

Chapter One

Introduction

What is it that catapults a crime—or, at times, an event that allegedly is criminal—into a realm where it remains deeply embedded in our collective imagination many decades later? Precise details may fade from memory, and people who were born after the case first dazzled the media and the public may be aware of only a few shreds of information vaguely connected with what went on. But they sense that the case stood for something important, not only representing the facts about the crime itself, but also offering a commentary on the condition of the time. Such criminal cases find their way into history books and become the stuff that endlessly feeds into television docudramas and other media reference points. Near the end of 1997, to take but one example, a play, *Never the Sinner*, opened in New York on an off-Broadway stage. Its theme revolves around the killing of Bobby Franks by Nathan Leopold and Richard Loeb, the first of the five cases that we consider in this book. The Leopold-Loeb killing took place seventy-three years before its current presentation in drama form.

A review of the play in the *New York Times* tells us some of the reasons why the Leopold-Loeb case continues to serve as the backdrop for a fascinating examination of human nature. The reviewer declared that the drama “has emotional and intellectual force.” The play rejects the wild emotionalism of the case itself, it is noted, but it portrays the public mood that surrounded the crime: the blaring headlines, “the almost erotic public revulsion,” the national newspaper-sponsored contest for women that offered as the prize a date with Dickie Loeb. This stage version of the case, we are told, “concentrates on the personalities of the men and on the moral environment they lived in, with the result that the world is uglier and colder and more sinister than ever.”

The criminal justice landscape has been so altered since the earlier epic cases that some of the conditions they reflect seem outdated, hardly creditable.

But the cases themselves will not be forgotten. Depending on the criminal sensation of the moment, they will be disinterred to provide object lessons about how much has changed and, yet, how very much human behavior and elements of criminal adjudication remain unaltered. Only recently, for instance, the inability of the Boulder, Colorado, police to solve the case of the Christmas Day 1996 garroting of JonBenet Ramsey, a six-year-old beauty contest winner, led a curator of the Colorado Historical Society to say that "JonBenet is our generation's Lindbergh baby." The Denver newspaper felt compelled to explain to a newer generation that the curator was referring to "the 1932 kidnapping and murder of the infant son of Charles and Anne Lindbergh."

The cases we review here rescue the American criminal justice system from abstraction. For each of them we have paid particular attention not only to the intricacies of the events but also to their relationship to important issues in criminology and in the administration of criminal justice. Three of the five cases that we examine came to be known in their time as the "crime of the century"—in reverse chronological order these are the alleged murder of Nicole Simpson and her ill-starred friend, Ron Goldman, by O. J. Simpson (1994), the kidnapping and death of Charles Lindbergh's infant son (1932), and the killing of Bobby Franks by Richard Loeb and Nathan Leopold (1924).

The label "crime of the century," it is worth noting, was not a new coinage. In 1898, Henry Hunt wrote *The Crime of the Century: Or the Assassination of Dr. Patrick Henry Cronin*. Hunt could at least review what had gone on for almost the entire nineteenth century before offering his judgment that this was its most significant criminal episode. The case Hunt examined involves the hacking to death of Patrick Cronin, a Chicago physician, by members of an Irish secret society. Cronin had accused the group's leaders of embezzling organization funds. Of the five persons tried for the murder, two received life sentences. The driver of the buggy that had decoyed Cronin to the scene of his death received a three-year prison term for manslaughter, while the head of the clan that condemned the doctor was found not guilty. The case has long since sunk into obscurity, a very unlikely fate for those we will scrutinize in the following pages.

The pair of cases we examine that did not earn crime-of-the-century distinction also are central to an understanding of the relationship between sensational criminal trials and the operation of the criminal justice system. They tell us a great deal about the social messages that such crimes convey and the manner in which they can cause a more critical and constructive appraisal

of criminal justice administration in the United States. One is the Scottsboro case (1931), involving a charge of forcible rape of two white women by nine young black men, allegedly while they hoboed their way on a freight train from Tennessee to Alabama. The other is the perjury trial of Alger Hiss (1949), an object lesson in the interconnection among the temper of the time, political considerations, and the operation of the criminal justice process. There are those who maintain that these cases should not have been exempted from the already overcrowded crime-of-the-century designation. Whittaker Chambers, the chief prosecution witness in the Hiss case, for instance, rather immodestly (though perhaps accurately) told a Rotary Club audience that the Hiss trial was "the most important case of the first half of the twentieth century."

