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Making and Remaking an Event: The Leopold and Loeb Case in American Culture

Paula S. Fass

The act which created a stir far beyond this country is so frightful, psychologically so incomprehensible, so singular in its unfoldment that, if Poe or a writer of detective stories wished to unnerve his readers, no better tale could be invented; no harder knot to unravel; no events could follow each other more effectively than life, or rather disease, has here woven them together.

—Maurice Urstein, *Leopold and Loeb: A Psychiatric-Psychological Study*, 1924

What a rotten writer of detective stories Life is!

—Nathan Leopold, *Life plus 99 Years*, 1958

From the instant it broke on public awareness in 1924, the Leopold and Loeb case was enveloped by the mass media. In fact, journalists gathered critical evidence that helped crack the case. And two newsmen on the *Chicago Daily News*, James Mulroy and Alvin Goldstein, eventually shared some of the reward money as well as the Pulitzer Prize for helping to connect Nathan Leopold, Jr., and Richard Loeb to the abduction and murder of Bobby Franks. As they pursued leads, rumors, and suspicions, journalists not only helped solve the crime, but gathered materials for stories that became the basis for public knowledge of the presumed events. Journalists and storytellers continued their active involvement with the case throughout the twentieth century as the Leopold and Loeb affair maintained a hold on the American imagination. Journalists, novelists, and screenwriters interpolated fictions into the facts of Loeb's murder in prison, testified at Leopold's parole hearings, and fictionalized the case in novels and movies. When Meyer Levin published *Compulsion* in

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1956, this process of story creation not only culminated in a new form of historical fiction but also occasioned a notable court ruling about the boundaries between public and private, fact and fiction. Through their stories, the media actively offered Leopold and Loeb as subjects for a process of social interpretation, which began in 1924 and continues today, as the two have become characters in an avant-garde film with a very contemporary focus.

I began to study this case while writing about child kidnapping, and I gradually became convinced that the tangled mystery at its heart—why two rich, gifted boys would commit a murder embedded in the form of a ransom kidnapping—had a Dostoevskian quality that made it at once compelling and unsolvable. Leopold and Loeb may have been aware that they were playing at the boundary of human consciousness where analytic intentionality blended with irrational passion, and Loeb was infatuated with detective fiction, which often illuminates that borderland. That we would probably never know exactly what happened or why was not, however, the significant issue. For a historian the important question was not what happened and why. Rather, since the case has been repeatedly reframed, the question was how the story has been presented over time and what issues it propelled into public awareness.

The themes explored in the repeated reimaginings of the case were ones important to twentieth-century culture: childhood, sexuality, the nonrational self, and psychology as a way to understand these. And the implicit questions went deep—to the source of evil in modern life. It is my argument that in using those themes to explain a heinous crime, first the newspapers, through which the case initially exploded into the public arena, and then other cultural agencies participated in a public discourse that offered Americans the new terms *normality* and *abnormality* to understand transgressive behavior. Indeed, the judicial hearing that determined Leopold and Loeb's fate was guided, not by legal questions of responsibility, but by a psychiatrically driven defense that popularized those terms. That public discourse began in an uneasy way in the reportage of the 1920s and culminated in the 1950s in a coherent fiction. Perhaps because so much was at stake and the issues so tangled, the discourse consisted of stories told and retold. At its inception, the plot concocted by Nathan Leopold and Richard Loeb had been modeled on detective fiction, and its depiction always existed along the uncertain boundary between fact and fiction. Because the case and the protagonists were rapidly engulfed in the evolving public discourse and the stories were vivid, the public portrayals overwhelmed the identity of the individual characters. When Leopold eventually wrote his own memoirs, he had difficulty distinguishing the fact from the fiction of his identity, so completely had he and the story in which he had participated been enveloped and defined in the public spaces of the culture.

Publicity and Portrayal

From its first appearance in print, the story of Bobby Franks's kidnapping was unusual. On May 23, 1924, the day the newspapers reported that Bobby had been kid-

napped, they also contained a detailed description of his dead body. The simultaneous public knowledge of the kidnapping and the murder set this story apart from earlier kidnapping stories, in which parents' willingness to accede to ransom demands might forestall harm to the abducted child. As the Franks story developed, sensational detail by sensational detail, the papers invested it with meaning and significance by linking it to widespread concerns about childhood and youth. When it finally left the front pages months later, the newspapers, which had started by sensationalizing an unusual kidnapping, had succeeded in normalizing a truly sensational case.

On the evening of May 21 the phone rang in the Hyde Park home of Jacob Franks, a wealthy Chicago businessman of Jewish origin who had embraced the Christian Science faith. The caller informed Flora Franks, Jacob's wife, that their youngest child and second son, Robert, aged fourteen, had been kidnapped but was alive and safe. Further information was promised for the next day. The next morning the Franks family received a carefully cast and neatly typed note that requested ten thousand dollars in ransom and enjoined Franks not to contact the police and to await further phone calls and instructions. Thus far the sequence of events and the ransom demand were very like those in other kidnappings, which, since the late nineteenth century, had become a staple of American life and police business.¹

By the time the note was delivered, the naked body of an unidentified boy had been found under several feet of water in a culvert in a little-trafficked part of Chicago known as the Hegewisch swamp. This news was part of the normal police blotter of a metropolitan newspaper. The *Chicago Daily News* had meanwhile received an anonymous tip about the kidnapping of a wealthy boy. The coincidence led the *News* to assign one of its reporters, Alvin Goldstein, to probe a possible connection. At the importuning of this reporter, Jacob Franks sent his brother-in-law to look at the body, even though the description of the child and the fact that he was found with a pair of eyeglasses suggested that the corpse was not Bobby's. Shortly after Franks received his next call from the kidnappers, which directed him to a pharmacy to await further instructions about the delivery of the ransom money that he had already gathered from his bank, the brother-in-law identified Bobby's body at the funeral home where it had been taken. The newspaper had brought the two pieces of information together, ruining a self-consciously ingenious kidnap plot, saving Jacob Franks ten thousand dollars, and ending the last hope of his son's safe return.²

The newspapers would continue to play a strategic role in the unfolding story, providing their readers with continuous good copy of a sensational kidnap-murder and the prosecuting attorney with material assistance. When the pieces of the case

¹ See Hank Messick and Burt Goldblatt, *Kidnapping: The Illustrated History* (New York, 1974); and Edward Dean Sullivan, *The Snatch Racket* (New York, 1932).

² This story is told compactly in Hal Higdon, *The Crime of the Century: The Leopold and Loeb Case* (New York, 1975), 34–38; and Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb* (Chicago, 1924), 7–12. See also *Chicago Daily Tribune*, May 23, 1924, sec. 1, p. 2.

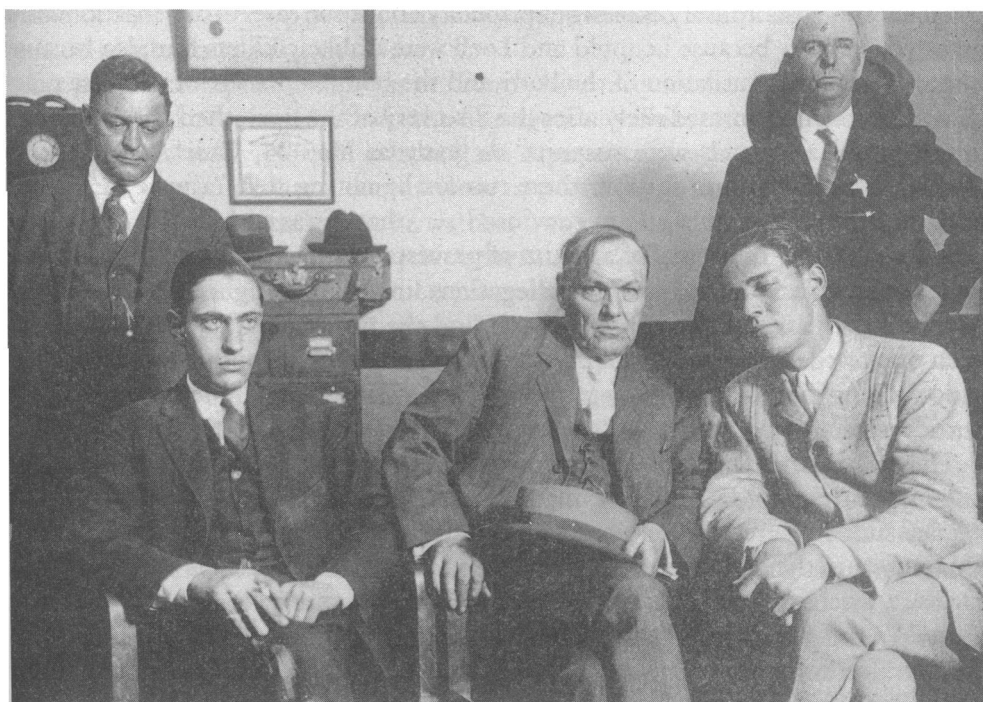
came together, Nathan Leopold and Richard Loeb separately confessed to the crime they had jointly planned and committed. From the beginning the press participated in the creation of the Leopold and Loeb story, since its role in resolving the mystery of Bobby's murder made Leopold and Loeb public property.

The basic outlines of Leopold and Loeb's story is well and widely known, having been told and retold. Leopold—the brilliant and precocious son of one of America's most illustrious German Jewish families (a Chicago reporter wrote that “Nathan Leopold, Jr., is related to every branch of a little royalty of wealth which Chicago has long recognized”), a graduate at eighteen of the University of Chicago, qualified at nineteen to enter Harvard Law School, a published ornithographer who could speak eleven languages and was an amateur student of classic pornography—would eventually write his prison-based memoirs, *Life plus 99 Years*.³ His partner was not so lucky. Not as brilliant, but equally precocious, Richard Loeb was the son of the vice-president of Sears, Roebuck and Company. The Loebes were even more prominent in German Jewish circles than the Leopolds, and Richard inhabited lavish homes in both Hyde Park and Charlevoix, Michigan. Handsome, debonair, and very collegiate in the 1920s manner, Loeb was extremely attractive to women, who flocked to his trial and reportedly showered him with letters when he went to jail. Having graduated at seventeen from the University of Michigan, he was the youngest graduate of the school. Loeb was distantly related to Bobby Franks and like him had attended the exclusive Harvard School in Chicago, from which he and Leopold had followed Bobby and abducted him. Loeb would die in prison, the victim of a slashing attack by a fellow inmate. All three families lived within walking distance of each other in the exclusive Hyde Park section of Chicago, within eyeshot of the University of Chicago, which both Leopold and Loeb attended at the time of the murder. Smart, accomplished, very rich, these boys of good family had committed, everyone agreed, “the crime of the century,” an almost “perfect crime,” baffling, fascinating, dangerous, and inscrutable.⁴

The discovery of Bobby Franks's identity presented the newspapers with a deep mystery, the motive for his death. Individual reporters (sometimes egged on by Loeb) became involved in solving the crime. When Leopold was called in to identify the eyeglasses, which had been traced to him as one of three possible owners, Goldstein and Mulroy tried to link the kidnap note (the only other distinct piece of evidence) to Leopold. When they tracked down his prelaw group study notes, whose imprint and characters matched that of the kidnap note, these provided key evidence that allowed the police to keep Leopold in custody and to bring Loeb in for questioning, since Loeb figured in Leopold's alibi for the day of the murder. When

³ McKernan, *Amazing Crime and Trial of Leopold and Loeb*, 54; Nathan Leopold, *Life plus 99 Years* (Garden City, 1958). At his death, Nathan Leopold was credited with knowing twenty-seven languages; see *Chicago Daily Tribune*, Aug. 30, 1971, sec. 1, p. 7. For Leopold's famous bird piece, in which he describes the habits of a bird until then believed to be extinct, the Kirkland warbler, see *Chicago Herald and Examiner*, June 5, 1924, p. 3; *ibid.*, June 7, 1924, p. 4; *ibid.*, June 8, 1924, p. 2.

⁴ On women's interest in Richard Loeb, see *Chicago Daily Tribune*, June 4, sec. 1, p. 2. The perfect crime idea dogged Leopold until his death; see his obituary, *New York Times*, Aug. 31, 1971, p. 36.



