious and atypical crimes, they quickly defined the Peterson disappearance as ''newsworthy'' (see Surette, 1998), and the case quickly gained media attention.



Figure 16.1 This undated handout photo from the Modesto Police Department shows Laci and Scott Peterson. © AP Photo/Modesto Police Department Handout.

Initial media and public interest partially reflected Laci's status as the potential victim of a serious crime. Research on media coverage of homicides, for example, suggests that incidents involving multiple victims, white victims, vulnerable victims, or young female victims, and those that occur in relatively wealthy neighborhoods, draw more media attention (Johnstone et al., 1995; Paulsen, 2003; Weiss & Chermak, 1998). Though her disappearance was not originally presented as a homicide, Laci, a vulnerable white young female who lived in a middle class neighborhood, embodied the ideal newsworthy victim. Indeed, friends described Laci as exceptionally friendly and always fun to be with. Referring to Laci's pregnancy, a friend lamented that ''This was the most exciting time for her. . .She has a happy, perfect life here'' (Phillips, 2002a). Soon after the disappearance the *Modesto Bee* article printed an article about sentimental moments in Laci's life. Her mother described how happy Laci was during her childhood. She reminisced about Laci exploring the family's farm, playing in her grandparent's swimming pool, hosting slumber parties, going to college, and falling in love (Phillips, 2003). Such efforts presented a relatable characterization of Laci that allowed the audience to experience her as a daughter, sister, or friend. Laci's family also effectively utilized media sources to create public awareness about her disappearance. They acquired the services of an agency specializing in attracting media attention to missing person cases, and established a $500,000 reward for her safe return. Initial statements by police and family focused on finding Laci before her due date, and the media initially functioned as a tool to help in the search for Laci and subsequent investigation of her disappearance. These collective efforts succeeded in gaining public support as within a week after the disappearance, roughly 1,200 people attended the vigil held to honor Laci and Conner, her unborn son (Lee, 2003a), and over 2,200 community members volunteered to help find Laci (DeFao, 2003b).

Despite momentum in the early stages of Laci's disappearance, within a few months the case began to stall. While the *San Francisco Chronicle* ran 16 stories about Laci in the two months following her disappearance, in March 2003 it ran only two Peterson-related stories. One story stated that police officially considered Laci a homicide victim (Lee, 2003b), and the second story described unsuccessful searches for Laci's body in San Francisco Bay (DeFao, 2003c). There would not be another story for over a month. The case regained momentum on April 13, 2003, when the body of an intact near-term male infant was

THE NEWSWORTHINESS OF CRIME VICTIMS

While the media quickly determined Laci to be a sympathetic victim that appealed to a mass audience, other victims have not received such attention. In fact, the disappearance and eventual murder of Laci Peterson mirrored a case that occurred only six months earlier in nearby San Francisco. Evelyn Hernandez, a 24-year-old legal immigrant from El Salvador, and her five-year-old son were reported missing on May 7, 2002. Hernandez was nearly nine-months pregnant when she disappeared. Police considered her married boyfriend and father of the unborn child to be a suspect in the disappearance. Media reports, though scarce, only minimally developed a characterization of Hernandez. The *San Francisco Chronicle* described her as a dedicated single parent who worked multiple jobs and received disability for complications during pregnancy (Van Derbeken, 2002). In late July a human torso was found in San Francisco bay and after a month of DNA testing, police verified that it was Evelyn Hernandez.

The Hernandez case garnered little media attention. The *San Francisco Chronicle* printed approximately ten stories about Evelyn Hernandez; four of these focused on or mentioned the Laci Peterson case. Television media virtually ignored the case (St. John, 2003a). Noting a disparity in coverage between the Peterson and Hernandez cases, astute observers suggested that journalistic decision-making largely shaped the attention each case received (Dorfman & McManus, 2003; St. John, 2003a). Newspapers and other media outlets are sources of entertainment and must tell stories that are not just important but interesting. Though Hernandez's role as a victim closely resembled that of Laci Peterson, her socioeconomic and racial description did not correspond with the ''ideal'' newsworthy victim status. Her story would not resonate with the public.

found on the shores of San Francisco Bay about 75 miles from Modesto. The well-preserved body had a piece of rope-like material wrapped around the neck that seemed to be knotted at the back. On Monday, April 14, 2003, a badly decomposed female torso washed to shore only a mile away from the location of the infant. It was missing a head, forearms, hands, the left leg, and both feet (Lee & Labriola, 2006). Within a few days DNA tests identified them as Laci and Conner. The causes of their deaths would never be determined.

As Laci's role shifted from the missing wife of an unfaithful husband to a certain victim of a serious and violent crime, the media and public revisited their obsession (Orth, 2004). Despite war in Iraq, during the week of April 12 through April 20, 2003, the three highest-rated cable programs were on the Fox News Channel and all occurred on the night Laci's body was found (Hartlaub, 2004). Nationally respected newspapers, which had previously resisted covering the case, became more attentive. In the over four months prior to April 13 the *New York Times* printed two Peterson-related stories. Between April 14 and April 27 this number increased to 11 stories. Sustained momentum in high profile cases is often a reflection of their ability to awaken compassion throughout the public (Chermak, 2002). Certainly the image of Laci's death and subsequent disposal haunted the public. The circumstances of the crime invoked a collective response that reinforced

boundaries of morality in society. Simply put, attractive, young, pregnant white women from middle class neighborhoods are not supposed to be murdered and deliberately dumped into the ocean. An emotionally invested audience mourned the loss of Laci and Conner. In a representative display of public sentiment 3,000 friends, family members, and strangers attended Laci's public funeral, requiring some to watch the service via a closed-circuit television feed in overflow rooms (Finz & Fagen, 2003).

High profile cases often gain and maintain momentum by providing attention to social issues that become focal points for public concern and bureaucratic or legislative reforms (Chermak, 2002). As the audience remained captivated by the melodramatic aspects of the case, underlying social and political issues provided additional impetus. Laci's role as the victim of a serious crime and the arrest of Scott Peterson helped bring attention to the relatively high amount of violence experienced by pregnant women (see St. George, 2004). The leading cause of death of pregnant women is murder (Chang et al., 2005; Horon & Cheng, 2001). Out of every 1,000 pregnant women 170 are assaulted by their partners in the last five months of pregnancy (Ablow, 2005). While the Peterson case illuminated the serious problem of partner abuse, it also reinvigorated debates about abortion. California, along with 28 other states, defines a fetus as a separate victim of a homicide (Johnson, 2004). In years prior, conservatives repeatedly failed to pass federal legislation that defined a woman and fetus as separate entities in homicides. Some liberal commentators identified that incidents of fetal homicide juxtapose demands for stricter domestic violence laws with desires for reproductive rights (Miya-Jervis, 2001). Others warned that fetal homicide laws represented conservative ploys to legislate antiabortion agendas under the guise of protecting women from violence (Campbell, 1999). The murder of an eight-months-pregnant Laci Peterson provided an ideal case of fetal homicide for an emotionally invested audience. One self-defined liberal journalist acknowledged the "undeniable truth that Conner's destruction was criminal" and lamented that the case created a pro-choice paradox: how can feticide be considered criminal when abortion is not (Peyser, 2004)? Widespread grief over Laci's murder coupled with the demonization of Scott Peterson could only have reinforced a retributive sentiment toward violent offenders against pregnant women.

Scott Peterson: An Evolving Demon

Police arrested Scott outside of a prestigious golf course in San Diego a few days after discovering the bodies of Laci and Conner. In what was another example of a long list of questionable activities, Scott, who had recently dyed his hair blond and grown a goatee, was arrested with over $10,000 in cash and camping gear in the trunk of his car. Despite a strong denial from Scott's family, police suspected he was going to flee the country. On April 22, 2003, the day after Scott's initial court appearance, the *New York Post* used its entire front page to clearly develop the role that Peterson would play throughout the remaining drama. Dressed in a red jail-issued jumpsuit, Peterson was shown to be shackled and escorted by a uniformed officer. In bold print above the picture the *New York Post* unabashedly wrote, "Monster in chains." By this time the public had, to some extent, embraced the characterization of Scott as a monster. Immediately following the arrest, police drove Peterson from San Diego to the Stanislaus County jail where a crowd of approximately 200 people gathered outside the jail to mock Scott (May & Squatriglia, 2003). After his incarceration people drove by the jail yelling "murderer" or "hang him" (St. John, 2003b). Given that physical evidence for Scott's guilt was nonexistent and the



Figure 16.2 Scott Peterson is led into Stanislaus County Superior Court to be charged with murder in the deaths of his wife, Laci Peterson, and unborn son, Conner, 2003. © AP Photo/Ted Benson, Pool.

case itself was only in the beginning stages of the criminal justice process, such sentiment was not grounded in verified facts.

Scott's role as the monster in this story was instead the result of character development in the context of an emerging narrative. In response to the natural suspicion directed towards the husband, Scott's initial characterization was idyllic but entirely inaccurate. Friends and family adamantly refuted the mere possibility that Scott was somehow involved with Laci's disappearance. In its first Peterson-related story the *San Francisco Chronicle* article reported a devastated Scott Peterson searching for his missing wife. Scott's sister publicly stated, ''If you knew Scott like all of his friends and family know him, there's not even a remote possibility that he would be involved in anything about Laci's disappearance'' (Lee, 2003a). Assertive denials of Scott's involvement were accompanied by unwavering descriptions of the Peterson's perfect marriage. The couple, according to friends and family, still resembled honeymooners after five years of marriage (DeFao, 2003a). A neighbor stated, ''I never heard them argue or look upset... They're what you would classify as a totally normal family'' (DeFao, 2003a). A friend said that Laci and Scott were ''just giddy over each other'' (St. John & Finz, 2003). Furthermore, the couple was eagerly anticipating the arrival of Conner; Laci had decorated the nursery with a nautical theme, and Scott had built a table for it (DeFao, 2003b). Thus Scott's introduction to a mass audience was primarily shaped by confident but naïve friends and family eager to diminish suspicion. His role as a husband, son, friend, and future father reflected an ideal that resonated with the viewing public.