The most obvious way to determine ingredients that elevate the ordinary in crime to the extraordinary is to examine the major aspects of these five cases to determine if any particular pattern emerges. Categories that seem relevant are geographic setting, the nature of the offenders and the victims, and the details of the offense.

The locations are rather what might be expected. One occurred in each of the three largest cities in the country: New York (Hiss), Los Angeles (Simpson), and Chicago (Leopold-Loeb). The fourth case (Lindbergh) was tried close to New York City and drew massive metropolitan and world press coverage. But the fifth set of trials took place in Scottsboro and Decatur, Alabama, far from any hive of activity or media center. Location probably feeds into the question of whether a case will rise above the ordinary, but it is obviously not a necessary consideration.

The crimes all are offenses that most people would regard as outrageous, moving downward on that scale from the seemingly senseless murder of fourteen-year-old Bobby Franks by Leopold and Loeb, to the slaughter of Nicole Simpson and Ron Goldman, to the kidnap-murder of a twenty-month-old child, to the alleged forcible rape by nine black men of two white women. Precisely where Alger Hiss's trial for perjury might rank on such a scale is not immediately obvious because the crux of the matter, despite the criminal charge, involved peacetime espionage by a government employee for a foreign country regarded as a threatening enemy. What we can conclude, again, is that the offense is not in itself determinant of the judgment on the case's prominence, though it is necessary that it be something consequential—or perhaps the better phrase would be something sensational. Three of the cases involved

the death penalty. But it remains difficult to untangle the question of whether public clamor represents a response to the media's judgment about the event or whether the media are responding to the public's concern and, at times, its frenzied outrage.

How important are the victims? In Scottsboro, the accusers were two disreputable young women; in the case of Leopold and Loeb, a fourteen-year-old boy, chosen for death apparently for no particular reason related to him; in the Lindbergh kidnapping, a twenty-month-old infant; in the Hiss case, a rising star in the political world, with outstanding professional credentials; and in the O. J. Simpson case, the beautiful thirtyish ex-wife and a male friend who was part of the crowd around her. In the Lindbergh case, the victim, a helpless child, triggered some of the notoriety that the case received, but it was not the victim himself but his father, Charles Lindbergh, a national hero, who elevated the case to the crime-of-the-century category.

In terms of offenders, the O. J. Simpson case clearly hogged the spotlight because of the celebrity of the accused perpetrator, a former football hero. But it is questionable that the case would have gained the attention that it did had the victim been a black woman, though the interracial elements of the murder, if Simpson had committed the crime, were too delicate a matter to give rise to much overt discussion in a country where people now are sensitive to public manifestations that might earn the epithet "racist."

In the other three cases it was elements of the situation, combined with "suitable" (that is, suitable for the circumstances of the case) protagonists that rendered the episodes famous—or, if you will, infamous. The Scottsboro case clearly was transformed from a routine matter because the persons accused, nine young black men, were seen by outsiders hostile to southern racial etiquette as innocent sacrifices in an effort by bigoted Alabamans to maintain indecent rules that dictated the "proper place" and behavior for blacks. The case also gained the limelight because of the obvious innocence of at least some of the accused and very likely all of them. As we point out in our consideration of the trial, had the accusing women named but one or two men as their assailants, the case probably would have had a short life—as would the black men singled out as rapists.

The circumstances of the times played an important part in escalating these five cases to a plane well above the ordinary. A newspaperman, Ralph Frammolino, notes that "a crime truly becomes historic when, like an eclipse, its timing brings into alignment many profound and often troubling questions about society. Acting as a prism the macabre crime has the power to show the spectrum of various ongoing struggles in the culture."