Nathan Leopold (left) and Richard Loeb (right) sit with Clarence Darrow (center) at the time of the judicial hearing in July 1924. *Courtesy Gertz Collection, Northwestern University Library, Evanston, Illinois.*

all parts of the case came together and the two began their long and detailed confessions, the press went to town. Newspapers published the confessions, interviewed the families and friends, and speculated about the nature of the “million-dollar defense” to be mounted by Clarence Darrow and his expensive psychiatric witnesses. They covered the criminal proceedings in minute detail, especially the testimony of the alienists and the extraordinary closing plea of Darrow, which became a classic of the genre.⁵

But coverage was only part of the press’s job. Maintaining an almost constant presence on the front page, discussions of the crime and the case were mounted in a frenzy of competitive sensationalism. As one journalist noted in a book published in 1924, on the eve of the Leopold and Loeb explosion, “The problem of sensationalism resolves itself largely into a question of balance.” Contemporary journals like the British *New Statesman* and American newspaper columnists observed and often

⁵ For Alvin Goldstein and James Mulroy’s role as described by the prosecution, see Alvin V. Sellers, *The Leopold-Loepold Case, with Excerpts from the Evidence of the Alienists and Including the Arguments to the Court by Counsel for the People and the Defense* (Brunswick, Ga., 1926), 81.

criticized the extraordinary excesses of publicity about the case.⁶ The sensationalism occurred, in part, because Leopold and Loeb were unlikely killers but also because rumors about the mutilation of the body and the body as the site of perverse practices started almost immediately after the discovery of the unclothed child, well before Leopold and Loeb were suspects. As early as May 24, Chief of Detectives Michael Hughes tried to squelch these rumors by noting that “after a hard day’s work on the Franks mystery, I am convinced . . . that it was a plain case of kidnaping for ransom — not a case of a victim of perverts.” The coroner’s report found no evidence of sexual abuse, but these allegations lingered throughout the life of the case, and the judge had to continually remind the prosecutor that the rumors had been disproved. The rumors were subsequently inflamed by psychiatric reports and wide-ranging interviews that suggested boyish compacts and alluded to perversions (a code word for homosexuality) between Leopold and Loeb.⁷

The sexual undercurrents in a case of murder by two rich kids with no social responsibilities might seem tailor-made for sensationalism. But at a time when sex seemed suddenly everywhere, especially among the young, and religion still berated modernism in the daily press, the case of Leopold and Loeb was not simply a sexual curiosity, interesting only because of strange practices among strange boys.⁸ Despite Leopold’s and Loeb’s wealth, brilliance, and alien religion, the newspapers insisted on manufacturing a story whose power lay in the explosive linkage of the two boys to others of their time and generation. Indeed, in its first significant incarnation, the Leopold and Loeb case became a cautionary story about the dangers of modern youth.

This did not happen at once. On the contrary, the initial portrayal of the killers, especially of Leopold, set them apart and represented them as larger than life. As one man on the street interviewed by the *Chicago Herald and Examiner* noted the day after they confessed, “I can’t conceive of normal persons committing such a revolting deed.”⁹ As soon as Leopold stepped before the public eye, the press began to fashion a portrait of a Nietzsche-obsessed scientist who had destroyed his feelings in the interest of experimentation and cold ratiocination. Since there was no obvious motive and Bobby’s identity was entirely incidental to the plot that Leopold and Loeb had concocted as a test and consummation of their friendship, making sense

⁶ On sensational crimes and murders in the decade, see John R. Brazil, “Murder Trials, Murder, and Twenties America,” *American Quarterly*, 33 (Summer 1981), 163–84; John D. Stevens, *Sensationalism and the Press* (New York, 1991), 103–54; and Charles Merz, “Bigger and Better Murders,” *Harper’s Monthly Magazine*, 155 (Aug. 1927), 338–43. Nelson Antrim Crawford, *The Ethics of Journalism* (New York, 1924), 110; “Leopold and Loeb,” *New Statesman*, Sept. 20, 1924, p. 670; *Chicago Herald and Examiner*, Aug. 12, 1924, p. 3.

⁷ *Chicago Daily Tribune*, May 24, 1924, sec. 1, p. 1. Throughout the proceedings the prosecution continued to suggest that perversion was one aim of the killing. See Sellers, *Loeb-Leopold Case*, 247. For Judge John Caverly’s warning to Robert Crowe, the chief prosecutor, see *Chicago Herald and Examiner*, Aug. 27, 1924, p. 1. See “Whispers ‘Incredible Pact’ between Boys,” *ibid.*, Aug. 5, 1924, p. 3.

⁸ See Paula S. Fass, *The Damned and the Beautiful: American Youth in the 1920s* (New York, 1977), 13–52. For contemporary comments, see *Chicago Herald and Examiner*, June 1, 1924, part 1, p. 4; Judge Ben B. Lindsey and Wainright Evans, *The Revolt of Modern Youth* (Garden City, 1925).

⁹ *Chicago Herald and Examiner*, June 1, 1924, part 1, p. 3.

of the crime was no easy task.¹⁰ In many ways, therefore, the portrayal of Leopold became a substitute for a motive.

Leopold's accomplishments, his brilliance, his precocity, his aloofness—all made him into a kind of strange bird. As the *Chicago Daily Tribune* noted in one of many similar observations: "Nathan is having an 'experience' that seems to bring him no 'regret,' no worry, no alarm. A marvelous opportunity to study his own reactions. And with a sense of detachment he watches—as a scientist might—his own curious lack of emotion." He was the "psychic adventurer *de luxe*," who, some speculated, might have left his glasses behind on purpose as a goad and an experiment to test the degree of his superiority to others. "The most brilliant boy of his age I've ever known," the prosecutor, Robert Crowe, reportedly called him.¹¹

Certainly Leopold's extensive interests (only some of them scientific) and his awkward identification of himself and his friend with Nietzschean supermen gave some grounds to this portrayal, but the picture of him as the "mastermind" who had lured the naïve Loeb into a horrible experiment on human life was extreme. "Is Loeb the Faun, Leopold the Svengali?" the *Chicago Herald and Examiner* asked on the front page. At the time of his confession, Leopold was quoted as saying that he "did it as easily as he would stick a pin through the back of a beetle." And the *Chicago Daily Tribune* commented that this was "an excellent analysis of his mental make-up."¹² The papers were full of pictures of the two, often dissected by lines and arrows, which pretended to physiological analysis. Leopold, with his dark, brooding Semitic looks, large nose, hooded eyes, and sensual lips, was especially vulnerable as the case became "the most cold-blooded and motiveless crime that has ever found mention in the pages of records of history." Loeb, the all-American boy and fraternity man, far less intellectual and more popular, who asked for his mother after his confession (and whose mother was not Jewish by birth), was initially let off the hook as "a suggestible type."¹³

The limning of Leopold as a monster with no conscience or emotions flew in the face of other statements in the same papers—that Leopold wished he could jump off a bridge, that he hoped his family would disown him, or, in courtroom psy-

¹⁰ The centrality of the compact was William Healy's most important contribution to the trial. On his testimony, see *ibid.*, Aug. 5, 1924, pp. 1–3; *ibid.*, Aug. 6, 1924, pp. 1, 2.

¹¹ *Chicago Daily Tribune*, May 31, 1924, sec. 1, p. 3; *ibid.*, June 1, 1924, sec. 1, p. 1; *ibid.*, May 31, 1924, sec. 1, p. 2.

¹² For an account that accepts the superman ideal as the essential significance of the case, see Frederick Hoffman, *The Twenties: American Writing in the Postwar Decade* (New York, 1962), 362–63. Alfred Hitchcock similarly portrays the boys as eager to put their amoral philosophy and sense of superiority into practice. *Rope*, dir. Alfred Hitchcock (Warner Brothers, 1948). *Chicago Herald and Examiner*, June 12, 1924, p. 1; *Chicago Daily Tribune*, June 16, 1924, sec. 1, p. 9. Leopold later claimed that he was talking about the way he was questioned by the press; Leopold, *Life plus 99 Years*, 48–49.

¹³ *Chicago Herald and Examiner*, June 1, 1924, p. 1. Crowe called the crime "the most atrocious, cruel, brutal, cowardly, dastardly murder in the history of American jurisprudence." See *ibid.*, July 24, 1924, p. 3. For examples of physiological analysis, see *ibid.*, June 4, 1924, p. 2; and *ibid.*, June 7, 1924, p. 2. For the claim that the prosecution would heavily base its case on such photographic analysis, see *ibid.*, July 21, 1924, p. 3. *Ibid.*, June 1, 1924, p. 2. For the patently false statement that Loeb and Leopold had agreed that the latter had killed Bobby although this issue remained very much in dispute between the two, see *ibid.*, May 31, 1924, part 3, p. 2.

chiatric testimony, that he had become hysterical at the time of the crime. Initially, however, Leopold's sense of shame and humiliation had no part to play in the portrait of the cold-blooded fiend being constructed out of the science, philosophy, and learning (with whiffs of the Jew) that constituted Leopold's earliest newspaper persona. Initially, as a Chicago paper summarized it, the case was an exotic flower of evil.

The diabolical spirit evinced in the planned kidnapping and murder; the wealth and prominence of the families whose sons are involved; the high mental attainments of the youths, the suggestions of perversions; the strange quirks indicated in the confession that the child was slain for a ransom, for experience, for the satisfaction of a desire for deep plotting; combined to *set the case in a class by itself*.¹⁴

The clear titillation this strange cocktail could provide put the newspapers in a bind. If Leopold was an alien fiend, and the case simply a quirk, it was difficult to justify its continuing prominence in the daily press. To make the case significant it had to become a reflection on modern life, an interpretation to which the papers were already committed before the identities of the killers were known, when poor Bobby's death had been used to illustrate "the Danger to the Children of Chicago." Indeed, as in all previous kidnappings, the Franks family was initially the focus of attention, as the press probed and pushed to get the most mileage from a mother in a state of collapse, pining for the son she fantasized would soon return, and a noble father (despite his pawnbroker roots) prepared to sacrifice his wealth and himself to do justice to his son. The use of the Franks family for sympathy and reader identification disappeared, as the newspapers refocused from the dead child to the live children. For the case was a sensation in part because, at nineteen and eighteen, Leopold and Loeb were children themselves, not much older than their victim. Soon Leopold and Loeb were appropriated to a Fitzgeraldesque type of youth, suffering from ennui, overeducation, or overindulgence, and especially from intellectual precocity. Thus, Billy Sunday blamed the murder on "precocious brains, salacious books, infidel minds."¹⁵

Modern childhood remained the central theme, but as the newspapers attempted to understand the motiveless crime and its relation to the dangers of modern child-

¹⁴ Leopold's responses are hard to assess because the papers reported such different things, including his supposed suicide in prison during the hearing. *Ibid.*, Aug. 18, 1924, p. 1. Leopold claimed years later that he wanted to be hanged because it would be easier for the defendants and would release the families from the "humiliation and shame." Leopold, *Life plus 99 Years*, 78. *Chicago Sunday Tribune*, June 1, 1924, sec. 1, p. 1, emphasis added.

¹⁵ *Chicago Herald and Examiner*, May 28, 1924, p. 8; *ibid.*, June 5, 1924, p. 3. On ennui, see *ibid.*, June 1, 1924, p. 1; *ibid.*, June 10, 1924, p. 2; *ibid.*, Aug. 28, 1924, p. 8. In the twenties, modernism was often contrasted to morality and religious training. Thus, for example, Chicago pastors used the Leopold and Loeb case to preach religion. See *ibid.*, June 8, 1924, p. 4. It was probably because so much was made of their modern atheism that Leopold and Loeb's Jewishness was not stressed in the press. For changing perspectives on precocity in America between 1830 and 1930 and on how it was connected with social and personal disease, see Joseph F. Kett, "Curing the Disease of Precocity," in *Turning Points: Historical and Sociological Essays on the Family*, ed. John Demos and Sarane Spence Boocock (Chicago, 1978), 183-211. For Billy Sunday's remark, see *Chicago Herald and Examiner*, June 5, 1924, p. 3. In another place, the paper noted that "the end results of precocity are often perversion." *Ibid.*, June 1, 1924, part 1, p. 3.



A montage of the Franks family. Bobby Franks, in the round photograph, appears between a picture of his parents, Flora Franks and Jacob Franks, at the funeral and one of young pallbearers carrying his casket. These and similar photographs in the Chicago newspapers provided the initial focus for readers' sympathies.