The deconstruction of this ideal coincided with awareness of Scott's marital unfaithfulness, habitual lying, and atypical behavior. On January 18, 2003, the *San Francisco Chronicle* reported that Laci's family believed Scott was having an affair and had lied to them on multiple occasions (DeFao, 2003b). Almost a week later Amber Frey, a 27-year-old massage therapist and single mother, publicly acknowledged that she was having an extramarital affair with Scott Peterson. Claiming ignorance of Scott's marital status, Amber began dating Scott in mid-November approximately one month before Laci's disappearance. Though the scandalous nature of Frey's role helped sustain public interest, it more importantly reshaped Scott's public persona. Family and friends quickly withdrew support and questioned their assumptions about Scott's innocence. Laci's brother, for example, announced that Scott had not been forthcoming with information about Laci's disappearance, and he wondered what else Scott was hiding. He then told the media he

was no longer supporting his brother-in-law (Finz, 2003a). The rift between Scott and some family members paralleled growing reservations among the masses. Was the coexistence of Scott's affair and Laci's disappearance merely coincidence?

Other well-documented events contributed to Scott's character development. For example, facing intense media and public scrutiny, Scott agreed to multiple television interviews. Though intended to alleviate pressure and refocus media attention on finding Laci, Scott's responses seemed poorly contrived and devoid of emotion. Many viewed the interviews as bad performances (see Crier, 2005; Lee & Labriola, 2006). When the bodies of Laci and Conner were found in San Francisco Bay near where Scott had been fishing, the public's attachment to Laci and its growing resentment toward Scott left little room for coincidence. That Scott appeared to be fleeing the country when he was arrested merely added to such belief. Eager for both a target and an explanation, the public accepted Scott's atypical behavior as evidence of guilt. Long before the presentation of factual evidence most considered him guilty; many thought him to be a sociopath. More colloquial explanations found comfort in the term ''monster.''

Pretrial Events

Soon after Scott's arrest, the Petersons hired high profile attorney Mark Geragos. Recognizing the irreconcilable damage to Scott's public persona, the defense sought to establish reasonable doubt in the minds of the hostile audience. In addition to reminding the public of due process ideals, the defense began to propagate two subthemes intended to counter a widespread presumption of guilt. First, Geragos attacked local police by claiming their investigation was composed primarily of ''voodoo tactics'' inadmissible in a court of law. The defense suggested that police relied on psychics, voice-stress analyzers, and people who study facial expressions (Finz & Fagen, 2003). Although the prosecution had accumulated approximately 30,000 pages of evidence, most remained unknown to the vast audience. Without justifying or explaining Scott's behavior, the defense began to publicly challenge the factual merits of the prosecution's case.

Second, Geragos suggested that the court process would vindicate Scott and lead to the arrest and prosecution of the real killers. The ''real killers'' theme became particularly salient in the ensuing months as the defense openly discussed various theories about who killed Laci Peterson (for full discussion see Dalton, 2005). On May 10, 2003, for example, Geragos said the searches for the ''real'' killers were progressing nicely and they were looking for a particular young lady who may prove to be a vital witness. In addition, the defense noted multiple promising leads and stated that they were investigating some ''incredible'' information (Finz, 2003b). The most familiar theory involved satanic gangs and ritualistic child sacrifice. Satanic groups, according to local lore, were not uncommon in the San Francisco Bay area, and they had been the focus of media attention before (Lee & Labriola, 2006). Claiming that Laci had been abducted from her neighborhood, Geragos stated he was looking for a tan or brown van that had been seen near the Peterson's home on the day Laci disappeared. On June 4, 2003, the defense announced it had made great progress in the search for Laci's killers (Lee, 2003c). Approximately a week later, a judge issued a gag order limiting communication between courtroom actors and the media. Though the ''real killers'' theme would continue through cable news analysis and periodic leaks from prosecution and defense, overt or noncourtroom related attempts to manipulate public opinion subsided.

Following intense media coverage of the preliminary hearing that both fueled the public's emotional response to Laci and Scott Peterson and presented the factual basis for the prosecution's case, jury selection provided a formidable challenge. The defense argued that Laci's beloved celebrity status coupled with intense negative media attention toward Scott created a ''lynch mob'' atmosphere that was ''downright hostile'' (Lee, 2003d). According to Geragos, Scott had been demonized as an outsider in the local community. The judge agreed and ordered a change of venue to nearby Redwood City in San Mateo County. The change of venue could have had only a limited effect as media coverage and public interest was far reaching. By mid-February 2004, approximately one month before jury selection began, the USA television network aired a movie titled, *The Perfect Husband: The Laci Peterson Story* (Walsh, 2004; Goodman, 2004). Cable television was not the only media outlet utilizing the sensational nature of the Peterson case. Local FM radio station KNEW placed two billboards near the San Mateo County courthouse encouraging people to call in and vote on Scott's guilt or innocence (Taylor, 2004). Fully embracing the characterization developed earlier by the *New York Post,* these billboards also used the picture of Scott shackled and wearing the jail-issued red jumpsuit. In bold print they asked, ''Man or monster?'' The radio station also placed a similar sign in the back of a pickup truck and drove around town; at times, until the judge ordered its removal, they parked the truck in front of the courthouse.

Jury selection began on March 22, 2004, and it proved to be an arduous process. Because of the saturation of media coverage and public attention the case received, the court struggled to find an adequate number of potential jurors. In sum, the court interviewed 1,500 people over almost three months and finally settled on a pool of 76 potential jurors (Finz, 2004a). Adding to the difficulty, the court encountered two stealth jurors, individuals who lie so that they can serve on a jury and manipulate it accordingly. One elderly woman, according to a ''tipster,'' was overheard on a bus saying that Scott was ''guilty as hell'' and that he was ''going to get what was coming to him'' (Walsh & Finz, 2004a). In the other case another ''tipster'' notified the defense that a woman claiming objectivity demonstrated strong bias against Peterson during online chat sessions (Walsh & Finz, 2004b). The judge summarily dismissed both potential jurors. On May 27, 2004, lawyers spent a mere 53 minutes to select 12 jurors and six alternates. Throughout the course of the trial the unsequestered jury members faced challenging circumstances as coverage of the case did not diminish. Media infatuation eventually led to nicknames and widespread analysis on the character of each juror. By the end of the trial three jurors would be dismissed from the case for various problems. The first was caught on tape innocently talking to Laci's brother, and he admitted to talking about the case to his girlfriend. The court dismissed a second juror for engaging in online research during deliberations. After days of contentious deliberations and merely six hours before the verdict, the judge dismissed the jury foreman for reasons that remain unclear.

THE CRIMINAL TRIAL

In the first week of June 2004, approximately 18 months following Laci's disappearance and 14 months after Scott's arrest, the prosecution and defense presented their opening statements. As with all homicide cases, facts must be reconstructed to tell a story about events before, during, and after the crime (Barak, 2004). Such contextualization not only contributes to a determination of guilt or innocence but also establishes the purposes or intentions behind the crime. The strength of the prosecution's case is largely based on

the competency of their reconstruction. How persuasively can the prosecution convince the jury that their story accurately reflects the actual crime? Facts provide the boundaries of such reconstructions so that strong cases involve only limited possibilities. With an absence of convincing physical evidence, the police and prosecution built a case that would organize a plethora of circumstantial evidence into a coherent story about Scott and the events surrounding Laci's murder. While the defense effectively challenged that reconstruction through cross-examination, they promised and ultimately failed to provide a more satisfactory explanation of Laci's death. This insistence proved to be a fatal mistake as it forced the jury to ponder the adequacy of two competing and unequal stories. They ultimately sided with the prosecution and agreed that Scott murdered his pregnant wife.

The Prosecution: Developing a Case on Circumstantial Evidence

Despite an absence of strong physical evidence, witnesses, and knowledge about how Laci actually died, prosecutors tediously presented a coherent and reasonable account of Laci's murder. The lead prosecutor described the case as a jigsaw puzzle. Each piece of evidence did not alone clarify the larger picture or the events surrounding Laci's death. Instead, evidence had to be placed together so that each piece represented a small element of a greater story. Using facts to frame the story, prosecutors relied on 178 witnesses to reconstruct the events before Laci's disappearance and to provide a damning characterization of Scott. Though not complete, the following provides a brief overview of the prosecution's case against Scott Peterson.

According to prosecutors, Scott killed Laci in the couple's home during the night or early morning hours of December 24, 2002. He thoroughly cleaned the house, wrapped the body in a tarp, and placed it either in a large tool chest in the truck bed or under a pile of large umbrellas. After leaving the house around 10:00 a.m., Scott stopped by his warehouse to pick up his boat and left sometime between 11:00 and 11:30. Parking receipts verified that Scott arrived at the Berkeley marina at 1:00 p.m. At some point, either in the warehouse or marina, Scott transferred the body from the truck to the boat and tied multiple homemade anchors to the body. He then took the boat out to a suitable location and dumped the weighted body into the bay. Never intending to fish, Scott took the boat back to shore and drove home. To appear innocent of the crime, Scott called home during the return trip and left messages for Laci. He stopped by the warehouse to return the boat and then went home. Worried about any potential evidence on his clothes or body, Scott did a load of laundry and took a shower. After phoning Laci's parents and patronizing them with a question about Laci's whereabouts, Scott stated that Laci was missing.