In the Scottsboro case, the events fed directly into the interest of the American Communist Party in forming a strong base among blacks, who it believed would be particularly discontented with their lot and sympathetic to Soviet pledges about racial justice. The Alger Hiss case was played out against a backdrop of deep concern in the United States with the threat of Soviet Communism and the fear that traitors in our midst were jeopardizing national security. Whittaker Chambers, the man who accused Hiss, would write that the events were bigger than either man. The case, Chambers proclaimed, "was an epitomizing drama" in which he and Hiss were "archetypes," that is, standard-bearing representatives of opposing ideological and philosophical positions. That was what, in Chambers's words, "gave the peculiar intensity to the struggle." Diana Trilling, a social commentator, made the same point, noting that controversial and well-publicized cases such as that involving Chambers and Hiss "provoke within their society a basic confrontation between opposing social principles." The Lindbergh case brought to the surface fears of parents throughout the country about the vulnerability of their children to kidnapping, to their being wrenched away from their hearth by monstrously evil people. That an illegal immigrant from Germany was accused of the crime fed into the growing American hatred of the country he had come from and of the Hitler regime that was posing a threat to world peace.

The Simpson case, for its part, told a tale of a kind of racial revolution. The Scottsboro defendants had been poor black men railroaded by powerful whites. Simpson was a very rich black man being judged by a jury made up predominantly of black citizens. Simpson had been accused, as had the Scottsboro defendants, of a crime against a white woman. The dramaturgy of the Simpson trial itself and the not-guilty verdict told a very different story about race relations and criminal justice in America from the one that had unfolded more than half a century earlier in Scottsboro.

The cases also served to showcase the politically ambitious and to bring to them that most important of assets, name recognition. At Scottsboro, Thomas Knight took over from the local district attorney and relentlessly prosecuted the case at succeeding trials, even when he was lieutenant governor of the state, in considerable part because his eyes were fixed on becoming governor. David Wilentz, the New Jersey attorney general, also usurped the local prosecutor and with the Hauptmann case launched a political career that lasted forty years. Richard Nixon, then a first-term congressman, leaned on the Hiss case as a strong force in his successful run for the Senate, the vice presidency, and the presidency. But for Nixon the matter was double-edged: he made implacable enemies for his handling of the Hiss case and also developed a

cynicism about political realities and the manipulation of public opinion and public power that, in Greek tragedy fashion, contributed to his unprecedented fall from power, with his humiliating resignation heading off a likely impeachment and a possible prison sentence.

Most of all, though, what characterizes the "crimes of the century" and the other memorable cases here is something not usually noted—their mystery, the ambiguity of the evidence paraded in the courtroom, often combined with the intransigent denials of guilt by the accused.

Uncertainty is the awful nemesis in a criminal trial. The English courts at one time solemnly tried cases involving charges of witchcraft against women (for it almost always was women) and after a formal hearing judges and juries determined that they were guilty of entering into a compact with the devil and should forfeit their lives. Today, the evidence that led to the hanging of the accused witches can be seen as self-evidently nonsensical, the sacrifice of lives due to the superstitions, fears, and anger of the prosecutors. Among the cases we discuss, the Scottsboro trials were in many respects a playing out of similar vengeful impulses. The Hauptmann trial and the trial of Alger Hiss, however correct or unsatisfactory the verdicts may have been, were permeated by a moral outrage that may have wrapped the blindfold on Justice much too tightly.

In earlier times, determination of criminal guilt involved tactics such as trial by ordeal, in which the accused and accuser fought each other to determine which one God would allow to triumph, which party was the righteous one. The Catholic Church's Fourth Lateran Council in 1215 outlawed such practices, declaring them blasphemous, and the justice system was compelled to invent new methods to assure that the guilty were adequately differentiated from the innocent. Now there was a need for standards of certain proof—proof so high, as John Langbein notes, "that no one would be concerned that God was no longer being asked to resolve the doubts."

In continental cases, proof of guilt could come only from the victim. The Inquisition, with its rituals of savage torture, sought to do defendants a favor and to relieve the uneasiness of those who were terrified of divine judgment if they were complicit in the execution of an innocent person. If those accused confessed, they were told they could go to their deaths with clear consciences and were more likely to be admitted to paradise. Besides, if the sentence was death by burning, those who confessed usually would be strangled before the fire was lighted.