Illustration for Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb* (Chicago, 1924).

hood, they turned readers' attention from children as victims to children as potential perpetrators of crime and immorality. Thus, according to the popular writer Elinor Glyn, the lesson of the case was to "awaken parents to the frightful responsibility of what thoughts they allow the subconscious minds of their children to absorb before they are twelve years old." A criminologist drew a generalizable lesson

from the case: "There is a great responsibility to raise a baby to manhood. A child is like a clinging vine and clings to its environment." But it was Ben B. Lindsey, the Progressive juvenile judge from Denver and a well-known youth advocate in the 1920s, who most fully suggested the breadth of the case's significance:

Let no parent flatter himself that the Leopold-Loeb case has no lesson for him. Let us all clearly understand that the crime was the fruit of the modern misdirection of youth. . . . It was more than the story of a murder. It was the story of modern youth, of modern parents, of modern economic and social conditions, and of modern education.¹⁶

The transition from senseless crime to moral lesson was made in two ways. First, the newspapers deflated the scientific imperturbability and distance that had set the case and especially Leopold apart from the multitudes. As the case evolved, and especially during the hearing, newspapers gave readers ample opportunity to reflect upon the often-conflicting views espoused by different spokesmen for the new science of psychiatry. The representation of psychiatry in the popular press reduced "science" from Olympian heights of objectivity to the awkward fumbling of vaudevillian figures. The press thus tamed the cold scientific monster of science (Leopold's first incarnation) into a clumsy, uncertain object of ridicule. Leopold, whom the defense psychiatrists insisted on calling by his nickname "Babe," lost his Svengali characteristics, becoming instead exposed, humbled, an object of demeaning testing and probing. The newspapers learned to control Leopold and the threat he posed by subjecting him to the science of psychiatry, without entirely accepting the new authority of psychiatry itself.

Second, the newspapers democratized Leopold and Loeb in ways that the two, Leopold especially, probably despised. They published the IQ puzzlers and tests to which Leopold was subjected and challenged readers to do them in the record time of Leopold, "the genius." IQ testing in the twenties was both an extremely popular new scientific instrument and a normalizing enterprise that reduced intellectual differences to variant notches on a single scale. This set readers on a continuum with Leopold and encouraged personal comparisons. They asked readers to vote in polls on many subjects, including whether the trial should be broadcast on the radio, something many readers supported because it would result in more democratic access to the trial. They showed "the boys" in prison garb, happily adapted to prison routine.¹⁷ The papers tried every angle on this everyman theme, including a column by Winifred Black that asked each woman reader to consider how she would feel

¹⁶ *Chicago Herald and Examiner*, July 30, 1924, p. 2; *ibid.*, June 11, 1924, p. 6; Lindsey and Evans, *Revolt of Modern Youth*, 104. See also Ben Lindsey's comments in the *Chicago Daily Times*, June 8, 1924, sec. 1, p. 2.

¹⁷ On IQ testing in the 1920s, see Paula S. Fass, *Outside In: Minorities and the Transformation of American Education* (New York, 1989), 44–54. For the radio poll, see *Chicago Daily Tribune*, July 17, 1924, sec. 1, p. 1; *ibid.*, July 18, 1924, sec. 1, pp. 1, 2, 3; *ibid.*, July 19, 1924, sec. 1, p. 3. See the questioning of men and women on the street by Arthur Brisbane on whether Leopold and Loeb should hang, *Chicago Herald and Examiner*, July 31, 1924, p. 1. For one of the IQ tests Leopold took, see *ibid.*, Aug. 2, 1924, p. 2. For opinions on the verdict, see *Chicago Daily Tribune*, Sept. 11, 1924, sec. 1, pp. 3, 4.

"If Your Son Were [the] Slayer?" "You who sit there at your breakfast table, so comfortable, so much at peace with all the world, this morning. . . . Would you stand for justice and for right, no matter if by taking such a stand you had to walk to the very foot of the gallows with your own son?" This process encouraged readers, if not to identify with the slayers, at least to be on a level with them; it thereby made Leopold and Loeb's ideas less alien and their crime less bizarre. It also made these extremely unusual children more "normal." As Maureen McKernan, a reporter for the *Herald and Examiner*, concluded:

The attitude of the boys throughout the trial amazed everyone who watched them. Every day newspapers carried pictures of them smiling in the courtroom. When the crowd laughed, they laughed. . . . but those who watched them closely came to see . . . two frightened, foolish boys, who found themselves in a terrific mess with the eyes of the world upon them.¹⁸

In taming their monstrosity, the papers' portrayal of two "foolish boys" renegotiated the terms of the crime from the satanic to the domestic. The monsters who inhabited an alien world of learning, culture, and wealth, who had committed an incomprehensible crime, became just two boys, Babe and Dickie, who had tested certain limits of human behavior (sex and murder), but whose punishment lay within the realm of comprehensible retribution. In the process, the newspapers helped introduce Americans to the new psychology and to new concepts of the normal and the abnormal.

The Personal as Public

By the time the judicial phase of the Leopold and Loeb case began in Judge John E. Caverly's courtroom on July 21, 1924 (the hearing was not broadcast on the radio), the issues of psychology and childhood identified with it had already been aired in the press. But the story was still erratic and sensational. In preparation for the hearings, the defense team began to provide the elements of a story of childhood written in the new language of modern psychology. Expert psychiatric testimony had been used long before the 1920s in court cases, most importantly in the famous trial of Charles Guiteau, President James A. Garfield's assassin in 1881. It had also played a part in the successful defense of Harry Thaw, Stanford White's killer, in 1906.¹⁹

¹⁸ *Chicago Herald and Examiner*, June 9, 1924, p. 2; McKernan, *Amazing Crime and Trial of Leopold and Loeb*, 72–73. On the phenomenon of newspapers seeking to help their readers identify with criminals, see Brazil, "Murder Trials." For contemporary analyses of the newspapers' role in crime, see Frances Fenton, "The Influence of Newspaper Presentations upon the Growth of Crime and Other Anti-Social Activity," *American Journal of Sociology*, 16 (Nov. 1910), 342–71; Frances Fenton, "The Influence of Newspaper Presentations upon the Growth of Crime and Other Anti-Social Activity (Continued)," *ibid.* (Jan. 1911), 538–76; Joseph L. Holmes, "Crime and the Press," *Journal of the American Institute of Criminal Law and Criminology*, 20 (May 1929), 6–59; Joseph L. Holmes, "Crime and the Press [Concluded from the Last Number]," *ibid.* (Aug. 1929), 246–93; Robert D. Highfill, "The Effect of News of Crime and Scandal upon Public Opinion," *ibid.*, 17 (May 1926), 41–103. For a contemporary popular commentary, see Merz, "Bigger and Better Murders," 338–43.

¹⁹ Charles E. Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and Law in the Gilded Age* (Chicago, 1968). The case of Harry Thaw was sensationally covered in the press, but one newspaper critic noted, "No news-

Indeed, by the time of the Leopold and Loeb case, one of the prosecution's alienists, W. I. Krohn, would earn Clarence Darrow's withering contempt as "a witness, a testifier" because he had abandoned all other professional duties to devote himself to giving expert court testimony. Psychiatric testimony was used throughout the twenties in new and probing ways. But the Leopold and Loeb case, because of its prominence, Darrow's innovative defense, and the role of the newspapers in promoting it as a pivotal modern event, gave the role of expert psychiatric testimony new visibility in popular culture.²⁰

After Nathan Leopold had been held for more than a day on the evidence of his eyeglasses at the scene of the crime and the apparent similarity between the type-written ransom note and his law group study notes, the Leopold family chauffeur provided the *coup de grace* by undermining an essential part of his alibi.²¹ Loeb, who had been separately questioned for a shorter period, broke down and confessed, triggering Leopold's very similar description of the crime and his role. Their confessions contained essentially the same detailed descriptions. These were almost immediately corroborated as the police, with Leopold and Loeb's active cooperation, retraced the killers' steps, finding clue after clue and assembling the prosecution's elaborate evidence. All the pieces of the puzzle, which Leopold and Loeb prided themselves on constructing, fit together and provided irrefutable evidence of their shared guilt. The confessions differed only in some minor details (later straightened out) and one essential fact—each accused the other of administering the fateful blow.

Thus when, very belatedly, the boys were allowed to contact their parents to arrange for an attorney, Nathan and Richard not only had openly confessed but also had helped the police to amass the materials for what prosecutor Robert Crowe assumed would be an airtight case, which he repeatedly called "a hanging case." The pair's active participation in constructing their own scaffold confronted their attorneys with serious strategic problems. Since all three families were rich and very well connected in various circles, including legal ones (two of the defense attorneys, Benjamin Bachrach and Walter Bachrach, were Richard's cousins), no one was en-

paper or magazine . . . published a sound, understandable explanation of the sexual psychopathy with which Thaw was and is afflicted, or discussed the means of guarding against the menace of this condition in human life." Crawford, *Ethics of Journalism*, 116. For the use of a psychological defense in the second trial, see John Holland Cassity, *The Quality of Murder: A Psychiatric and Legal Evaluation of Motives and Responsibilities Involved in the Plea of Insanity as Revealed in Outstanding Murder Cases of This Century* (New York, 1958), 34–36.

²⁰ Sellers, *Loeb-Leopold Case*, 191; Richard Cantillon, *In Defense of the Fox: The Trial of William Edward Hickman* (Atlanta, 1972). The Leopold and Loeb case occasioned wide discussion of the role of medical expertise in the law. For professional discussions, see William A. White, "The Need for Cooperation between the Legal Profession and the Psychiatrist in Dealing with the Crime Problem," *American Journal of Psychiatry*, 7 (Nov. 1927), 493–505; V. C. Branham, "The Reconciliation of the Legal and Psychiatric Viewpoints of Delinquency," *Journal of the American Institute of Criminal Law and Criminology*, 17 (Aug. 1926), 173–82; S. Sheldon Glueck, "Some Implications of the Leopold and Loeb Hearing in Mitigation," *Mental Hygiene*, 9 (July 1925), 449–68; "The Crime and Trial of Loeb and Leopold," editorial, *Journal of Abnormal Psychology and Social Psychology*, 19 (Oct.–Dec. 1924), 221–29; and editorials and comments in *Journal of the American Institute of Criminal Law and Criminology*, 15 (Nov. 1924). For popular comments, see James J. Walsh, "Criminal Responsibility and the Medical Experts," *America*, Oct. 4, 1924, pp. 586–88; "Crime and the Expert," *Outlook*, Aug. 27, 1924, p. 626; George W. Kirchwey, "Old Law and New Understanding," *Survey*, Oct. 1, 1924, pp. 7–8, 64.

²¹ *Chicago Daily Tribune*, May 31, 1924, sec. 1, p. 1.

tirely surprised when Darrow was called in to lead the defense team in what soon was described in the press as the “million-dollar defense.”²² It was generally assumed by the prosecutor, the press, and others that Darrow’s team would enlist medical specialists to assist in proving the two confessed slayers insane. Anticipating that the “crime of the century” would lead to the “battle of the alienists,” the papers began to prepare the public with long and even learned discussions of the insanity defense and its history.²³

After careful consideration, Darrow and the Bachrachs decided that their chances for an outright acquittal of the two extremely lucid and well educated defendants was slim. Instead, and to the great surprise of most participants, they pleaded the pair guilty (rather than not guilty by reason of insanity) and introduced expert testimony to mitigate the *sentencing* of the defendants. In this way, the defense avoided a jury trial and the specific legal requirements of an insanity defense, which in addition often incurred much popular hostility. The sentences were left to the mercies of a judge, in a state in which juveniles had only rarely been executed.²⁴ As a result of the strategy, the issue in the case became not *insanity*, with its specific legal definitions, but mental *abnormality*, a much more flexible and fungible concept, and one open to modern winds of interpretation. Issues of legal insanity were bound by clear guidelines, the M’Naughton Rule, but abnormality (a psychological concept) had no legal definition and a chaotic boundary. As Darrow noted, “There are many persons who walk the streets who are subject to mental disease falling short of the legal definition of insanity.” It was thus the defense’s contention that while Leopold and Loeb knew what they were doing and certainly that it was wrong (the key to guilt in cases of insanity), their emotions were so disordered that they should not suffer the extreme sentence of death. As Walter Bachrach made clear to the court in defending the introduction of psychiatric evidence:

We raise no issue as to the legal sanity of these defendants and make no contentions that by reason of the fact that they are suffering from a diseased mental condition, there should be any division or lessening of the responsibility to answer for the crime, the commission of which they have confessed. We do assert that they are suffering and were suffering at the time of the commission of the crime charged

²² The newspapers repeatedly estimated the combined wealth of the three families involved. Initially one paper put it at around \$25 million. *Chicago Herald and Examiner*, June 2, 1924, p. 2. Because of the fear that wealth would undermine justice, the fathers of the defendants issued a joint statement, promising, “In no event will the families of the accused boys use money in any attempt to defeat justice.” *Ibid.*, June 7, 1924, p. 1. This remained a loaded issue throughout the trial and after the sentencing. See the brief news reports from across the country in *Chicago Daily Tribune*, Sept. 11, 1924, sec. 1, p. 4; and “Rich and Poor Murderers,” *Literary Digest*, Sept. 27, 1924, pp. 10–11.