When detectives arrived on the scene that evening they walked through the house with Scott and continued to ask him questions. Detectives noted an indentation in the couple's neatly made bed and later suggested that is where he placed Laci after the crime. Scott had recently done a small load of laundry consisting only of clothes worn earlier that day. The kitchen floor appeared to have recently been mopped, and there was a bucket with wet mops placed just outside of the home. Despite media reports that blood and vomit were found in the mops, forensic scientists found no physical evidence supporting such claims. Tiny drops of Scott's blood were, however, found on the couple's bed sheets and on the inside door of Scott's truck. Police also noted that a rug in the entryway was pushed against a wall as if something had been dragged through that area. When asked, Scott said the dog and cat must have messed it up and he straightened the rug. Laci's purse and

jacket were still in the home. Police found five four-feet-long umbrellas wrapped in a tarp in the back of Scott's truck.

The ensuing investigation of Scott's warehouse yielded about as many clues. Detectives found a piece of hair consistent with Laci's in a pair of pliers located in Scott's boat. They also found white outlines in the boat that vaguely resembled homemade concrete anchors. Even though Scott recently bought an 80 pound bag of cement mix, police found only one ten-pound homemade anchor in Scott's boat (for full discussion of evidence see Lee & Labriola, 2006).

While evidence fit the prosecution's reconstruction of the murder, it would not be enough to convince a jury of Scott's guilt. The prosecution's theory was, however, strengthened by two interwoven themes that provided a characterization of Scott that convincingly demonstrated guilt. First, Scott exhibited atypical behaviors after Laci's disappearance that seemed to imply his involvement in the crime. The police officers who initially arrived at the Peterson's home found Scott's behavior suspicious and quickly identified him as a viable suspect. During initial conversations with police about his activities before Laci's disappearance, Scott failed to answer or had difficulty answering simple questions. Scott did not initially reply when asked what he was fishing for. He also struggled to specify the bait he used just hours earlier. Police were troubled when Scott quickly gave them a parking stub to prove his whereabouts earlier that day. They had not asked for proof. Within hours of Laci's disappearance police targeted Scott Peterson as the prime suspect.

During the first formal interview with Scott only seven hours after the missing person report, police were again troubled by abnormal behavior. For example, Scott received a phone call from Laci's sister during the interview and never asked if they had found Laci. A few times Scott referred to Laci or Laci's behavior in the past tense. At the end of the interview Scott asked for information on grief counselors for Laci's friends and families (Crier, 2005). Such behavior would be repeatedly noted by friends, family, and police over the ensuing months. Other events that supposedly implicated Scott include but are not limited to the following: soon after Laci's disappearance Scott sold Laci's car and talked to a real-estate agent about selling the house, he seemed apathetic and was often preoccupied with mundane things, Scott ordered hard-core pornography on his television only three weeks after Laci disappeared (for a full discussion see Bird, 2005). In what police identified as behavior consistent with a killer returning to the scene of the crime, Scott traveled to the Berkeley marina three times, stared at the bay for approximately ten minutes and left. He would also taunt police officers as they tailed him and would drive erratically to lose them. Scott's efforts to change his appearance by dying his hair and growing facial hair, coupled with the large amount of cash, camping gear, and his brother's driver's license in his possession during his arrest, suggested that Scott was planning on fleeing the country.

The second theme, which was articulated most effectively through the testimony of Amber Frey, characterized Scott as a self-absorbed liar who demonstrated no concern for Laci before or after the disappearance. During the trial, Amber Frey recounted her brief but intense relationship with Scott Peterson. Amber and Scott met for the first time on November 20, 2002, and dated only a few times before Laci's disappearance. He seemed to be the ideal boyfriend and immediately bonded with Amber's three-year-old child. Unaware of Scott's marriage, Amber trusted her new boyfriend and was generally excited about the relationship's prospects. However, a few weeks into the relationship

Scott tearfully confessed to Amber that he had been married but his wife was no longer with him, and this would be the first holiday season that he would be alone. Though upset, Amber accepted Scott's apology. To the prosecution, however, these comments seemed like an odd foreshadowing of Laci's ensuing disappearance. Not coincidentally, the confession occurred the same day Scott purchased his boat.

In addition to her testimony, Amber cooperated with police to record numerous phone conversations with Scott after Laci's disappearance. While the recordings did not directly prove Scott's guilt, their content captured both Scott's lying and apparent lack of concern for Laci. For example, the jury heard a taped conversation between Amber and Scott on December 31, 2002, only a few hours before Laci's vigil. He wished Amber a happy New Year and told her he was in Paris with some friends. Amber received another call from Scott at midnight, only hours after Laci's vigil, in which he ensured her that the relationship would grow and told her "we could fulfill each other . . . forever" (Crier, 2005, p. 143). Scott, calling from his home in Modesto, told Amber that he would be out of the country for the next month. Though Scott's exorbitant lies were certainly damaging, the timing and content disturbed police, prosecution, and ultimately the jury. His optimism for the future implied that Scott, free of his marital and parenting responsibilities, could focus on other relationships. Later conversations continued to reinforce the prosecution's characterization of Scott. When finally confronted about Laci's disappearance, Scott denied his involvement but repeatedly insisted he would later explain everything. Scott avoided questions about Conner and at times seemed to imply that Conner was not his son. Scott stated that despite being married he had never been unfaithful to Amber. Although he had never taken a polygraph test, Scott told Amber otherwise and promised to show her the results. In what proved to an unbelievable statement to the jury, Scott even suggested that Laci knew about his relationship with Amber and it did not bother her.

The prosecutor presented a complicated circumstantial case that adequately reconstructed the events before, during, and after Laci's death. In what was described an exceptional closing statement (Crier, 2005), the District Attorney recounted this story and emphasized both the crime's horrific nature and Scott's callous behavior. He also reminded the jury that Laci's and Conner's bodies were found in the same area where Scott had been fishing. This, according to the prosecutor, was not coincidence.

The Defense: Reasonable Doubt and a Flawed Counterstory

The defense of Scott Peterson can be divided into two components. First, during cross-examinations defense attorneys skillfully challenged expert and lay testimony. They continually undermined elements of the prosecution's case by questioning the relevance of evidence and challenging the capabilities of criminal justice personnel. To some extent, they began to construct a counterstory that focused on overeager mistake-prone police officers. Scott was, indeed, a "cad" and exhibited "boorish" behavior but, according to the defense, there was no evidence that he killed his wife. Second, the defense sought to provide an alternative and ultimately unbelievable account of Laci Peterson's death.

During cross-examination the defense depicted Modesto police officers as incompetently overeager as they presumed Scott's guilt too quickly. Did evidence lead police to believe that Scott was guilty or did the early belief that Scott was guilty lead police to find evidence? If the latter was true, police could construe almost anything to fit their leading theory. Given that detectives seemed fixated on Scott within the first hour of Laci's disappearance, the defense argued they ignored alternative suspects and misinterpreted

TIMELINE

2002

Nov. 20	Scott Peterson and Amber Frey's first date.
Dec. 24	Scott goes fishing and Laci Peterson is reported missing.
Dec. 30	Amber contacts police.

2003

Jan. 1	Laci's vigil and infamous phone conversation.
Jan. 24	Amber introduced to public.
April 13	Body of fetus found.
April 14	Laci's body found.
April 18	Scott Peterson arrested.
May 5	The Unborn Victims of Violence Act (Laci and Conner's Law) introduced to the U.S. House of Representatives.
Oct. 29	Preliminary hearing begins.
Dec. 3	Scott Peterson arraigned.

2004

March 4	Jury selection begins.
May 27	Jury selected.
April 1	The Unborn Victims of Violence Act becomes law.
June 1	Opening statements.
June 23	First juror dismissed.
Aug. 10	Amber Frey testifies.
Oct. 21	Defense expert crumbles.
Nov. 1 & 2	Closing statements.
Nov. 3	Deliberations begin.
Nov. 9/10	Second and third jurors dismissed.
Nov. 12	Guilty verdict.

2005

March 16	Scott sentenced to death.

evidence to support their theory. As such, relatively mundane items such as the messy rug, indentation in the bed, and washed clothes were all recorded as evidence of Scott's guilt. The defense noted also multiple reasons for why Laci's hair was found in the boat. She was, after all, married to Scott. Either she had been in the warehouse or some of her hair was on Scott's clothes. They demonstrated that police mistakenly explained how the alleged anchors were made by Scott and then argued that the extra cement had been used in Scott's driveway. At one point, Geragos questioned Scott's ability to dump a weighted body into the bay without tipping the boat. Such statements could not be supported or refuted as police never tried to recreate the alleged act. Most importantly, the defense identified that the police could not verify how and when Laci died. The prosecution's case had been constructed from a series of misconstrued facts shaped according to a presumption of Scott's guilt.

In addition to challenging police and prosecution interpretation of case facts, Scott's defense team also offered reasonable explanations for some of Scott's atypical behavior. He sold Laci's car because she disliked it. Given that Scott was continually pursued by both tabloid and news media outlets, he was accustomed to being followed and often drove erratically to avoid them. Evading media attention was also the primary motivation for Scott's altered appearance. On the day he was arrested, Scott's mother had given him money to buy a car because police had tampered with his previous vehicle. He had his brother's ID because he was going golfing and wanted to get a resident discount at the club. Visits to the Berkeley marina merely allowed Scott to check on the progress of searches for Laci. Given the cold temperatures, the holiday season, and timing of Scott's fishing trip, Laci's stepfather openly doubted the validity of Scott's fishing trip. Yet during cross-examination he acknowledged that he was also fishing on the morning of Laci's disappearance. Such contradictions frequently undermined accounts of Scott's strange behavior. A relative, for example, testified that he followed and observed Scott sitting in a mall parking lot for 45 minutes. When cross-examined he admitted that following and watching Scott for that period of time was also strange behavior. The point was clear: what is typical behavior in the context of extreme circumstances?