²³ *Chicago Herald and Examiner*, June 3, 1924, p. 2. Even before Leopold and Loeb were known to be the slayers, Jacob Franks noted that the slayers of his son had to have been insane. *Chicago Sunday Tribune*, June 1, 1924, part 1, p. 4. See also the huge headlines, “Slayers’ Parents First Statement Bases All Hope on Insanity Plea,” *Chicago Herald and Examiner*, June 7, 1924, p. 1. For discussions of the insanity defense, see *ibid.*, June 4, 1924, p. 3; *ibid.*, June 6, 1924, p. 2; *ibid.*, June 7, 1924, p. 3; *ibid.*, June 8, 1924, p. 2; *ibid.*, June 9, 1924, p. 3.

²⁴ The defense lawyers described their reasons for choosing this strategy in Clarence Darrow and Walter Bachrach, “Introduction,” in McKernan, *Amazing Crime and Trial of Leopold and Loeb*, 3–5. For hostility to pleas of insanity, see, for example, *Chicago Herald and Examiner*, June 6, 1924, p. 2. This seems still to be the case; see Richard Moran, “Preface,” *Annals of the American Academy of Political and Social Science*, 477 (Jan. 1985), 9–11.

from a diseased mental condition, but we do not concern ourselves with the question of whether such mental disease would constitute in the present case a defense to the charge of murder.

Crowe tried repeatedly to trip the defense into an insanity plea. But the defense team maintained that abnormality, according to a new psychological vision in which normal and abnormal were continuous and in which unconscious processes, rather than knowing intent, were paramount, differed from insanity. Darrow's defense, which was fully consistent with his own extremely dark and deterministic view of human behavior, used psychology in a maneuver that was new to the courts.²⁵

The maneuver allowed for maximum attention in the press to the new psychiatric theories and stimulated the newspapers to ask ministers, professors, and doctors for their views on the legal, medical, and moral issues involved.²⁶ The defense strategy laid the groundwork for the media's active role in translating and interpreting the case for the public, and because so many issues in the case were related to the new psychology, the press became an active source of cultural news and information.

"Fifty Alienists to Fight for Slayers," announced the *Chicago Herald and Examiner* headline for June 14 in a typical burst of exaggeration. In fact, Darrow's experts were a much smaller team: First among the three star witnesses—invariably called "the Three Wise Men from the East" by the prosecutor and often by the press—was William Alanson White, chief of staff at St. Elizabeth's Hospital in Washington and professor of nervous and mental diseases at Georgetown University. As the head of St. Elizabeth's, White was one of the most important figures in American psychiatry. An early and very influential American interpreter of Sigmund Freud's ideas, he did much to bring European psychoanalytic theory into an American framework. The second star was William Healy, an expert on juvenile psychopathology and a pioneer in expert court testimony. Healy had been director of the psychopathic clinic in Chicago and was at the time of the trial the director of the Judge Baker Foundation in Boston, an organization devoted to issues of juvenile crime and justice. Healy had written extensively about the causes of juvenile crime. Dr. Bernard Glueck, the third witness, was former director of Sing Sing prison in New York, a member of the staff at the College of Physicians and Surgeons of

²⁵ Richard Moran, "The Modern Foundations for the Insanity Defense," *Annals of the American Academy of Political and Social Science*, 477 (Jan. 1985), 31–42; A. Moresby White, "Legal Insanity in Criminal Cases: Past, Present, Future," *Journal of the American Institute of Criminal Law and Criminology*, 18 (Aug. 1927), 165–74; Winfred Overholzer, "The Role of Psychiatry in the Administration of Criminal Justice," *Journal of the American Medical Association*, 93 (Sept. 14, 1929), 830–34. William Alanson White called responsibility, which underlies the idea of insanity, a "legal fiction," in his courtroom testimony. *Chicago Herald and Examiner*, Aug. 3, 1924, p. 2. For Clarence Darrow's remark and the defense statement, see Sellers, *Loeb-Leopold Case*, 93, 90–91. See Clarence Darrow, *Crime: Its Causes and Treatment* (New York, 1922). For the critiques of this view, see "Editorial Comment," *Catholic World*, 119 (July 1924), 546–51; and C. O. Weber, "Pseudo-Science and the Problem of Criminal Responsibility," *Journal of the American Institute of Criminal Law and Criminology*, 19 (Aug. 1928), 181–95.

²⁶ For interviews with Chicago ministers, many of whom saw the case as a warning to parents and advocated more Bible study, see *Chicago Herald and Examiner*, June 9, 1924, p. 4. For an alienist who blamed "egoism," see *ibid.*, June 10, 1924, p. 3. For professors' views, see *ibid.*, June 9, 1924, p. 4; and *ibid.*, June 10, 1924, p. 3. For psychiatrists', see *ibid.*, June 11, 1924, p. 6.

Columbia University and the New York School of Social Research, the translator of several European works on psychoses, and an expert on the relationship between law and psychiatry who had in 1916 published *Studies in Forensic Psychiatry*. Less well known nationally was Ralph C. Hamill, a local and well-regarded neuropsychiatrist who helped prepare the written psychiatric evaluation on which the defense case was based.²⁷

The defense team had also enlisted the aid of two physicians who were not psychiatrists, Harold S. Hulbert and Karl M. Bowman. They examined Leopold and Loeb for fourteen days, probing and measuring their body functions, mentality, intelligence, their family histories and fantasies, as well as the then-popular matter of the function of their endocrine glands to appraise the physical and mental basis for their behavior.²⁸ The result of their investigation was the notorious eighty-thousand-word Hulbert-Bowman report on Leopold and Loeb, which provided the basic text of the defense case, but not before its contents were stolen or leaked to the press and served up, alongside eggs and toast, as breakfast food for American newspaper consumers.

The Hulbert-Bowman report thus became famous even before it became evidence. The most intimate facts of Loeb's and Leopold's lives, their fixations, and their "master-slave" relationship became a staple of Chicago diet as "perversions" were anchored in childhood fantasies and intellectual precocity absorbed into compensations for fears of physical inferiority. The report forced an entire revision of the assumed relationship between Leopold and Loeb; Loeb was now the "master" criminal and Leopold his willing slave and subordinate. This seemed initially to be the shocker: "Loeb is the king. It is he who has been the master-mind throughout. He is almost without emotions. . . . He has always been fond of crime stories." But any reader who went beyond the attention-grabbing summations would be presented with two very troubled boys. Much of this report, except for "the unprintable [sexual] matter," appeared in all the major Chicago newspapers, as well as in the book published very shortly after the trial by Maureen McKernan, who had been a reporter for the *Chicago Herald and Examiner*.²⁹

The Hulbert-Bowman report did not explain away the death of the Franks child, but it substituted the troubled bodies and childhoods of the killers for the tragic loss of Bobby and the remainder of his childhood. One could hardly read Hulbert and Bowman's reports and not be affected by the fragile loneliness of Leopold's

²⁷ *Ibid.*, June 14, 1924, p. 1. For works by the defense experts, see, for example, William Healy, *The Practical Value of Scientific Study of Juvenile Delinquents* (Washington, 1922); William Healy with Augusta F. Bronner, *Delinquents and Criminals: Their Making and Unmaking* (New York, 1926); and Bernard Glueck, *Studies in Forensic Psychiatry* (Boston, 1916).

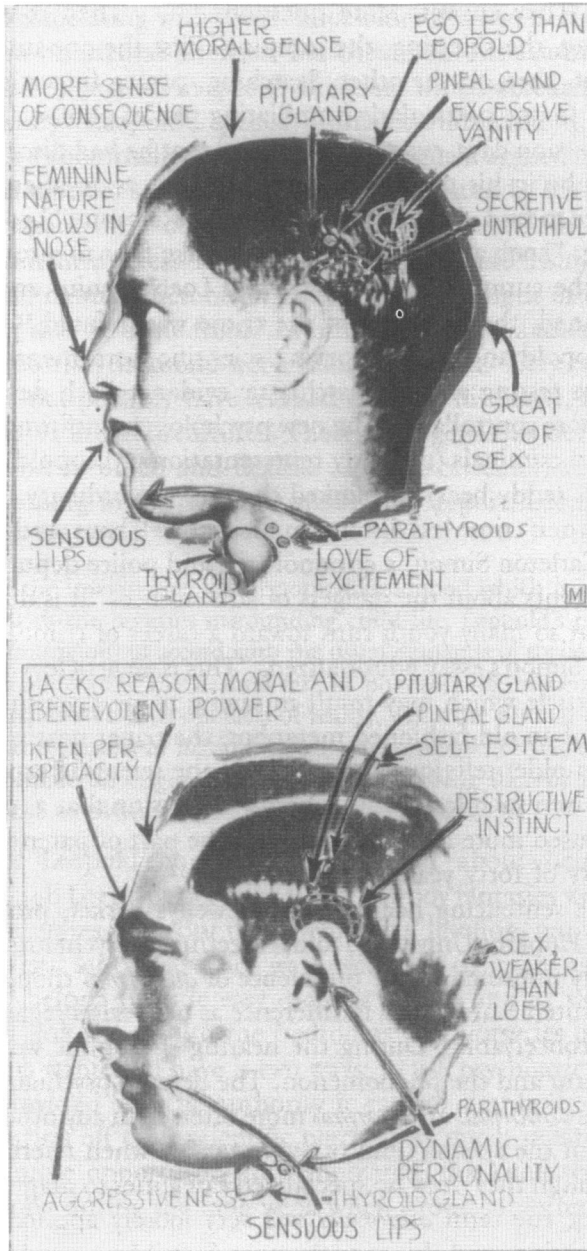
²⁸ "All is referred back to the glands. They are the Alpha and Omega of personality." *Chicago Herald and Examiner*, June 18, 1924, p. 3.

²⁹ *Chicago Daily Tribune*, July 28, 1924, sec. 1, p. 1. (There were separate reports on Leopold and on Loeb jointly written by Harold S. Hulbert and Karl M. Bowman and a psychiatrists' report to which they contributed. The two reports they wrote jointly were called the Hulbert-Bowman report.) For the report see this issue generally. It was Maureen McKernan who used the term "unprintable." McKernan, *Amazing Crime and Trial of Leopold and Loeb*, 82.

childhood, scarred by feelings of physical inferiority, the sexual abuse of a governess, and the loss of his mother when he was fourteen. "The patient states that there have been two experiences in his life which have completely altered his philosophy of life. His mother's death is one of these. . . . if his mother, who was such a good and exceptional person had to suffer so much in the world and that if God took her away from this world, then that God is a cruel and senseless God." In McKernan's very early account of Leopold's life, based on this report, the theme of the lonely, betrayed child rings clear: "A queer reserved chap, living to himself among his books, substituting his studies for the normal active interests of boys his own age." Similarly, it was difficult to deny the evil committed against a vulnerable Dickie Loeb by a well-meaning but pretentious and outrageously strict governess who took him over, denied him play time, and pushed him into extreme academic overachievement. The defense doctors, psychiatrists, and lawyers were very careful to avoid blaming the boys' families (specifically absolving them of genetic taint), and the governesses were clearly convenient substitutes for the parents. This defense stratagem appears to have succeeded: in letters and interviews ordinary citizens were divided on the question of parental guilt and responsibility and not strongly inclined to blame the parents. Nonetheless, whether parents or parent substitutes were at fault, the childhood of each boy had been distorted. As the psychiatric testimony continued, the warped childhoods of the two killers were embedded in the public awareness of the case. The prosecution derided White's image of Dickie nightly speaking his dreams and fantasies to his teddy bear, but the mental picture of the lonely child with his teddy lingered in the newspapers and throughout the hearing.³⁰

Leopold and Loeb were not entirely tamed by the Hulbert-Bowman report or the psychiatric testimony, especially as the boys' sexual compact as master and slave became more firmly limned. But in the minds of readers who were willing to be informed and not just inflamed, the image of the bold, self-sufficient, criminal master-minds had been deeply shaken. The exposure of their privacy in the press was profoundly humiliating. The endless testing itself must have aggravated the humiliation, as the boys' every bodily and mental function became part of their "defense," the subject of news and publicity. The newest scientific work was enlisted on their behalf. As the *Chicago Herald and Examiner* observed: "Physiology, psychology, biology, chemistry and a half dozen other sciences have been utilized in the research work." But this use of science also brought down their imperiousness and autonomy, as day after day the newspapers showed the pair hooked up to machines and discussed their test results. "Questions are hurled at them — staccato,

³⁰ *Chicago Daily Tribune*, July 28, 1924, sec. 1, p. 2; McKernan, *Amazing Crime and Trial of Leopold and Loeb*, 56, 108, 140. On references to "guiltless parents" and their "horrible suffering," in letters received by Judge Caverly, see *Chicago Herald and Examiner*, July 30, 1924, p. 2. For a contrasting view, see the interviews with a man in the street, *ibid.*, July 31, 1924, p. 1. For a sympathetic portrait of Leopold's father, see *ibid.*, Aug. 12, 1924, p. 3. On the fear of parent substitutes and the tendency to blame parents for relying on them, see Arthur Calhoun, *Social History of the American Family*, vol. III (Cleveland, 1919), 134–36. On Loeb and the teddy bear, see, for example, *Chicago Herald and Examiner*, Aug. 2, 1924, p. 2; and *ibid.*, Aug. 4, 1924, p. 3, with picture.



This kind of “scientific” analysis of the faces of Richard Loeb (top) and Nathan Leopold (bottom) was often featured in the newspapers at the times of the arrest and the hearing.

Note, for example, the moral categories: “higher moral sense” and “excessive vanity.” *Copyright 1924, The Chicago Tribune Company, reprinted with permission.*

urgent questions. They answer. More questions. . . . Then come the examinations—the hopping, the skipping, the jumping. First the one under examination stands on one foot, then on the other. Searching, prying fingers go over him. He winces and grins.” In one particularly humiliating pair of photos, Leopold is shown first in his preconfession days, examining the bird that he had discovered, and then, birdlike, with a tube in his mouth, subjected to tests as an alienist used “all the resources of science to find evidences of some form of insanity.” Leopold once railed against the testing: “Loeb and I are being trained like fleas to jump through hoops just to entertain the curious.” As Leopold’s and Loeb’s genius and precocity were tested and demeaned, the fierceness of the crime was defused.³¹

In exposing Leopold and Loeb to prying scientific instruments and the prying public, the endless testing and the psychiatric evidence both democratized them and made them more controllable. The new psychology transformed them from arrogant Nietzschean criminals (the early representation of Leopold) into vulnerable boys (Loeb and his teddy bear) and linked them to the ordinary boys of America. The change made their crime less distant, but it may well have made it more broadly frightening. Dr. Carleton Simon, a criminologist and police deputy, took the occasion to instruct parents about the dangers of adolescence. “It is during the adolescent transition that so many youth turn toward a career of crime.” And the newspaper that carried Simon’s essay editorialized, “This is an article which every parent should read, an article which may result in saving many a youth from the wages of sin.” By its use of an old-fashioned metaphor, the paper neatly transcended the difference between older religious authority and the scientific expertise offered by a criminologist. Given such lessons, it is hardly surprising that a minister observed that the crime “caused more heart searching on the part of parents than any crime within my memory of forty years in the ministry.”³²

Even before the sentencing hearing, Dr. Llewellys Barker, professor of clinical medicine at Johns Hopkins University, told a meeting of psychiatrists: “If the public could be accurately informed of the prevalence of *abnormal* thought, feeling, and behavior in the United States, such indifference as now exists regarding prevention would become inconceivable.” During the hearing the public was thoroughly inducted into the term and the phenomenon. The defense psychiatrists’ joint report repeated the terms *abnormal* and *normal* more often than any other set of concepts and added to them the special term of *supernormal* when referring to Leopold’s intelligence. Although they drew on specialized categories to diagnose Leopold and Loeb’s abnormality, the term *abnormal* was very loosely applied by the defense throughout the hearing, and this vaguer, more fungible concept was much more widely applicable. Among the “abnormal” childhood behaviors were too much private fantasizing, excessive reading of “exciting detective fiction,” drinking at too

³¹ *Chicago Herald and Examiner*, June 19, 1924, p. 9; *ibid.*, June 15, 1924, part 1, p. 3; *ibid.*, June 16, 1924, p. 4; *ibid.*, June 16, 1924, p. 1. This same newspaper also announced that the doctors were measuring the pair’s “vanity.” *Ibid.*, June 17, 1924, p. 1.

³² *Ibid.*, Aug. 4, 1924, p. 3; *ibid.*, June 9, 1924, p. 4.

early an age, and associating with those much older than oneself. Leopold “was not only precocious in his mental interests, but these interests assumed a degree of intensity and showed themselves in special directions which were in themselves indications of abnormality.” Leopold’s special brilliance and extraordinary interests became signs of an “abnormality” that had been much aggravated because “early recognition of his superior attainments by his teachers and by his mother made him feel unlike and apart from others and superior to them.” In Loeb’s case, “unscrupulousness, untruthfulness, unfairness, ingratitude and disloyalty assume a particularly abnormal nature when one views them in the light of the kind of home and social setting that he came from.” In other words, traits usually condemned as dishonorable or possibly immoral were being redefined. They were abnormal because Loeb could not possibly have learned them in his home, one “noted for its high standards of virtue and culture.” These were generous definitions of abnormality, indeed, and so broad and flexible as to be extremely frightening.³³

Above all, according to the defense psychiatrists’ report, Leopold and Loeb had indulged extreme fantasies.

In contrast to the imaginative life of normal childhood which is always in touch more or less with the realities surrounding child life, Leopold’s phantasies were from the beginning out of accord with the usual demands of social life, and never seem to have undergone the natural fate of phantasy life in being increasingly matched or assimilated into the facts of reality. Thus the normal child identifies himself with the persons in his immediate environment, he day-dreams himself being a motorman, an engineer, a policeman, showing thereby in his desires a normal response to the influences which surround him.

Probably neither Leopold nor Loeb daydreamed about being motormen or policemen (although Loeb’s perfectly ordinary cowboy fantasies were damned as evidence of excessive aggression). But the psychiatrists’ leveling, not to say banal, views of reality and realistic fantasies, which were even then criticized as substituting doctrine for insight, helped provide easy didactic lessons and fit well into the needs of newspapers to link the case to the bedrooms and nurseries of their readers.³⁴

The newspapers wanted to have it two ways: to use psychiatric testimony for the information it provided and the authority it gave to simple domestic lessons but to knock psychiatrists off their scientific perch as so much inflated (and overpaid) ego. They had ample opportunity to demonstrate this confused attitude toward science and learning during the long week when Crowe subjected the “Three Wise

³³ *Chicago Daily Tribune*, June 5, 1924, sec. 1, p. 3; emphasis added. See “Psychiatrists’ Report for the Defense (Joint Summary),” *Journal of the American Institute of Criminal Law and Criminology*, 15 (Nov. 1924), 370. Sellers, *Loeb-Leopold Case*, 157, 117; “Psychiatrists’ Report for the Defense,” 361, 362, 374.

³⁴ “Psychiatrists’ Report for the Defense,” 366. For the cowboy fantasy, see *ibid.*, 374. See also the photograph in *Chicago Herald and Examiner*, Aug. 6, 1924, p. 3. For contemporary criticism, see the editorial, “Crime and Trial of Loeb and Leopold,” 223–29; and the response, Glueck, “Some Implications of the Leopold-Loeb Hearing,” 448–68. For lessons drawn by psychiatric experts, see, for example, *Chicago Herald and Examiner*, June 3, 1924, p. 3; *ibid.*, June 5, 1924, p. 2; *ibid.*, July 25, 1924, p. 3.

Men from the East” to a withering populist cross-examination. The papers had a field day pitting Crowe as a David of common sense against the Goliath of psychiatric obscurantism and sissified intellect. And Crowe, rumored to be eager for higher elective office, played on this persona: “After noon, Mr. Crowe reminded the men and women of the country that he was just a layman, who didn’t know much about fancy terms for psychoses. And he suggested that perhaps many of his comrades round about were just plain folks with plain terms for plain things.” When Crowe scored a point, either confusing the alienists (White was his special target) or suggesting the limitations of their expertise, the papers registered it as a victory for the people against the hired evidence. On other days, the newspapers applauded the shrewd rejoinders of the defense or prosecution psychiatrists. The papers never reported that the alienists on both sides had offered to hold joint examinations and to submit common reports and that the prosecution had turned the offer down. Instead, the alienists were pitted against each other. The circus atmosphere surrounding the trial, at which three thousand people daily vied for a hundred seats, did not help, nor did the newspapers’ competitive grandstanding. The papers were using the psychiatrists in some grand public demonstration of modernism and its discontents, and indeed, William Randolph Hearst had tried to hire Sigmund Freud to testify at the trial.³⁵

The carnival atmosphere almost obscures the important but subtle way the papers democratized the trial by bringing Leopold and Loeb and the assorted bigwig doctors and lawyers down to a common level, transforming the event from the distant and bizarre to the vaguely familiar and socially consequential. The killers became anything but the Nietzschean supermen whom they claimed to be and whose self-sufficiency initially alarmed the public. Instead they became children, precocious and wounded certainly, but children who could provide lessons about how to normalize childhood. “There is not an act in all this horrible tragedy,” Darrow said, “that was not the act of a child.” As the psychiatrists persisted in describing the pair as Dickie and Babe, Crowe became understandably irate at the testimony’s tendency to make them into ordinary boys. And at one point, Crowe, who wanted to make them “normal” and therefore responsible for their actions but monstrous, burst out in his cross-examination of William Healy, “You don’t get in your courts many college graduates whose fathers are millionaires.”³⁶ He thus suggested that Healy’s experience with ordinary juvenile delinquents did not cover this case. Of course Healy’s very presence on the defense team suggested that the case was being absorbed into this larger category (and speciality) of juvenile delinquency, much expanded in this trial to include the children of the privileged as well as of

³⁵ *Chicago Daily Tribune*, Aug. 2, 1924, sec. 1, p. 1. Of Crowe’s performance, the *New Statesman* concluded, “Of Mr. Crowe, the State’s Attorney, perhaps the most charitable thing to say is that he provided the psychiatrists with a subject of study not much less interesting than Leopold and Loeb.” “Leopold and Loeb,” 670. “Crime and Trial,” 226. Hearst offered to pay Sigmund Freud’s one-half million dollars and his transatlantic transportation costs. Freud refused because, he said, he was too ill to travel. See *Chicago Herald and Examiner*, June 18, 1924, p. 3.

³⁶ Sellers, *Loeb-Leopold Case*, 173; *Chicago Daily Tribune*, Aug. 6, 1924, sec. 1, p. 2.

the deprived. The Leopold and Loeb case thus problematized childhood (and not, as previous concerns about juvenile delinquency had, only the children of the poor) and made it the site of significant preventive knowledge. The case had attached categories of normality and abnormality to definitions of childhood, and the association was more significant than the often slippery distinctions that were made between them. At a time when child-rearing advice was avidly sought by parents and increasingly dispensed by a variety of experts, the Leopold and Loeb case stimulated psychological explorations of childhood development and experience.

The verbal pushing and shoving in court as the prosecutor tried to show that these pampered “fiends” (Crowe never gave up suggesting that Bobby had been mutilated) were perfectly sane and normal and the defense team tried to make them just kids, very human but mentally abnormal, made the concepts of normal and abnormal, in all their rich confusion, daily staples of newspaper copy. In the written psychiatric report, the defense team emphasized the killers’ “abnormal mental life. This has made a situation so unique that it probably will never repeat itself. There is justification for stressing the uniqueness of this case if for no other reason than that it has created wide-spread panic among parents of young people.”³⁷ The psychiatric report implied that the newspaper coverage had succeeded in alarming parents, but the report left unclear whether parents panicked because their children might be victims or, as became increasingly likely in view of the lessons offered by Leopold and Loeb, perpetrators of horrible crimes.