While Scott's defense team attempted to deconstruct the factual merits of the prosecution's case and offered reasonable explanations for some of his strange behaviors, they could not question the contents of the taped conversations between Scott and Amber. To challenge the prosecution's original theory that Amber was the primary motive for Laci's murder, defense attorneys attempted to minimize the seriousness of the relationship. They suggested it was unreasonable to assume that Scott would kill his wife after only four dates with another woman. Amber acknowledged that Scott never said, ''I love you.'' He also clearly told her on their first date that he traveled often and would be around inconsistently. She was a ''good time girl,'' and the relationship exemplified lust and not love (Finz & Walsh, 2004a). Though acknowledging that Scott's behavior was detestable, the defense argued that his habitual dishonesty and strange statements to Amber were merely consistent with the behavior of many womanizing men. Such a point was not entirely lost on the jury. In response to media questions, the first juror dismissed from the trial would state ''Honestly, guys say pretty stupid stuff to get a girl'' (Crier, 2005, p. 381). The defense hoped that if placed in this context, Scott's conversations with Amber were less damning.

Some experts suggested that Geragos created an ample amount of reasonable doubt during cross-examination and he may not have needed to present a formal defense of

Scott Peterson (Finz, 2004b). Most agreed that attempting to prove his ''real killers'' theory would be a critical mistake as it would shift the burden of proof from the prosecution to the defense. Yet during opening statements, Geragos charismatically promised to provide evidence that proved Scott was ''stone cold innocent,'' and failing to meet those expectations may have disillusioned the jury. Despite high expectations, the formal defense of Scott Peterson, which began in mid-September 2004, lasted approximately one week and was decidedly underwhelming. The defense called only 14 witnesses (Finz & Walsh, 2004b). Their counterstory of the events surrounding Laci's death depended on the timing of Conner's death. An expert witness for the defense testified that Conner lived for five days after Laci's disappearance. As such, someone other than Scott, who was heavily monitored during those days, kidnapped Laci and kept her alive for a few days. The perpetrators were transients who engaged in satanic rituals and child sacrifice. When cross-examined by prosecutors, however, the expert witness admitted that his conclusions were drawn from flawed assumptions about when Conner was conceived. The key for the defense became an embarrassment, and their attempt to provide a reasonable explanation of Laci's death failed.

A Verdict: The Audience Rejoices

Following closing statements, jury deliberations began on November 4, 2004, and ended when the jury unanimously found Scott guilty on one count of first degree murder for the death of Laci Peterson and one count of second degree murder for the death of Conner Peterson. In a representative display of public sentiment, approximately 1,500 spectators gathered outside the courthouse and responded to the verdict with joy (Gaithright, Taylor, & Van Derbeken, 2004). According to a defense memo, as jury members left the courthouse they were cheered by the crowd ''as if they were members of a winning Super Bowl team'' (Finz & Walsh, 2004c). A juror would later describe the cheers as disturbing (Crier, 2005). The same jury reconvened approximately four months later to sentence Scott Peterson. On March 16, 2005, over two years following Laci's disappearance, Scott Peterson was sentenced to death for the murders of Laci and Conner Peterson.

PUBLIC SENTIMENT AND LEGISLATIVE CHANGE

The mass appeal of the Peterson case largely reflected a narrative that began to emerge within days of Laci's disappearance. As a young attractive middle class white female who was eight months pregnant, Laci personified the model newsworthy victim and the audience became enthralled with her story. Scott's initially idyllic characterization exacerbated the effects of his habitual lying, strange behavior, and marital unfaithfulness. Long before the presentation of facts the public demonized Scott for his callous behavior and alleged participation in Laci's murder. Such sentiments only grew during pretrial and trial events, culminating in a cathartic release following Scott's conviction. The interplay between a sympathetic victim and despised criminal offered more than a quality story line; it provided a stage for a significant political issue. With public sentiment strongly protective of Laci-like victims and especially hostile towards their potential abusers, conservative politicians returned to their previously failed attempts to legislate federal fetal homicide laws.

In May 2003, less than one month after the bodies of Laci and Conner were found, ''The Unborn Victims of Violence Act'' was introduced to the U.S. House of

Representatives. The Act defined a violent attack against a pregnant woman as two distinct crimes: one against the woman herself, and the other against her fetus. As a federal law it would have limited impact on criminal courts and could be applied only to rare situations in which a crime was committed on federal property, against federal employees, or by members of the military (The Library of Congress). Though pragmatically insignificant, the act had powerful symbolic ramifications. It recognized a woman and fetus as separate beings and granted rights to the fetus. As conservatives minimized the bill's impact on the abortion issue by discussing it in terms of protecting women from violence, liberals argued that the bill threatened women's reproductive rights. Pro-choice advocates viewed the bill as a major setback that if passed could lead to a reversal in *Roe v. Wade* (Ryan, 2004). In response to these concerns, liberals presented an alternative bill that increased penalties for violence against women without defining woman and fetus as separate beings (Epstein, 2004). Such efforts were summarily dismissed by the conservative House.

Before they introduced The Unborn Victim's of Violence Act, conservatives gained the support of Sharron Rocha, Laci's mother, and attached Laci and Conner's name to the bill (*Washington Post,* 2003). Rocha publicly pleaded with the democratic party to recognize that homicides of pregnant women involve two victims. She wrote, ''When a criminal attacks a woman who carries a child, he claims two victims. . .I lost a daughter, but I also lost a grandson'' (Eilperin, 2003). During an interview with Court TV, Rocha sobbed, ''We feel that [Laci's unborn son] Conn[e]r was a person—there wasn't one murder, there were two murders'' (Sheehy, 2003). Only one month separated these pleas from the discovery of Laci and Conner's bodies, and a grieving mother strengthened what many in the public felt at that time. Polls indicated that roughly 80 percent of the American population supported the ''Laci and Conner'' Law (Orin & Bishop, 2004). The strength of public sentiment carried the bill to a conservative victory in the senate in the spring of 2004, and on April 1, 2004, President Bush signed the act into law (The Library of Congress). Sharon Rocha stood at his side.

FINAL THOUGHTS

During 2003 and 2004, the disappearance and subsequent murder of Laci Peterson unexpectedly turned into a national media event. The public, which became remarkably invested with the characters involved in the case, has moved on to other interests. As of February 2007 Scott Peterson resides on death row in California's San Quentin State penitentiary. Amber Frey has regained her private life. Jurors have struggled to reenter normality as some have experienced mental breakdowns and signs of post-traumatic stress disorder (Adams, 2007). During the 2004 presidential election, President Bush ran a series of commercials challenging democratic candidate John Kerry's stance on The Unborn Victims of Violence Act. Referencing Laci Peterson, the commercial stated that Kerry did not support legislation that protected pregnant women from violence (Sandalow, 2004). He won the election. The abortion debate, undoubtedly altered by the Peterson case, remains contentious and continues to polarize American society.

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17

The Abu Ghraib Torture and Prisoner Abuse Scandal

MICHELLE BROWN

Twenty miles west of Baghdad, the city of Abu Ghraib houses one of the most infamous prisons in contemporary history. Under the rule of Saddam Hussein, Abu Ghraib Prison stood as the site where thousands of political dissidents were incarcerated, tortured, and executed. Suspected to have contained as many as 50,000 people at once and to be home to some of Hussein's most ingenious torture devices, the site was a national symbol of brute oppression. In 2004, in the midst of the American occupation of Iraq, the prison, then renamed the Baghdad Central Confinement Facility, again emerged as a site of international notoriety when American news media aired disturbing and graphic photos of members of the U.S. Army Reserve torturing and abusing Iraqi detainees.

Warning Signs

In the aftermath of the fall of the Hussein regime in April 2003, Coalition Forces took over the then deserted and stripped Abu Ghraib Prison, renovating and retrofitting the facility for military use. By fall, the facility contained several thousand prisoners, including men, women, and children, largely divided into three categories: common criminals, security detainees or insurgents accused of crimes against the Coalition, and a small group of suspected high-value intelligence leaders of the insurgency movement with possible Al Qaeda links (Hersh, 2004). Most of these prisoners had been picked up in the midst of random security sweeps and were, in retrospect, by and large not of any major intelligence value (Taguba, 2004). Army Reserve Brigadier General Janis Karpinski, the only female commander in the war zone, was placed in charge of the Iraqi prison system, although she and most of the army reservists under her command had no experience working in prisons or with detainees. Across 2003, the prison became the site of several detainee escapes and riots. In response to escalating conditions and information needs, military intelligence requested that Tiers 1A and B (the tiers that came to be known as

the ''hard site'' and were the locations for most of the photographed abuse) be placed under their control for the explicit purpose of interrogation of high-value detainees. In October, the 372nd Military Police Company was brought in to oversee the tiers alongside of military intelligence, resulting in two types of chain of command in a single unit. One month later, in November 2003, Specialist Matthew Wisdom, a member of the 372nd, filed the first formal complaint reporting prisoner abuse in the prison at the hard site, but the complaint was ignored. In January 2004, roughly six months after Abu Ghraib became operational again, Specialist Joseph Darby placed an anonymous note and a compact disc, given to him by Spc. Charles Graner, under the door of a division officer in the U.S. Army Criminal Investigation Command. The disc was filled with photographs depicting members of the 372nd, including Graner, engaged in acts of abuse and torture against detainees. Darby's act triggered the investigation that led to the implication and ultimate conviction of seven soldiers in the 372nd. That same month, Karpinski was formally suspended in connection with undisclosed criticisms, and an internal and undisclosed military investigation was launched under the leadership of Major General Antonio Taguba.