While Leopold and Loeb did not hang, that victory did not necessarily validate the defense claim that the case was unique or that it should be decided on the basis of new visions of psychological abnormality (Caverly based his ruling on their age) or on the alienists’ conclusions. Indeed, subsequent cases in the decade in which young men were accused of heinous crimes against children, like those of William Hickman and Harrison Noel, may have suffered from the connection with Leopold and Loeb. Rather, the press presented and the public heard the alienists’ views in tandem with Crowe’s challenges. In the end what ruled the day was, as Mr. Dooley put it, the perception that “th’ throupe if thrained alyenists at ivry murdher thrile is always a riot. This is prob’bly th’highest price vowdyville act on th’ big cirket.”³⁸ Science took it in the knees in the public press, while the Leopold and Loeb case familiarized Americans with a wide range of terms, concepts, and values drawn from psychiatry. Nevertheless, psychiatrists had defused the crime, not because it was unique, but because they lodged its causes in the childhoods of the young men who had killed, not for an intentional “thrill” as first reported, but for deeply psychological reasons. They had made psychology a form of explanation far more comprehensible (and far less disturbing) than the initial Nietzschean portrait that the papers had exploited. If Leopold and Loeb were not quite like any other two boys, they

³⁷ McKernan, *Amazing Crime and Trial of Leopold and Loeb*, 142.

³⁸ See Thomas W. Salmon, “The Psychiatrist’s Day in Court,” *Survey*, Oct. 15, 1925, pp. 74–75; Branham, “Reconciliation of the Legal and Psychiatric Viewpoints,” 173–82; and Clara Cushman, “Do Alienists Disagree?,” *Mental Hygiene*, 13 (July 1929), 449–61. *Chicago Sunday Tribune*, magazine section, Aug. 17, 1924, part 5, p. 1.

were declawed, and their crime became a moral lesson that Americans could ponder as they put their own children into their cradles and cribs at night.

The Crime Grows Up

The orgy of publicity surrounding the crime, confessions, trial, Judge Caverly's sentencing, and Leopold and Loeb's imprisonment would have made the case notable even if Leopold and Loeb had thereafter disappeared from the public record, tightly shut up from freedom and from view at Joliet and Stateville prisons. As the *New Statesman* told its English readers, "No crime that the modern world knows of can be set beside the killing of the boy Robert Franks by Nathan Leopold and Richard Loeb. . . . The affair has dominated the American newspapers for four months in a fashion that no short description could make real to English readers." After their confession, "there began the exploitation of Leopold and Loeb on a scale and with a recklessness going beyond anything hitherto known." That exploitation, as we have seen, both tamed the criminals and gave the public cause for concern about the inclinations and rearing of "normal" children. The case also had effects in professional circles. S. Sheldon Glueck, an expert on forensic psychiatry and juvenile delinquency, noted in 1925, "In Illinois and throughout America, the much journalized and discussed Leopold-Loeb hearing is even now bearing fruit in the shape of numerous articles, on different angles of the problem of mental disorder and the criminal law, published in scientific periodicals and professional journals."³⁹

But the two convicts did not disappear. Similar crimes later in the decade inevitably brought newspaper recollections and comparisons, and sometimes other criminals suggested that they had imitated the famous pair.⁴⁰ Such crimes, the way the killers had been represented to the public, and Leopold and Loeb's experiences in prison kept the case alive.

Despite the reputation of the 1920s as an era of sexual revolt, the sexuality in the Leopold and Loeb case was not fully explored then. Instead, the public discussion of sexuality was marginalized or shortcircuited and largely restricted to rumor and innuendo. Perhaps this was because the story that became central in the press was about childhood, and because the boys' story was normalized at a time when heterosexuality dominated public discussions of youthful misbehavior. Indeed, the newspapers frequently emphasized Richard Loeb's special attraction for women and his many girl friends. In 1924 the public was largely guarded from specific knowledge about the details of Leopold and Loeb's homosexual relationship. The newspapers did not print the sexual sections of the psychiatric reports; McKernan's important collection excised what she called "the unprintable matter." Even professional journals such as the *Journal of the American Institute of Criminal Law and Criminology* excluded "the murderers' sexual history" when it printed large excerpts and

³⁹ "Leopold and Loeb," 669; S. Sheldon Glueck, *Mental Disorder and the Criminal Law: A Study in Medico-Sociological Jurisprudence* (Boston, 1925), xiii.

⁴⁰ See, for example, *New York World*, Sept. 18, 1925, p. 3S.

case summaries. Judge Caverly had asked the attorneys to approach the bench when these matters were discussed in court. He ordered women, even female reporters, out of the courtroom. That the two had been sexual partners of some kind was nevertheless commonly assumed to be part of their “folie à deux,” if not indeed at the root of their crime. Even though the press eschewed vivid or graphic descriptions, the rumors, innuendos, and use of such terms as *perversions* and *fend fed* popular imaginings.⁴¹

It was this cloud of sex stuff that erupted when Richard Loeb was brutally and horribly murdered in the Illinois Penitentiary at Stateville in 1936. Loeb had been literally “slashed to ribbons” in the shower by James Day, a fellow inmate. “The killing of Loeb rivaled in brutality the killing of the Franks boy,” the *New York Times* announced in its front-page coverage. It seemed that twelve years after his own heinous act, Loeb had gotten his and, appropriately, as a result of a sexual goad. Day immediately played on the sexual in his own story and defense. Day often changed the details of his story, but he stood by the accusation of sexual assault. In the *Chicago Tribune* he was quoted as saying, “I can’t talk about Loeb or why I dislike him while there’s a lady present,” but he must have assumed that ladies did not read the *Los Angeles Times*, for in an interview for that paper, he contended that “ever since I have been a prisoner here . . . Loeb has been hounding me with improper advances.” Since both Loeb and Day were undressed at the time of the murder, the accusation seemed plausible.⁴²

In his memoir, Leopold claimed that Loeb would not have instigated a sexual rendezvous with Day.⁴³ State’s Attorney William R. McCabe, called in to investigate the case, believed Loeb had been set up as a result of “a plot among fellow convicts. . . . I disbelieve Day’s story almost in its entirety. . . . What he says of Loeb’s morality is directly opposed to all that was known of Loeb.” Rather than being interpreted as a sexual story, “the slaying of Loeb was regarded by many public officials as the crowning episode in the inefficiency and violence that have characterized the history of the state prisons under Governor Horner.” Some speculated that Loeb, because of his wealth and ability to buy special privileges from corrupt prison officials, was murdered by resentful prisoners, as equally resentful guards looked the other way. But, as journalist-historian Hal Higdon observed, “Undoubtedly, many

⁴¹ For the growing normalization of heterosexuality in the early twentieth century, see Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America* (New York, 1985), 245–96. At Caverly’s order, the women, including reporters, left. *Chicago Herald and Examiner*, Aug. 27, 1924, p. 2. For a reference to *folie à deux* by a defense psychiatrist, Bernard Glueck, see *ibid.*, Aug. 4, 1924, p. 1. In his prison memoir, Leopold noted that when the “newspapers reported the proceedings, they did so in terms that misled a large part of the public: ‘At this point the testimony became of such a nature as will not be reported in this paper,’ and this would be followed by a whole row of asterisks. What a lot of sordid imaginings laid behind those asterisks.” Leopold, *Life plus 99 Years*, 76.

⁴² *New York Times*, Jan. 29, 1936, p. 1; *Chicago Tribune*, Jan. 29, 1936, sec. 1, p. 2; *Los Angeles Times*, Jan. 29, 1936, p. 1. Day subsequently told other stories, including one in *True Detective Magazine* about a prison-break plot organized by Loeb. See Higdon, *Crime of the Century*, 291–303.

⁴³ Leopold’s motives in this denial are open to question since his *amour propre* might have been wounded or his sense of decorum offended by his heroized Loeb having any physical relationship with the insignificant Day. For Leopold’s story of the death, see Leopold, *Life plus 99 Years*, 266–79.

people accepted the story that Loeb did make homosexual advances as true because they wanted it to be true. They considered the Franks murder an act of perversion — which was never proved — so it seemed fitting that Loeb die while attempting another perverted act.”⁴⁴

It is significant that what was remembered about Loeb’s death had nothing to do with inequalities in prison or lack of discipline and enforcement of rules. Loeb’s death was remembered by journalists and the public as a tale of sexual perversion, not of state corruption. Beginning in the 1930s, especially with the publicity surrounding Loeb’s death, the sexual materials that had been largely inhibited in the original case spilled forth in explicit public representations. Less than a week after Loeb’s death, *Time* magazine, for example, described the event in its “Crime” department by remembering Leopold and Loeb as “two perverted Chicago youths” who had “violated” Bobby Franks before they killed him. “Prison,” *Time* declared, had “only exaggerated Loeb’s unnatural appetites.”⁴⁵

Subsequently, Loeb’s horrible end became the subject of even more titillating imaginings. One had an especially pungent twist. In *The Madhouse on Madison Street*, his memoirs as a newspaperman, George Murray described “Dickie Loeb” as “in love, desperately and insanely. He lusted for the body of the Negro boy he coveted and he was driven mad by jealousy when he saw the boy so much as talk to another prisoner.” He quotes the “Negro boy” as saying, “White boy, keep your hands to yourself. Quit writing me love letters. I need a woman bad but I sure don’t need the kind of satisfaction you keep offering.” Murray finishes his recollection by quoting the story lead from fellow journalist Edwin A. Lahey of the *Chicago Daily News*: “Richard Loeb, who graduated with honors from college at the age of fifteen and who was a master of the English language, today ended his sentence with a proposition.” Murray not only misrepresented Day as black (his pictures in the newspapers clearly showed a white man) but also misquoted from a colleague who in his clever haste had loaded his news copy with *double entendres*. Murray thereby made Loeb even more precocious than he was (he graduated at seventeen).⁴⁶ The full engagement with Leopold and Loeb’s homosexuality occurred in the 1980s and 1990s, when the pair became part of the self-conscious history of homoerotic love. But the sexuality implicit in the story would not wait that long.

After the 1930s, with Leopold older and in prison and Loeb dead, the case was no longer about childhood. Sexuality and psychology began to dominate the public memories and representations. Removed from public view and therefore from newsprint, it now moved to other forms and toward the boundaries between fact and fiction. If the facts in Loeb’s death could be fictionalized, it was no great surprise

⁴⁴ *Chicago Tribune*, Jan. 31, 1936, sec. 1, p. 1; *ibid.*, Feb. 1, 1936, p. 4. This paper also discusses a plot involving high levels of secret explosives. See *ibid.*, Feb. 2, 1936, sec. 1, p. 7; *ibid.*, Feb. 3, 1936, sec. 1, p. 4. *New York Times*, Jan. 29, 1936, p. 1; Higdon, *Crime of the Century*, 298.

⁴⁵ “Last of Loeb,” *Time*, Feb. 10, 1936, p. 15.

⁴⁶ George Murray, *The Madhouse on Madison Street* (Chicago, 1965), 343, 344. The *Chicago Daily News* article did not even give Loeb’s age at graduation, which was evidently made up by Murray. *Chicago Daily News*, June 29, 1936.

that fictional representations could deliver a huge payoff of exact details and entire pages lifted from the historical record. In *Compulsion*, a 1956 novel based on the case, Meyer Levin obscured the boundary between fact and fiction by including the text of Darrow's famous summation, an exact replica of the criminal investigation, the confessions, and the sequence of court evidence. Moreover, by endowing Judah (Judd) Steiner with almost all of Leopold's interests and borrowing aspects of the personalities of the historical characters for his fictional ones (Artie Straus was Dickie Loeb), he made it very difficult, in fact impossible, to know where facts leave off and fictions begin. Levin made no secret of his exploitation of the case.