According to conclusions made in the Taguba report, the first internal investigation of the 800th Military Brigade (which oversaw Iraqi prisons), the 372nd, amidst riots, escapes, and insurgency, engaged in ''sadistic, blatant, and wanton criminal abuses'' against prisoners (Taguba, 2004). These documented acts include shooting and beating detainees, acts of sodomy and rape, videotaping and photographing naked male and female detainees, many in sexually explicit postures and forced sexual performances, arranging detainees in human piles and jumping and sitting on them, simulating electrocution, using dogs to intimidate and in some instance injure detainees, keeping detainees naked and awake for days at a time, holding detainees in isolation cells without recourse to running water, toilet, ventilation, or windows, exposing detainees to extremes of heat and cold, pouring chemicals and cold water on detainees, and posing with photographs of dead detainees. According to this and later independent and internal investigative reports (Schlesinger, 2004; Jones & Fay, 2004), the company was made up of individual soldiers caught inside an institutional contradiction, following orders but with little direct oversight or clear guidelines in the proper handling of detainees or interrogation procedure. According to the Taguba report, poorly trained, inexperienced, understaffed, and facing limited resources and extensive service in prisons and war zones, soldiers in the 372nd were being asked to ''provide a safe, secure, and humane environment'' that simultaneously supported ''the expeditious collection of intelligence'' by ''setting the conditions for successful exploitation of the detainees'' (Taguba, 2004, p. 5).

Over the next few weeks as the Taguba report and Abu Ghraib photos slowly began to circulate through military hierarchy and across government agencies, human rights organizations continued to issue warnings regarding reported abuse and its potential escalation at various off-limits war prisons administered by the United States. Both the International Committee of the Red Cross and Human Rights Watch expressed concern over possible human rights violations at U.S. detention facilities from the beginning of the war on terror, including a list of 20 detention facilities in Afghanistan (Bagram, Kandahar, Jahalabad, and Asabadad) (Brody, 2004; ICRC, 2004). In Iraq, international rights violations were raised at Camp Bucca, Abu Ghraib, and other undisclosed facilities. These watchdog agencies attributed emergent patterns of abuse across war prisons to the practices first implemented at Camp X-Ray (now Camp Delta) at Guantánamo where it

was argued that standard operating procedure brought with it new tactics and strategies in detention and interrogation that violated international conventions for the treatment of prisoners during wartime (Brody, 2004; Hersh, 2004). In the aftermath of the Abu Ghraib scandal, a debate about legal authority and jurisdiction in the confinement of ''enemy combatants'' and ''detainees'' would ensue that would eventually lead all the way to the U.S. Supreme Court where definitions of torture, the constitutionality of indefinite detention, and the powers of both the executive and judiciary branches in the midst of a war on terror would be tested and redefined (Greenberg and Dratel, 2005). The scandal would come in many ways to serve as a turning point in the war, one in which the review and scrutiny of the Bush administration became suddenly possible in public discourse.

The Scandal Breaks

On April 28, producers at *60 Minutes,* in an agreement with the U.S. military, were the first to broadcast what came to be known as the Abu Ghraib photos. Within minutes, the story achieved international media attention. The report was shown after a two week delay on the part of the Department of Defense and only when CBS learned that *The New Yorker* might preempt their coverage as they planned to publish the photos alongside of Seymour Hersh's groundbreaking investigation of the abuses in the next few days, regardless of government requests for postponement. Hersh's work was posted online on April 30 and then published and referenced across the May editions of the *New Yorker*. A complete account of his investigation, which relied heavily upon confidential sources at high levels inside the Department of Defense and the Bush administration and an undisclosed copy of the Taguba report, was eventually published in book form as *Chain of Command: The Road from 9/11 to Abu Ghraib* by HarperCollins in 2004.

In the *60 Minutes* report, photos taken in the fall of 2003 were shown that depicted members of the 372nd engaged in acts that matched the documented offenses listed in the Taguba report. The segment headlined a photo of Specialists Charles Graner and Sabrina Harman giving an enthusiastic thumbs up while standing and crouched, respectively, over a human pyramid of naked Iraqi detainees, heads covered in sandbags. Specific images that quickly spread across the globe and various modes of media (Internet, television news and commentary, print journalism, etc.) also included the now infamous photos of Specialist Lynndie England posing with a prisoner on the ground tethered to a dog leash and, in another photo, giving a smiling thumbs up, while smoking and pointing at a naked detainee who appears to be masturbating. Other photos depicted a hooded detainee attached to electrodes standing on a box, Charles Graner poised to punch a pile of restrained detainees on the ground, Ivan Frederick sitting atop the back of a restrained naked detainee lying prone on the ground, the use of dogs by military dog handlers to terrify inmates, inmates forced to engage in sexual acts, naked inmates covered in what looks like fecal material, and photos of Sabrina Harman and Charles Graner posing with a dead detainee on ice in a body bag, who was later identified as Manadel Al-Jamadi. The graphic photos were quickly archived and made available at numerous Web Sites, including http://www.salon.com/news/abu_ghraib/2006/03/14/introduction/ and http://www.thememoryhole.org/war/iraqis_tortured/. As more photos and video were gradually released across the ensuing months, the archives continued to grow.

In the immediate aftermath of the *60 Minutes* story, Abu Ghraib dominated media discourse across the world and in a manner that is distinct from other cases in this volume due to the international scope of the case in legal, political, and cultural debate. Because of their graphic and visual nature, the photos remained the primary source of debate across the scandal, although the nature of their shock value and the meanings of the photos themselves remained a site of national and international contest. Most news and political commentators argued that what made the photos particularly surprising, disturbing, and horrific was not simply the images of torture during wartime or in prison but the apparent patriotic delight of the torturers, of America ''out of place.'' International criticism and outrage pointed to the manner in which the existence of such photos denied the primary American justification for military intervention in Iraq—liberation—as the photos clearly depicted irreconcilable images of democratic liberators proudly engaged in torture.

FRAME ANALYSIS

Frame analysis is both a theoretical approach and a methodology with interdisciplinary roots in sociology and communication studies. Its application involves the examination of the processes by which an event, movement, or issue is framed in public, political, and media discourse. It gives careful attention to how meaning is constructed around events or issues and the manner in which dominant ideologies emerge from these practices. In sociology, much of framing research focuses upon the ways in which experience is organized through interpretive frames and how events are socially constructed through the investment of diverse kinds of meanings (Goffman, 1974). In communications, framing analysis largely involves an examination of how issues and events, such as the Abu Ghraib scandal, are packaged by various interest groups with certain kinds of frames achieving dominance in public discourse. In the course of examining media coverage of Abu Ghraib for the purposes of this chapter and other research, careful attention was given to the manner in which dominant frames developed across news media through a systematic coding process that plotted the emergence of key frame and package ''signature elements,'' including the ways in which metaphors, exemplars, and catchphrases recur across coverage as well as how depictions of Abu Ghraib seek to explain the roots of the event, map its consequences, and appeal to particular kinds of principles.

Others were not surprised at all. Journalist Mark Danner identified the soldiers' actions at Abu Ghraib as ''a logical extension of treatment they have seen every day under a military occupation that began harshly and has grown, under the stress of the insurgency, more brutal'' (Danner, 2004, p. 4). Cultural commentator Slavoj Zizek insisted, ''In the photos of the humiliated Iraqi prisoners, what we get is, precisely, an insight into 'American values,'' a ''flipside'' to public morality, premised in the obscene, where soldiers perceive torture and humiliation as acceptable (2004). In other contexts, some conservatives expressed outrage at the outrage itself, claiming the event was media-generated: Conservative talk radio host Rush Limbaugh, for instance, garnered criticism and support when he publicly argued that the soldiers were just ''blowing off steam'' and having ''a good time'' in a war zone where people were trying to kill them (Meyer, 2004). Senator James Inhofe, a Republican member of the Senate Armed Services Committee, stated that he was ''more outraged by the outrage'' than the abuse itself, arguing that the detainees were ''murderers, they're terrorists, they're insurgents'' (Henry, 2004). Former Vice



Figure 17.1 Spc. Sabrina Harman and Cpl. Charles Graner Jr. pose behind naked detainees with bags placed over their heads placed into a human pyramid in late 2003 at the now infamous Abu Ghraib prison. © AP Photo.

President Al Gore achieved widespread media attention when he gave a speech that openly blamed the Bush administration for an ''incompetent'' war plan that had led to Abu Ghraib, stating, ''In Iraq, what happened at that prison, it is now clear, is not the result of random acts of a few bad apples. It was the natural consequence of the Bush Administration policy'' (Gore, 2004). The *New York Times, The Boston Globe,* and *The Economist* all openly demanded Rumsfeld's resignation. International media coverage continued to be overwhelmingly critical of the American political stance in connection with the war on terror and the scandal intensified already growing anti-American sentiment abroad. Middle Eastern news warned of potential retaliatory acts and an escalation of the insurgency in Iraq. Then, on May 11, video footage of the beheading of American citizen Nick Berg was released by a militant group headed by Abu Musab al-Zarqawi who claimed the act was retaliation for the abuses at Abu Ghraib.