If I have followed an actual case, are these, then, actual persons? Here I would avoid the modern novelist's conventional disclaimer, which no one fully believes in any case. I follow known events. . . . I suppose *Compulsion* may be called a contemporary historical novel or a documentary novel, as distinct from a *roman à clef*.⁴⁷

Anyone deeply familiar with the case, as I have become, would be caught short trying to find the boundary between what she knows from the evidence and what Levin has interpolated or re-created in his book, with two exceptions. *Compulsion* is full of a psychologizing much more sophisticated than that presented in the trial, and the shutters have been taken off the sexual materials. From the beginning, as we have seen, psychology and sexuality clung to the case, but in the atmosphere of the twenties the public discussions were choked off. Psychiatry was made very public in the Leopold and Loeb case, but it was humiliated and short-circuited, confused with public morality. Levin makes his psychological explanation of the story fully Freudian, accenting symbolism in the murder and drawing out aspects of the relationship between the boys that neither William Alanson White nor anyone else had publicly discussed in the twenties. The sexuality of the two had been whispered about in the twenties, but women had been sheltered from the facts and the subject never seriously engaged in public. Levin proposes sexual drive as the motive force for Leopold's involvement, making the homosexual dimension of the boy's relationship just one facet of a more complex sexual energy that propels Leopold. He even interpolates a heterosexual rape scene that seems to spill forth from Leopold's imagination, engorged on World War I propaganda. (In his summation, Darrow had drawn attention to the violent consequences of the war and wartime propaganda for the culture as a whole, not just the defendants, and the defense psychiatrists had mentioned in their report Leopold's *fantasies* of German soldiers raping captives.) Indeed, in Levin's novel the two boys are always looking for "gash" and parading their sexual prowess. Their girl friends anxiously consider experiencing sex a necessary part of being modern and up-to-date. By the 1950s such overt sexuality, although sometimes criticized as vulgar in reviews of the book, had become a necessary ingredient of realistic fiction.⁴⁸ Levin thus took the two most powerful latent

⁴⁷ Meyer Levin, *Compulsion* (New York, 1955), ix.

⁴⁸ See, for example, Genevieve Forbes Herrick, "Novel Based on Loeb-Leopold Case," *Chicago Sunday Tribune Magazine of Books*, Oct. 28, 1956, part 4, p. 2.

themes of the case, psychiatry and sexuality, and built his novel around them, making it thereafter impossible to imagine that the story of Leopold and Loeb had earlier been about anything else. Full of fifties themes, but built on twenties events, the novel became a best seller and eventually sold more than one million copies in its Pocketbook paperback edition. In the fifties—after another, even more brutal war—sex, violence, and psychoanalysis seemed the right mix of clues to penetrate the terrible conundrum at the base of the century's understanding of evil, a mystery that the Leopold and Loeb case, with its pointed questions about childhood danger, had from the beginning promised to expose. In the fifties, the explanatory power of psychology, a fixation on the omnipotence of sex, and an obsession with normality came together in Levin's re-creation, contributing to its broad popularity.

The fifties was not just the decade when Freudian psychology and sexually explicit novels arrived. In the fifties, Nathan Leopold, having survived over thirty years in prison, was beginning to dream of the possibility of parole. Levin believed that *Compulsion*, which carried forward the psychological humanizing that the alienists had begun in 1924, assisted Leopold in his parole efforts, and Levin even testified, unbidden, on Leopold's behalf at the latter's 1957 executive clemency hearing. According to Levin, "Some of the members of the Board told me they read the book and it changed their thinking about Leopold."⁴⁹ If Levin is to be believed, his fictionalized re-creation positively affected the image of Leopold. But Leopold, who had already been deeply exposed and humiliated in the 1920s by the press and psychiatrists, felt otherwise. He believed that the book infringed on his private property, that is, his person, identity, and personality; it made up incidents and took liberties with the truth, all the while parading as a fiction that everyone assumed to be fact. On October 2, 1959, shortly after his release on parole, he and his lawyer, Elmer Gertz, filed suit against Levin, his publisher, Simon and Schuster, and Darryl F. Zanuck Productions, Inc., which had just released a movie based on the book. Levin, who had also written a play based on his book, wrote the screenplay. Like the novel, the movie altered cases and renamed characters, but it was extensively advertised as based on the Leopold and Loeb case.⁵⁰

After long delays, on April 15, 1964, Leopold won the right to sue for \$1,405,000 in the Circuit Court of Cook County, Illinois. In the decision, Judge Thomas E. Kluczynski observed:

defendants claim the protection of the First Amendment. . . . Freedom of speech and of the press does not encompass freedom to exploit commercially or "make

⁴⁹ See the book by Leopold's parole counsel, Elmer Gertz, *A Handful of Clients* (Chicago, 1965), 6–110. Gertz also includes the best summary of Leopold's character during those thirty plus years: "Leopold was wise in the ways of prison." *Ibid.*, 11. To get a sense of this wisdom, see John Bartlow Martin, "Murder on His Conscience, Part One," *Saturday Evening Post*, April 2, 1955, pp. 17–18, 86–88, 90; John Bartlow Martin, "Murder on His Conscience, Part Two," *ibid.*, April 9, 1955, pp. 32–33, 65–66, 71–72; John Bartlow Martin, "Murder on His Conscience, Part Three," *ibid.*, April 16, 1955, pp. 36, 198, 201–2; John Bartlow Martin, "Murder on His Conscience, Part Four," *ibid.*, April 23, 1955, pp. 28, 135–38. Gertz, *Handful of Clients*, 163. Carl Sandburg, several journalists, and other literary figures, including Erle Stanley Gardner, had appeared for Leopold or submitted statements on his behalf.

⁵⁰ On the case, *Leopold v. Levin*, see Gertz, *Handful of Clients*, 150–92.

merchandise" of one's name or likeness in an advertisement. . . . Although plaintiff is "disguised" by the use of pseudonym in the book, plaintiff's name is prominently displayed on the coverjacket. . . . Similarly the plaintiff was used to sell the motion picture. . . . The unauthorized publication of plaintiff's name and likeness to advertise both the book and the movie constitutes a classic instance of an invasion of the right of privacy, for which the courts have allowed redress.

Leopold appeared to have won back from the public arena the right to his identity.⁵¹

The case did not end there, however. Although the Illinois Supreme Court first upheld Kluczynski's ruling in the Leopold suit, "which was in the nature of a suit alleging violation of the right of privacy," the decision was overturned, on an appeal by Levin, by the same court on May 27, 1970.⁵² The final judgment delivered by Justice Daniel P. Ward noted that "public interest in the crime and its principals did not wane with the passage of time." As a result:

we hold here that *the plaintiff did not have a legally protected right of privacy*. Considerations which in our judgment require this conclusion include: the liberty of expression constitutionally assured in a matter of public interest, as the one here; the enduring public attention to the plaintiff's crime and prosecution, which remain an American cause célèbre; and the plaintiff's consequent and continuing status as a public figure.

Justice Ward dismissed Leopold's fury at the explicit sexuality the book contained and his contention that the book's fictionalizations were an "outrage to the community's notion of decency," by noting that "we consider that the fictionalized aspects of the book and motion picture were reasonably comparable to, or conceivable from facts of record from which they were drawn, or minor in offensiveness when viewed in the light of such facts." The indelicate materials that in 1924 had prompted Judge Caverly to order women out of the courtroom were now judged reasonable and could be made publicly available not only as facts but as extrapolations from known facts. Leopold had participated in a public event that was part of the "historical record. That conduct was without benefit of privacy."⁵³

In effect, the final judgment in the *Compulsion* case removed the boundary between fact and fiction. Once an event or an individual became public and part of the historical record, "reasonable" fictionalizations of all sorts were permissible. Indeed, those fictionalizations could entirely recast the meanings of the initial record. Ironically, the very historicity of an event made it vulnerable to fictionalization. In many ways, Judge Ward merely confirmed what had long ago happened to Leopold and Loeb. "The story," one of Leopold's parole board members had noted, "is already a legend."⁵⁴

⁵¹ Gertz, *Handful of Clients*, 189–90. See *Chicago Tribune*, April 16, 1964, sec. 1A, p. 18.

⁵² Paul Birgiel, "Leopold v. Levin: Privacy 1970," *John Marshall Journal of Practice and Procedure*, 4 (Winter 1970), 143.

⁵³ *Leopold v. Levin*, 45 Ill. 2d 434, 259 N.E. 2d 250, 252, 254, 255–56, emphasis added.

⁵⁴ Gertz, *Handful of Clients*, 156.

The Public as Personal

The process of changing representation—which had first proposed that Nathan Leopold was a Nietzschean monster, had then used him and his partner to expose the dangers lurking in modern childhood and to explore the insights offered by psychology, and had ended in Levin's book with Leopold romping unclothed with Loeb in his fraternity room and raping his own girl friend—was more than a public appropriation of private events. For Leopold, awaiting parole, it was a matter of personal self-awareness and of painful dependence on public opinion. Leopold's interest in Levin's book was profoundly "personal." At stake was his self-representation as he attempted to prove to the parole board, the governor, and the public that he merited release from prison because he was a "new man."

The first stage of this self re-creation required that Leopold sharply distance himself from his partner in crime, the boy he had loved, even revered, and heroized as a superman. ("I admired Richard Loeb extravagantly, beyond all bounds. I literally lived and died on his approval or disapproval.") That process began at a parole hearing on June 7, 1957, where Abel Brown, Leopold's former University of Chicago classmate, observed:

There has been a great misconception about Leopold and Loeb in the minds of the public. In the minds of a good many people they have been thought of as one individual. That is not true. They were totally different as youngsters. Their life patterns have been totally different. Loeb was a leader, aggressive, crafty, smart. Leopold was definitely a follower. Loeb induced Leopold to make the tragic mistake of his life.

With Loeb dead and unable to speak for himself, Leopold and those who spoke for him began the final process of self-confession. Loeb was now made into the "master criminal" he had craved to become in his boyhood fantasies and the one who had been responsible for the deathblow. In the original court testimony, two defense psychiatrists had reported that Loeb admitted striking the blow, but that had hardly figured in the original case in which the boys and their two families had stood together and Leopold and Loeb had been tried as jointly responsible. Now, especially in view of Loeb's violent death, it became essential to make the distinction. Loeb became the villain, who had lured an innocent Leopold, "a quiet, *studious, serious, very gentle* boy," to commit murder. And Gertz, Leopold's attorney, argued that Judge Caverly had confided in a nun who nursed him in his final illness "his impression that Leopold was completely under the domination of Loeb and would do whatever Loeb wanted." This was, of course, a complete inversion of the first public representations of Leopold.⁵⁵

Having put the bloody chisel in Loeb's hand and the crime in his partner's mind, Leopold now began the difficult process of persuading the world that whatever he

⁵⁵ On Leopold's admiration of Loeb, see Gertz, *Handful of Clients*, 98. Cf. Leopold, *Life plus 99 Years*, 270. For Abel Brown's statement, see Gertz, *Handful of Clients*, 16–17, esp. 17, emphasis added. *Ibid.*, 56.

was as a child, innocent and gulled, as Brown portrayed him, or not, his older self had been rehabilitated. "Gentlemen," his lawyer argued in 1958:

let me say this openly and without equivocation, Nathan Leopold is not now, and has not been since his imprisonment, a sexual deviate, or indeed, a sexual problem in any respect. The prison records will bear out, and the public should know it, that there is not the slightest evidence of any sexual impropriety on his part. Whatever his pre-prison infatuation for Loeb was, he completely *outgrew* it, and there was not the slightest tinge of homosexuality from the moment he entered prison to this very moment.⁵⁶

With the sexual shroud lifted by his lawyer, Leopold then represented himself to the parole board. Prison had given him time to "regret bitterly, to repent fervently . . . the horrible crime of which Richard Loeb and I were guilty." "At nineteen my growth and developments were *unnatural* . . . my emotions were at least five years behind my thinking." Where the young Leopold had once preferred prison to being judged insane, he now freely accepted that he had once been "unnatural." Since then he had grown, matured, and learned that the only thing that helped him forget his crime was "to try to be useful to others." "I never had the philosophy of Nietzsche," he argued, and now he claimed, "I am a practicing, believing Jew." Leopold's parole representation thus reviewed the three issues that had been embedded in the case from its beginning—precocious childhood behavior, psychological abnormality, and sexuality. After thirty-three years in prison, Leopold, eager for parole, actively accepted the framework of definition that by the 1950s securely anchored the case. The three issues were packaged together and safely placed in the past. Leopold had "outgrown" his "infatuation" for Loeb and admitted that he had been an "unnatural" youth because his emotions were "five years behind his thinking." Leopold thus fully accepted the accusation of precocity, which had been important in the initial newspaper coverage of the case. Since he was now almost an old man, this admission was hardly explosive or, in the context of the late 1950s, threatening. In the fifties, teenagers seemed less intellectually precocious than immature and rowdy, and reading comic books, not Nietzsche, was the prevailing social bogeyman. In re-presenting himself, Leopold had renounced his sexual partner and his sexual past, outgrown the precocious child, and converted from abnormality to Judaism (a mainstream religion by the 1950s).⁵⁷

Finally, and perhaps above all, Leopold now wanted completely to shun the limelight and to "find some quiet spot with some organization where I can live quietly and modestly in an attempt to atone for my crime, by service to others." "I want to get *lost*, want to get away from notoriety." In the attempt to re-create himself, Leopold knew that he somehow had to become purely personal again. His lawyer told Leopold that Carl Sandburg, who had testified at the hearing, said, "You were

⁵⁶ Gertz, *Handful of Clients*, 62–63.