In the midst of massive international political and media attention, two dominant frames for understanding the event emerged, both centered upon how to attribute accountability. The frames are exemplified in a series of interviews conducted by Dan Rather during the course of the original news-breaking *60 Minutes* segment. In an interview with then Deputy Director of Coalition Operations in Iraq, Brigadier General Mark Kimmitt, the general responded to the reported events with the following:

> The first thing I'd say is we're appalled as well. These are our fellow soldiers. These are the people we work with every day, and they represent us. They wear the same uniform as us, and they let their fellow soldiers down . . . and if we can't hold ourselves up as an example of how to treat people with dignity and respect, we can't ask that other nations do that to our soldiers as well. So what would I tell the people of Iraq? This is wrong. This is reprehensible, but this is not representative of the 150,000 soldiers that are over here. I'd say the same thing to the American people. Don't judge your Army based on the actions of a few. (Rather, 2004)

Kimmitt introduced what would become a predominant legal and media frame in the scandal, the notion that the abuses were conducted by a small group of reservists who constituted ''a few bad apples.'' The depiction of Army Reserve Staff Sergeant Ivan ''Chip'' Frederick (who would later be charged and convicted in connection with the scandal) by *60 Minutes* countered this framing by describing how Frederick recorded in his journal and in letters home to family:

> We had no support, no training whatsoever. I kept asking my chain of command for certain things . . . like rules and regulations . . . And it just wasn't happening . . . MI [Military Intelligence] has been present and witnessed such activity. MI has encouraged and told us great job [and] that they were now getting positive results and information. (Rather, 2004)

Frederick's statements were used to introduce the notion of a systemic problem in the distribution and hierarchy of chain of command, an explanatory framework that would insist reservists were following orders and, by extension, would implicate far more than the reservists active at the hard site. These two perspectives and the tension between them would come to dominate public discourse in the months ahead as debates about how to explain and bring justice to the troubling events at Abu Ghraib carried forward.

THE COURT-MARTIALS

Across 2004 and 2005, the soldiers at center stage in the scandal were charged, tried, and convicted. Those most likely to be indicted in the scandal were those, in the end, who were most visible in the photographs. The accused were seven low-level reservists who were each charged under the Uniform Code of Military Justice and were subject to court-martial. A court-martial, like the military tribunal, is a military court but one that sanctions military personnel. The military tribunal, on the other hand, is used to try enemy combatants during wartime. The court-martial, unlike the military tribunal, exists within the scope of constitutional law, and is adversarial in nature including attorneys who represent the state and the accused and present cases based upon rules of procedure and evidence. This court is presided over by a military judge and, if invoked, a jury. The military tribunal, by contrast, is inquisitorial and may be held in secret, rules of evidence are more lax, and appellate processes are limited. Contemporary debate in the United States has centered upon the increased prevalence of the military tribunal, particularly in the trials of those designated enemy combatants at Guantánamo; however, in the case of Abu Ghraib, all trials reflected the military status of the accused and proceeded, consequently, under the jurisdiction and authority of the court-martials.

The first of several related cases was resolved in May 2004 when Specialist Jeremy Sivits, a 24-year-old soldier from Hyndman, Pennsylvania, who took some of the photographs at

TIMELINE

March 19, 2003	In a Presidential Address, George W. Bush announces that U.S. and Coalition military intervention in Iraq has begun.
Nov. 2003	Spc. Matthew Wisdom of the 372nd Military Police Brigade files the first formal complaint of prisoner abuse at Abu Ghraib, but the complaint is ignored.
Jan. 2004	Spc. Joseph Darby of the 372nd leaves a CD of photos depicting prisoner torture and abuse anonymously with military investigators. An internal investigation is launched. Brigadier General Janis Karpinski is formally suspended.
March 2004	General Antonio Taguba submits the first internal investigation report, claiming army reservists in the 800th Military Brigade engaged in ''sadistic, blatant, and wanton criminal abuses'' against prisoners. The report is not publicly released until May 2004. The International Committee of the Red Cross issues a report documenting serious violations of international humanitarian law in the treatment of prisoners by Coalition Forces.
April 28, 2004	The scandal breaks when graphic photos of alleged abuse and torture are aired on the CBS news program *60 Minutes II*.
May 7, 2004	Congressional Investigation begins.
May 11, 2004	Video is released of the beheading of American civilian Nick Berg by Islamist militants who claim it is retaliation for the prisoner abuse at Abu Ghraib.
May 17, 2004	Seymour Hersh publishes his influential article ''Chain of Command'' in *The New Yorker,* followed later that year by a full-length book.
May 19, 2004	Jeremy Sivits pleads guilty in a special court-martial in Baghdad and is sentenced to 1 year in a military prison, demotion, and a bad conduct discharge.
May 24, 2004	President George W. Bush announces plans to demolish the prison.
June 21, 2004	U.S. Military Judge Col. James Pohl rules the prison a crime scene, prohibiting any plans for its demolition.
Aug. 2004	The Schlesinger and Jones & Fay reports are issued.
Oct. 20, 2004	Ivan Frederick II pleads guilty and is sentenced to eight years in military prison, forfeiture of pay, demotion, and a dishonorable discharge.
Oct. 30, 2004	Megan Ambuhl pleads guilty and is sentenced to a reduction in rank to private and loss of a half month's pay.
Nov. 10, 2004	President Bush nominates Alberto Gonzales, legal architect of the war on terror, for the office of Attorney General. He is confirmed in February 2005.
Jan. 16, 2005	Charles Graner is found guilty and sentenced to ten years in a military prison, a dishonorable discharge, and the loss of all benefits.
Feb. 4, 2005	Javal Davis pleads guilty and is sentenced to six months in a military prison, demotion, and a bad conduct discharge.
May 16, 2005	Sabrina Harman is found guilty and sentenced to six months in military prison and a bad conduct discharge.
Sept. 26, 2005	Lynndie England is found guilty and sentenced to three years in military prison and a dishonorable discharge.
Sept. 6, 2006	U.S. control of the Baghdad Central Correctional Facility is officially remanded to Iraq.

the prison, accepted a plea negotiation and pled guilty of three counts of abuse. These charges included conspiracy to commit an offense, a charge linked to Sivits's having taken photos of naked inmates forced to form human pyramids, as well as failure to protect inmates from maltreatment and the commission of inmate maltreatment (UCMJ-Sivits, 2004). His father, David Sivits, argued that his son, a former McDonald's employee, was trained as a mechanic, not a prison guard, and was following orders. He was represented by First Lieutenant Stanley Martin of the U.S. Army Trial Defense Service who is reported to have argued passionately that Sivits was a good soldier placed in unusual circumstances. Martin was able to negotiate one of the most favorable of case dispositions for his client by way of a pretrial agreement that included Sivits's pivotal testimony against six other guards. During his four hour hearing, Sivits testified that he witnessed Charles Graner punch a naked detainee and Lynndie England stomp on the hands and feet of detainees. He also testified that military police stripped inmates and forced them to simulate and perform sexual acts with one another. His statements indicate that military intelligence was present and encouraged military police to conduct this kind of behavior, which, they argued, was assisting in successful interrogation of the detainees. Sivits is reported as having tearfully stated, "I'd like to apologize to the Iraqi people and to those detainees. I let everybody down. I should have protected those detainees that night" (Spinner, 2004). He also begged the judge not to discharge him from service. In the end, however, Sivits was sentenced to one year in prison, demoted, and discharged for bad conduct.

In October of the same year, the highest ranking actor to be charged in the scandal, Staff Sergeant Ivan "Chip" Frederick, age 37, pled guilty to conspiracy, dereliction of duty, assault, indecency, and maltreatment of detainees (UCMJ-Frederick, 2004). His plea agreement included admissions of guilt where Frederick testified that he had forced detainees to masturbate and simulate sexual positions, while photographing these and other acts. He also admitted to attaching electrodes to an inmate and placing him on a box as well as punching a prisoner in the chest with so much force that he required resuscitation. Frederick insisted in the months before his court-martial that he had received orders and authorization from superior officers to engage in these kinds of practices. He also insisted that efforts on his part to question the ways in which detainees were being treated were rebuffed as well as his pleas for more training and clear instructions on the proper handling of detainees under the Geneva Conventions. Importantly, Frederick kept a record of events at the prison, which indicated that military intelligence and other government agencies were present on the cellblock and were aware of abuses. Although Frederick had formerly been a corrections officer at a Virginia prison where his wife also worked and although he represented one of the few soldiers assigned to the unit with qualified prison work experience, he, nonetheless, admitted to committing all the acts he was accused of and his two day court-martial ended in a ten year sentence reduced to eight by way of a pretrial agreement. He was required to submit to forfeiture of pay, demotion to the rank of private, and dishonorable discharge.

In January 2005, specialist Charles Graner, 35, popularly considered to be the "ringleader" of the abuse and one of the more visible actors in the Abu Ghraib photos, was convicted of all charges, including conspiracy to commit an offense, maltreatment of detainees, failure to protect detainees, and assault, indecency, adultery, and obstruction of justice (UCMJ-Graner, 2004). Graner, like Frederick, had prison work experience and an extensive military record. He had previously served in the U.S. Marines after

graduating high school and was on active duty in the Gulf War during 1991. During Operation Desert Storm, Graner spent roughly six weeks at the largest prisoner of war camp in the war zone. He left the Marine Corps in 1996 after marrying and moved to a coal mining region in southwestern Pennsylvania. There he began work as a prison guard, eventually taking a position as a correctional officer at a maximum security prison, which also housed Pennsylvania's death row and had a record of abusive practices among its staff. At Greene, Graner faced numerous disciplinary charges (mostly for absence and tardiness) as well as a series of complaints and lawsuits centered upon misuse of force and making racist remarks. In 1997, Graner and his wife separated and over the ensuing years, she filed for three orders of protection against Graner who had become physically abusive with her. Graner was implicated in essentially all the acts conducted by the other soldiers at Abu Ghraib as well as a charge of adultery for having sexual intercourse with Lynndie England. These acts included coordinating the building of human pyramids; jumping, stomping, and punching restrained inmates in piles on the floor; forcing inmates to simulate and engage in sexual acts; posing in photographs of these abuses; and, like Harman, posing with the dead body of Manadel al-Jamadi. His obstruction of justice charge related to an incident in which Graner was said to have threatened Sivits who had grown concerned with practices in the unit. In depositions, detainees stated that Graner had cuffed them to cell bars and left them dangling for hours, had sodomized one detainee with a phosphoric light that eventually broke, spilling chemicals all over the inmate, and another with a baton, and had forced a female detainee to expose herself. In the end, all charges were dropped except for conspiracy to maltreat detainees, assault, and indecency, and the case proceeded to trial.