⁵⁷ *Chicago Herald and Examiner*, June 16, 1924, pp. 1, 2; Gertz, *Handful of Clients*, 98, 99, 100, 102; James Gilbert, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950's* (New York, 1986).

a struggler from the darkness into light. . . . You were transfigured." Leopold had taken himself from the other world of crime to the inner sanctum of social approval.⁵⁸

Leopold had not only taken this new self before the parole board but had also labored for several years on a book, *Life plus 99 Years* (the title was based on the terms of his sentence), that described in detail his life in prison and how that new self had been created. In it Leopold lambasted Levin's book as 60 percent fiction and hurtful: "Mr. Levin accuses Judd Steiner of felonies I never dreamed of committing. He puts into Judd's mouth and very brain words and thoughts that were never in mine. Some make me blush; some make me want to weep." The book, he said, made him "physically sick." But in distancing himself from his own past, Leopold also made an interesting elision: "I hope—I know—that I am in no sense today the same person as that horrible, vicious, conceited, 'super-smart'—and pathetically stupid—Judd Steiner in the book. There's only one trouble. I share a memory with the monster; a memory, that is, covering those things that actually did happen." Having re-created himself in the present, he was forced to collapse his former self into Levin's fictionalized creation. In putting his past behind him and outside him, Leopold could not entirely distinguish it from the other selves that had been created around his crime.⁵⁹

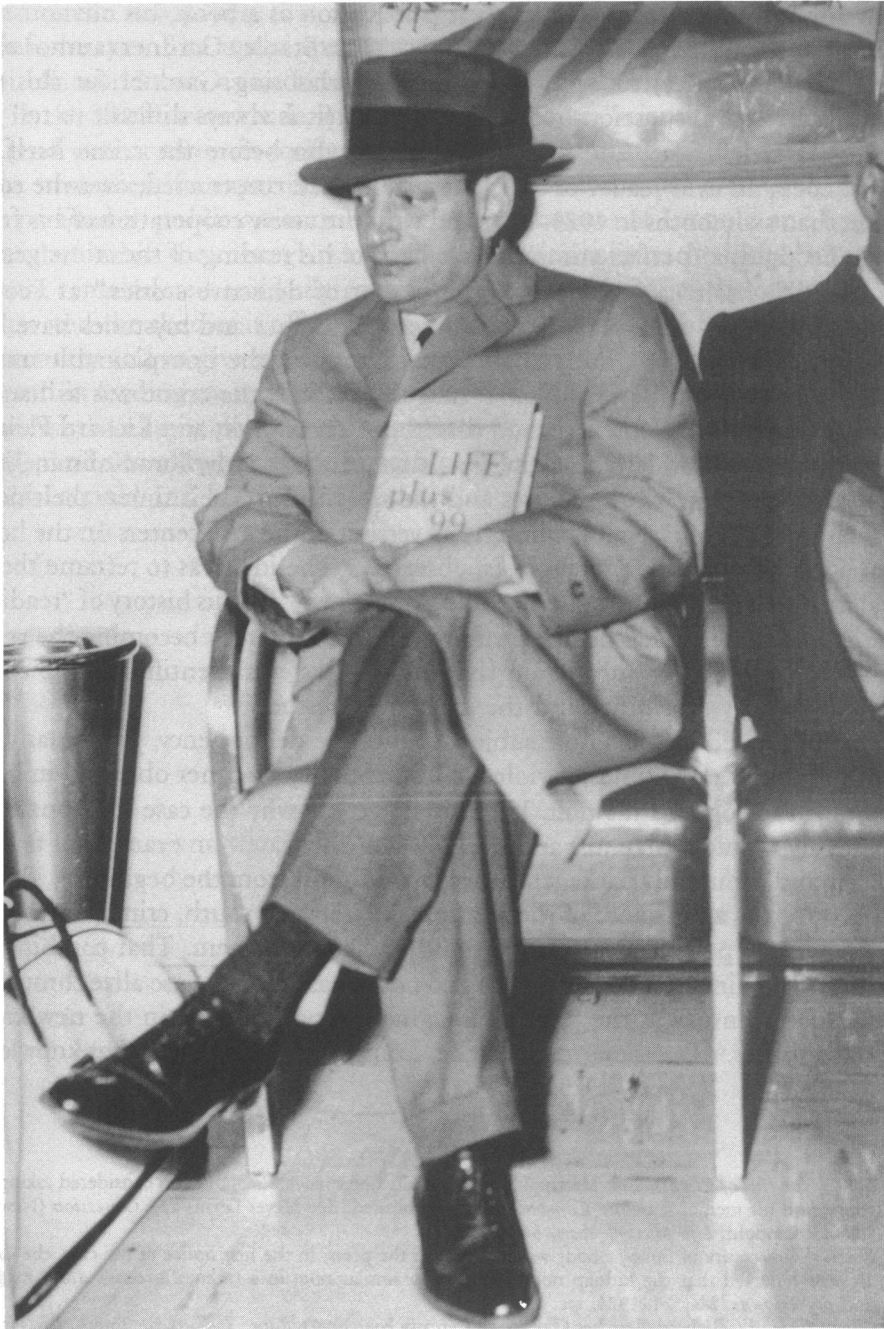
Leopold's book was mostly about his life in prison, where he had started and run an extremely successful correspondence school and participated in World War II malaria testing. The book started after the "crime of the century" was committed: "I am back on the evening of May 21, 1924. It is a little after nine o'clock. 'Well,' I said to myself, 'it's over. There's no turning back now. How on earth could I have got involved in this thing? It was horrible—more horrible even than I figured it was going to be. But that's behind me now.'" This bland beginning, lacking both insight and verisimilitude, was all Leopold wished to say, perhaps all he could say, about the crime and the earlier self that his prison experience, which fills most of the remaining 350 pages, had transformed. At the end of the memoir, Leopold portrays himself invoking "God's help in prayer. I shall pray for guidance and for strength. I shall pray for mercy and compassion. I shall pray for the wisdom and moral strength to justify by my conduct the rightness of the Board's decision, if it is favorable." Leopold had become a man who, publicly at least, accepted society's judgment of himself and his crime. As soon as the book appeared, it was sent to the parole board.⁶⁰

Leopold claimed that "publicity has been my worst enemy for thirty-three years." Now, ironically, he needed just that publicity to lay his past to rest and to redeem himself from the public. Even before the publication of *Life plus 99 Years*, he had allowed John Bartlow Martin to write a series of articles about him for the *Saturday Evening Post* in which he was portrayed as a new man, a model prisoner, and a

⁵⁸ Gertz, *Handful of Clients*, 101, 108.

⁵⁹ Leopold, *Life plus 99 Years*, 370.

⁶⁰ *Ibid.*, 23, 381.



Nathan Leopold, March 19, 1958, a few days after his release on parole.
Leopold is conspicuously advertising his book, *Life plus 99 Years*.
*Courtesy Gertz Collection, Northwestern University Library,
Evanston, Illinois.*

potentially valuable citizen. Before their publication as a book, his memoirs were serialized in the *Chicago Daily News*. He chose Erle Stanley Gardner (author of the Perry Mason mysteries) to write a preface.⁶¹ By choosing Gardner for this task, Leopold completed, consciously or unconsciously (it is always difficult to tell with Leopold), a cycle of fact and fiction that had begun before the crime itself. For Richard Loeb, an avid reader of detective fiction, had constructed, over the course of more than six months in 1923–1924 and with the active cooperation of his friend Nathan Leopold, a “perfect crime” on the basis of his reading of the crime genre.⁶²

While “life itself” might be “a rotten writer of detective stories,” as Leopold learned after thirty-three years in prison, real-life crimes and mysteries have been an irresistible source for writers of all kinds. Drawn to the unexplainable murder of a fourteen-year-old by two other teenagers (perhaps the crime was as banal as Leopold’s remembrance), writers and directors such as Levin and Richard Fleischer in *Compulsion*, Alfred Hitchcock in *Rope*, and, most recently, Tom Kalin in *Swoon* have drawn and redrawn the figures and the story to suit their times, their needs, and their imaginations. Kalin, whose 1992 version of the case centers on the homosexual bond between the protagonists, observed, “The idea was to reframe the historical materials for a more modern reading of the case.” As this history of “readings” of the case indicates, it has been repeatedly reframed, thereby becoming the vehicle for the merging of fact and fiction that Modris Eksteins identifies as the core of twentieth-century sensibility and the modernist aesthetic.⁶³

“I am interested in the whole subject of juvenile delinquency, particularly as it relates to murder and crimes of violence,” Erle Stanley Gardner observed in his introduction to Leopold’s memoir. He thus suggested why the case of Leopold and Loeb was always more than just another 1920s murder case—an example of frenzied publicity and commonly packaged titillations. Almost from the beginning, the case had been read as an instance of the relationship between youth, crime, and sex and the new means, psychology, to understand and contain them. That combination, with juvenile delinquency as its specialized node, has kept the case alive throughout the twentieth century as the popular imagination participated in the new knowledge of the times.⁶⁴ Decisions made by the defense team stimulated that knowledge,

⁶¹ Gertz, *Handful of Clients*, 104; Martin, “Murder on His Conscience.” Leopold had considered asking Levin to collaborate on his memoirs, before *Compulsion* was published. See Meyer Levin, *The Obsession* (New York, 1973), 106–13; Leopold, *Life plus 99 Years*, 367–68.

⁶² When the discovery of Bobby’s body was reported in the press, in the first notice of the case, the *Chicago Daily Tribune* reported that the kidnap note resembled a similar note in a recent *Detective Story* magazine. *Chicago Daily Tribune*, May 24, 1924, sec. 1, p. 2.

⁶³ *Compulsion*, dir. Richard Fleischer (Twentieth Century Fox, 1959); *Rope*; *Swoon*, dir. Tom Kalin (Fine Line Features, 1992). For an interview with Tom Kalin, see *Boston Globe*, Oct. 25, 1992, sec. B, p. 2. Modris Eksteins, *Rites of Spring: The Great War and the Birth of the Modern Age* (New York, 1989), 4.

⁶⁴ Erle Stanley Gardner, “Preface,” in Leopold, *Life plus 99 Years*, 15. Production of the vast literature on juvenile delinquency began just before the 1920s. During the twenties, it was decidedly psychological. See, for example, Healy, *Practical Value of Scientific Study of Juvenile Delinquents*; Healy and Bronner, *Delinquents and Criminals*; Cyril Burt, *The Young Delinquent* (New York, 1925); John Slawson, *The Delinquent Boy: A Socio-Psychological Study* (Boston, 1926); William Healy and Augusta F. Bronner, *New Light on Delinquency and Its Treatment* (New

but it was the newspapers that exploited it in a frantic combination of titillation and information. The initial spotlight provided by publicity locked the pair into the public world and, as we have seen, into a larger cultural discourse. Still quite fresh in the 1920s, even crude, explanations that were “scientific” had to compete with (and were sometimes conflated with) older moralizing standards. Spokesmen for the new scientific expertise were still suspect and derided even as they began to be paraded as public authorities. But just as the case of Leopold and Loeb was not left behind in the mere glare of twenties sensationalism, the insights it offered were not remaindered amid the rough beginnings of twenties discourse. Instead, the case and the themes it offered have continued to evolve throughout the twentieth century and to give meaning to human behavior. In providing new explanations and in feeding many forms of imagination, the case offered itself as a subject for twentieth-century popular culture. Over time, the themes of childhood, psychology, and sexuality gathered strength sufficient to make us (almost) forget that in 1924 Leopold and Loeb were two rich kids who tried to get away with murder.

Haven, 1936); Henry W. Thurston, *Concerning Juvenile Delinquency* (New York, 1942). In the 1920s, Healy was the most widely recognized authority on juvenile delinquency. Later Sheldon Glueck, who often collaborated with Eleanor Glueck, became the best-known authority. See, for example, Sheldon Glueck and Eleanor Glueck, *Delinquents in the Making: Paths to Prevention* (New York, 1952). Sheldon was Bernard Glueck's brother. Thus, two leading twentieth-century authorities on delinquency had a relation to the Leopold and Loeb case.