After a series of Article 32 hearings in Germany and Iraq, Graner's case was moved to Fort Hood, Texas, where on January 7, 2005, the trial began with jury selection. The ten-member jury was made up of four officers and six enlisted soldiers, all men, all having served in Iraq or Afghanistan. Graner testified that he was just following orders, that many senior officers were aware of activities on the tier and that this was why he was not afraid to share the photographs, which came to constitute evidence against him. The prosecution insisted that even if Graner was following orders, he should have known that they were illegal. Sgt. Joseph Darby testified that Graner had said of the abuse at Abu Ghraib, ''The Christian in me knows it was wrong, but the corrections officer in me can't help but want to make a grown man piss himself'' (Polk, 2004). Although Graner's defense attorney, Guy Womack, a retired JAG officer, had hoped to subpoena Vice President Dick Cheney, Secretary of Defense Donald Rumsfeld, and Lieutenant General Ricardo Sanchez (commander of the Iraq invasion), no senior officers or officials were ever required to testify. Graner was found guilty on January 16, 2005. Instead of the potential maximum of 24 and 1/2 years in prison, Graner was sentenced to ten years in federal prison—the longest and harshest of all sentences given in connection with the abuses. While serving time later that year, Graner married fellow Abu Ghraib guard Megan Ambuhl.

One of the most remarkable aspects of media coverage of the scandal centered upon the role of women in the commission of offenses, specifically the roles of Sabrina Harman and Lynndie England. In May 2005, Sabrina Harman, 26, was convicted of conspiracy, maltreatment of detainees, and dereliction of duty. She was sentenced to six months in prison and discharged for bad conduct. Harman, the daughter of a homicide detective, had worked as an assistant manager at a Papa John's Pizza franchise in Alexandria, Virginia, before she was deployed to Iraq. At the hard site, Harman stated that there were no



Figure 17.2 The now familiar photo shows an unidentified detainee standing on a box with a bag on his head and wires attatched to him in late 2003 at the Abu Ghraib prison. © AP Photo/File.

standard operating procedures and that Army Intelligence made up the rules as they went, insisting that the job of the military police was to keep prisoners awake and make them talk by breaking them down. Charges against Harman referenced a number of acts, including photographing and posing with the corpse of Manadal al-Jamadi, jumping on prisoners in a pile, and attaching wires to a detainee while he stood on a box with his head covered and then threatening him with electrocution if he fell (Spinner, 2004a). Although Harman was highly visible across the Abu Ghraib photos, it was Lynndie England who was subject to the highest degree of media attention of any of the convicted soldiers.

England, of Fort Ashby, West Virginia, joined the Army Reserve in 2001 after working as a cashier at a local grocery and in a chicken-processing factory, hoping to earn money to become a meteorologist and a storm chaser. She arrived in Iraq in 2003 where she was involved in an affair with Charles Graner (they were engaged at one point) and later became pregnant. Because of her pregnancy, she was transferred to Fort Bragg, North Carolina, to await trial, where she gave birth to her son in October 2004. England's mother, like the families of the other Abu Ghraib guards, insisted that her daughter was just following orders and that the government was attempting to place all accountability on low ranking soldiers. England was charged originally with 19 offenses, the most charges anyone faced, many of which were specifically attached to the acts she is photographed performing. These images include the notorious images of England pointing at hooded, naked detainees masturbating in a public corridor of the prison, England posed holding a dog leash placed around a naked detainee's neck, England and others posing with inmates piled on top of one another, and, finally, England and Harman posed with an inmate who had "rapeist" written across his buttocks. The sexualized nature of the photos and the prominence of women (England and Harman specifically) in them, often pointing at genitalia, lent credence to assertions that the photos were being used as a source of cultural humiliation, designed to degrade and dehumanize the male detainees. Eventually, the cameras were turned on the soldiers themselves. A charge of indecency was linked to photographs of England engaging in a sex act with Charles Graner.

In September 2005, Lynndie England, 21, was the last of the seven to be convicted of conspiracy, maltreatment, and indecency. England, the youngest of those to be charged, agreed to plead guilty in April 2005 in connection with a plea agreement that would have

reduced her sentence from 16 to 11 years, in what would have been the harshest of all of the sentences. Col. James Pohl, who served as the judicial authority in the Abu Ghraib cases, threw out the plea bargain when testimony by Charles Graner suggested England did not understand the impact of her acts nor understand that these actions were wrong. Graner had testified that he believed asking England to place a leash around a detainee's neck and pose for a photograph with him was a legitimate use of force, thereby contradicting England's prior guilt plea. She was sentenced to three years in prison and dishonorably discharged and is currently confined in the Naval Consolidated Brig Miramar in San Diego.

Other less primary actors in the scandal had their cases resolved similarly. Megan Ambuhl, a 29-year-old Virginia resident who had previously majored in biology and worked as a lab technician, was convicted of dereliction of duty and conspiracy to maltreat detainees. She was demoted to the rank of private with the loss of a half-month's pay. Ambuhl was never proven to have directly engaged in abusive acts and steadily insisted that she was following orders and that she thought humiliating treatment of detainees was normal and acceptable as no one had taught her otherwise. New Jersey–born, 26-year-old Javal Davis pled guilty to charges of dereliction of duty, making false statements, and battery (UCMJ-Davis, 2004). His case primarily involved an incident in which Davis had assisted Graner and others assemble a pile of detainees and then jump and stomp on them. Initially, Davis denied his role when questioned early in the investigation, which led ultimately to a false statement charge and conviction. He was sentenced to six months in prison, demotion to private, and a bad conduct discharge.

Other actors charged and convicted in the cases include two military intelligence specialists, Armin Cruz and Roman Krol of the 325th Military Intelligence Battalion. Two dog handlers were also found guilty in connection with the scandal—Sgt. Michael Smith and Sgt. Santos A. Cardona. Both were accused of using their Belgian shepherd dogs to terrify detainees for their own amusement, sometimes allowing them to bark and lunge, unmuzzled, within inches of restrained inmates' faces. Smith was sentenced to six months in prison, demotion, and forfeiture of pay. Cardona was sentenced to 90 days hard labor, demotion, and forfeiture of pay. Both soldiers launched defenses that claimed the rules and policy governing interrogation and use of dogs during interrogation were so fuzzy that even senior officials testified that they were unaware of appropriate procedures.

As the legal dispositions of these cases were decided, verdicts centered upon individual culpability, which achieved dominance over any systemic account or broader explanation for events at Abu Ghraib. Although the scandal resulted in at least eight major investigations, thousands of interviews, 15,000 plus pages of reports, a series of congressional hearings, the release of Department of Defense files, the continued emergence of new photos depicting abuse, and a suspended general, all documenting patterns of abuse internationally across American military prisons as well as the presence of CIA, FBI, and private contractors and civilian interrogators at Abu Ghraib, no one above the rank of staff sergeant was ever charged.

Legal Ramifications

Those soldiers who were prosecuted and convicted are now serving sentences that range anywhere from demotion to ten years of prison time, their charges largely revolving around conspiracy to commit a crime, maltreatment of detainees, and dereliction of duty through failure to protect detainees. In the end, the absence of intervention on the part of most of the soldiers was enough to be interpreted as a violation of orders under the

KEY ACTORS AT ABU GHRAIB

Megan Ambuhl: Abu Ghraib military police. Former biology major and lab tech who received the most lenient of sentences and married Charles Graner in 2005.

Joseph Darby: Abu Ghraib military police. The whistle-blower who first brought the prison photographs to the attention of Army investigators; Darby and his wife were subjected to intense criticism and harassment upon his arrival back in the United States and were eventually placed in protective military custody at an undisclosed location.

Javal S. Davis: Abu Ghraib military police. Former high school track star and New Jersey–born father of two whose wife serves in the U.S. Navy.

Lynndie England: Abu Ghraib military police. Worked at a chicken factory and bagged groceries in West Virginia before joining the Army Reserve to earn money for college in order to become a meteorologist.

Ivan ''Chip'' Frederick: Abu Ghraib military police and senior enlisted man to be charged and convicted. Was argued by Dan Rather to be ''well-suited'' for his job at Abu Ghraib as a former Virginia corrections officer (along with his wife), described by his warden as ''one of the best'' (Rather, 2004).

Charles Graner: Abu Ghraib military police. Widely considered to be the ''ringleader'' in the scandal. Served in the Gulf War, after which he worked as a guard at a high security prison in Waynesburg, a former Pennsylvania mining town.

Specialist Sabrina Harman: Abu Ghraib military police. A former pizzeria manager who had hoped to follow her father and brother into law enforcement.

Janis Karpinski: Former Army Brigadier General in charge of the Iraqi Prison System and the only female commander in the war zone. Suspended in February 2004 and later demoted.

Donald Rumsfeld: Former Secretary of Defense who assumed responsibility for the acts at Abu Ghraib but denied their status as torture. In the face of intense international criticism and demands at home for his resignation, Rumsfeld maintained his position until November 2006.

Jeremy Sivits: Abu Ghraib military police. A former McDonald's employee who was the first to accept a plea agreement in exchange for his testimony against others.

Antonio Taguba: Army Major General who led the first major investigation into abuses at Abu Ghraib.



Figure 17.3 Sgt. Michael Smith, leftt, with his black dog Marco, Sgt. Santos Cardona, second left, with his tan dog Duco, and Pvt. Ivan L. Frederick II, right, torturing an unnamed detainee at the Abu Ghraib prison, 2003. © AP Photo.

Uniform Code of Military Justice and in accordance with the Geneva Conventions. Interestingly, however, according to defense testimony, such acts of intervention on the part of these soldiers would have required a violation of orders, specifically through military intelligence and military police chain of command.

The legal dispositions of the cases have been interpreted by some as an evasion of the roles that senior officials and policy makers played in setting the conditions for abuse and torture at Abu Ghraib. Many reference the manner in which wider discretionary use of the law by the Bush administration facilitated a vagueness and lack of accountability in legal protections for detainees and against torture, and that this overarching logic filtered its way into the practices and interrogation techniques of the prison tiers at Abu Ghraib (Hersh, 2004; Danner, 2004; Gore, 2004). The legal architecture of the war on terror and its troubled relationship to the pursuit of intelligence through questionable practices of interrogation has now been carefully laid out in the release of what came to be known as the ''Torture Memos'' (Greenberg and Dratel, 2005). These internal exchanges within the Bush administration are argued to be the groundwork for the emergent category of detention that came to define prisons like Guantánamo and Abu Ghraib: the classification of ''unlawful and enemy combatants.'' Some argue this legal category effectively

placed prisoners in the war on terror outside of international protections and the rule of law, largely under the leadership and guidance of former White House counsel and current Attorney General Alberto Gonzales. When the Bush administration insisted that acts at Abu Ghraib were isolated and unrepresentative, many, consequently, responded by critiquing the governments' attempts to position the scandal at Abu Ghraib as an "aberration" or the result of a particular institutional or group pathology. Charles Graner's mother, in the aftermath of his conviction, maintained "my son was convicted the day that President Bush went on television and said the seven bad apples disgraced the country" (O'Reilly, 2005). Social psychologist Philip Zimbardo, who organized the Stanford Prison Experiment—a study that demonstrated the tendency on the part of ordinary actors to engage in violent and sadistic behaviors when given authority in a prison setting, insisted, in the widespread public recuperation of his study, that individual culpability was unacceptable as a total explanation for events at Abu Ghraib. He testified for the defense in the trial of Ivan Frederick and later publicly asserted that the court disregarded his testimony by holding Frederick solely accountable and ignoring systemic influences. Part of the problem with proving systemic influence, however, is found in the manner in which legal responsibility is distributed by law. A systemic defense must rely heavily upon the rule of law in the form of the military order with its dispersal of responsibility through chain of command and hierarchy, often resulting in the "obedience to authority" explanation. This legal framing, often referred to as the Nuremberg Defense, was ruled unacceptable under the U.S. Uniform Code of Military Justice in the aftermath of World War II trials where allied powers agreed to refuse as valid any defense that depended upon the notion of "following orders." In this manner, the primary actors at Abu Ghraib, perpetrators and their victims, were argued by many to be caught in a series of institutional contradictions (Tabuba, 2004; Hersh, 2004; Greenberg and Dratel, 2005).

In the legal aftermath of Abu Ghraib, a series of rulings by the Supreme Court have limited executive power and authority in wartime. In 2004, the Court ruled that suspected terrorists and enemy combatants must be permitted to challenge their indefinite detention. In 2006, the high court ruled military tribunals at Guantánamo unlawful and in violation of U.S. law and the Geneva Conventions. The court's shift away from executive power was argued by many to be related to the Abu Ghraib photos, powerful illustrations of the weaknesses of unchecked power.

Cultural Aftermath

The Abu Ghraib scandal remains a media event unlike any other due to its immediate and archival visual record of torture and abuse in wartime by a democratic superpower and its international proportions. The nature of the scandal and its emergence marks the unprecedented importance of technology and communications as a potential whistle-blowing mechanism but also as a mode of abuse in and of itself in increasingly global conflicts. In statements before the Senate Armed Services Committee on May 7, 2004, Secretary of Defense Donald Rumsfeld declared:

> To those Iraqis who were mistreated by members of the U.S. armed forces, I offer my deepest apology. We're functioning in a—with peacetime restraints, with legal requirements in a wartime situation—in the information age, where people are running around with digital

> cameras and taking these unbelievable photographs and then passing them off, against the law, to the media, to our surprise, when they had not even arrived in the Pentagon. (Rumsfeld, 2004)

The international scale of the scandal was possible only by way of the immediate and global circulation of the disturbing digital photos, photos collected for the explicit purpose of degradation and humiliation, then circulated across the Internet and various media outlets in a manner that supersedes law, borders, and oversight—thus, leaving the American government and public surprised, exposed, and ashamed. These global mechanisms of circulation and access permitted an intense, albeit relatively short-lived, round of cultural commentary by a broad and international audience.

Across weblogs, news commentary, alternative media outlets, journals, and intellectual debate, many argued that events at Abu Ghraib reflected a darker side of American culture and history with its emphasis upon a sexualized and racialized violence. Numerous comparisons were made to the historical practice and popularization of racial lynchings in the American South by the Ku Klux Klan and specifically the manner in which these lynchings, similarly to Abu Ghraib, were carefully and proudly documented through a clear historical record of souvenir postcards, drawings, and photographs (Garland, 2005; Gordon, 2004; Niman, 2004; Carby, 2004). This discourse converged popularly with negative stereotypical depictions of the soldiers at the center of the scandal as rural, lower class, and uneducated.

Perhaps the most obsessive aspect of media coverage, however, revolved around the presence and use of female soldiers in the sexualized dehumanization of male detainees in a manner directed at cultural humiliation. Commentators compared the photos focused upon sexual degradation to the contemporary cultural staples of reality television and violent pornography in combination (Baudrillard, 2006). The focus upon gender and sexuality is particularly compelling in the aftermath of the event as popular attention tended to center predominately and disproportionately upon Lynndie England. Images of her at Abu Ghraib have achieved iconic status, where, cigarette dangling, she points at the genitalia of hooded, naked detainees who appear to be masturbating in one photo and in a pose similar to that of a sadomasochistic dominatrix constrains a prisoner on a dog leash. Imitations of both poses have appeared on some of television's most popular comedy programming, including Comedy Central's *South Park* and *The Daily Show* as well as Fox's *The Simpsons* and *Arrested Development*. In fact, an entire Web site dedicated to ''doing a Lynndie'' (http://badgas.co.uk/lynndie/) has achieved widespread popularity —where visitors are instructed on how to perform the pose and then encouraged to submit photos of themselves imposing the gesture upon ''victims'' who are ''unaware, bemused, or angry'' and thus, ''in keeping with the original.'' At this site, photos from around the world document individuals performing the pose while pointing at drunks, celebrities, the homeless, animals, and numerous photoshopped fictional and living characters. References to the scandal also appeared in prime time television dramas, including NBC's *Law and Order* and its spin-offs, whose plots are modeled often after stories taken from recent news.

The first fictional cinematic depiction of events at Abu Ghraib is a highly controversial and popular Turkish film, *Valley of the Wolves Iraq* (2006), which includes portrayals of U.S. soldiers torturing detainees and one scene in particular that depicts a character modeled after Lynndie England constructing human pyramids from some of the narrative's

main characters. The prison guards are played by American actors, including Billy Zane and Gary Busey. The film's reception has been highly controversial internationally in part due to its alleged anti-Semitism, resulting in its being banned across parts of Europe. Nonetheless, in Turkey, it is the most expensive film ever produced and has played to record box office crowds.

Most serious treatments in the United States to date have occurred in the production of a small group of independent documentary films. A 39 minute documentary by Dutch filmmaker Twan Huys, titled *Big Storm: The Lynndie England Story* (2005) and produced in connection with the Sundance Channel, was distributed in 2005. The film is largely an extended interview with England just before her court-martial but also includes interviews with journalist Seymour Hersh, former Coalition director Paul Bremmer, former Brigadier General Janis Karpinski, and England's family. Robert Greenwald's *Iraq For Sale: The War Profiteers* deals with aspects of the Abu Ghraib Scandal and the PBS Series *Frontline* included the incident in an episode titled ''The Lost Year in Iraq.'' A Sundance and Court TV collaboration, titled *The Human Behavior Experiments,* explicitly investigates the many connections made in the aftermath of the Abu Ghraib scandal to social psychology experiments from the 1960s and 1970s, specifically Philip Zimbardo's Stanford Prison Experiment and Stanley Milgram's obedience experiments. In the Stanford Prison Experiment, students were arbitrarily divided into two categories of guards and prisoners and then placed in a simulated prison setting. Relationships there quickly deteriorated into abuse and sadism on the part of those in positions of authority. The experiment, which was to last two weeks, was shut down after only six days. The documentary employs footage from this experiment and others to explore explanations about group behavior in particular cases, which require social intervention, including the 1964 murder of Kitty Genovese, where 38 witnesses did nothing to stop the crime, and the disturbing collective acts committed at Abu Ghraib. In the United States, Erroll Morris, who directed the critically acclaimed *Thin Blue Line* (1998) and *The Fog of War* (2004), has announced his next documentary feature will focus upon the Abu Ghraib scandal, tentatively due out in 2008.

Conclusion

In the spring of 2006, the U.S. military announced plans to evacuate the Abu Ghraib prison and transfer detention operations to the Iraqi government. On September 6, 2006, Abu Ghraib was remanded to Iraqi control. Although the Abu Ghraib scandal shook the world in the aftermath of its immediate exposure, served as a turning point in critical discourse surrounding the war on terror, and continues to make up a prominent part of popular culture, the direct political impacts, strangely, were short-lived. The scandal did not figure prominently in the 2004 presidential election, and upon reelection, President Bush promoted the controversial Alberto Gonzales to the post of Attorney General. As reports continued to circulate of questionable detention practices, including the existence of undisclosed ''secret'' CIA prisons, extraordinary rendition tactics (the transporting of prisoners by the United States to undisclosed locations in other countries, where torture is less prohibited) (Mayer, 2005), and patterns of abuse in other off-limits war prisons, Abu Ghraib ultimately was politically and legally resolved in the short term as little more than an anomaly in wartime. The place of Abu Ghraib in a more extensive political, popular, and historical consciousness remains an open question.

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