England, and later the United States, hit upon a different approach—a jury system. The jury substituted for God and, as Langbein observes, “because criminals could not be punished on evidence short of full proof, confessions were no longer essential.” But several of our cases illustrate that in the absence of a confession and with the presence of rebuttable evidence, matters can become sticky and satisfactory closure unattainable. This remains one of the inducements to eliminate capital punishment, an irrevocable act. But in some trials, such as that of Hauptmann, the desire for blood, for revenge, was too pronounced to spare a life until a much greater degree of certainty could be achieved. That case also might be taken as illustrative of one of the dangers of posting high rewards for information: the lure of money can make people invent and stubbornly stick to fictive stories so that they can qualify for part of the bounty.

Of the five cases we consider, only in the Leopold-Loeb case were the facts clear-cut and uncontroverted. The mystery there—the one that still haunts those who examine the case—remains the question of motive, the seemingly inexplicable issue of why the two young men murdered a fourteen-year-old selected casually—indifferently—from the streets.

In the other four cases, those accused steadfastly maintained their innocence, perplexing onlookers who wanted certainty. Their adamant denials of guilt and their continuous challenge to the allegations pose conundrums that engage those who review the evidence.

The Scottsboro defendants proclaimed their innocence because they were, almost certainly, truly innocent. In the Hiss case, there was a hung jury at the end of the first trial and a defendant whose impeccable personal credentials contrasted profoundly with the endless lies and admitted traitorous activities that marked the life of his accuser. Hauptmann went to his execution stoutly proclaiming his innocence, and several comprehensive recent examinations of the case insist that he was a man executed on grounds that failed to come close to the standards required for a criminal conviction. The mystery surrounding the case is melodramatically caught in the reflections of a person involved in investigating the Lindbergh kidnapping: “Hauptmann told his story and left much in doubt. Perhaps this doubt will remain until someone on his deathbed comes up with the truth. The secrets of the Lindbergh case still challenge the world.” So too with Hiss, who died recently at the age of ninety-two, still maintaining that he had been unjustly charged and convicted and that some day, to use a word he greatly favored, he would be “vindicated.”

O. J. Simpson never wavered from his official protestations that he was not responsible for the murders with which he was charged, though, as in the Hiss case, there was an array of evidence that argued otherwise. But there also were things about the Simpson case, most particularly the inept performance of the police and the prosecutors, that easily could lead an unbiased observer to conclude that reasonable doubt existed regarding Simpson's culpability. Many people remain perplexed by a nagging question: How could a human being have possibly done so terrible a thing—the savage slaughter of the mother of his children, a woman he undoubtedly had once loved—and yet maintain a posture of innocence, even self-pity, regarding what was being done to him? Others cynically observe that it probably makes little difference, except to those close to the victims, whether Simpson was convicted, even if he was guilty. His example is hardly going to encourage other men to kill their wives, nor is Simpson himself very likely to commit another murder, given (again, *if* he was guilty) the years that it took him to build up the ferocious anger that drove him to virtually decapitate his former wife.

The mystery and the uncertainty in each of the five cases and the public battleground on which they sought resolution cannot explain totally our interest in the cases. Any one of them under slightly different circumstances might have been no more than a footnote in the recorded parade of crime. Scottsboro, as we said, would have remained localized if the accusation had not been so obviously fraudulent; and Leopold and Loeb probably would have pled guilty to murder if they had been guaranteed a life sentence. It took more than two years to locate Hauptmann, and the case never would have been "solved" had he not been caught spending some of the ransom money. The Hiss case likely would have evaporated if Richard Nixon had not, with extraordinary insight, recognized the potential it had to advance his political career and had he not also developed a strong personal dislike of Alger Hiss. O. J. Simpson apparently came very close to killing himself during his run on southern California freeways; had he done so, the case would have been wrapped up rather quickly and with little fanfare.

Studies of specific criminal cases provide a rich source of information through which to examine how the criminal justice system operates and how crime is handled. It can be argued, with truth, that celebrated cases by definition are unusual and unrepresentative and therefore distort the processes of criminal law. After all, about 90 percent of all criminal charges are resolved by plea bargaining, not by the kinds of emotion-laden public trials examined in

the following pages. But such a position appears to us to miss the central point: it is the dramatic, well-publicized, highly controversial trials that disclose the tensions, the inadequacies, and the underlying elements of criminal justice adjudication.

The Simpson case, for example, let the public learn in dramatic fashion how judges have become careless in regard to requirements for search warrants, how they routinely accept police testimony that they are perfectly aware is untrue because they themselves typically come to the bench from positions as prosecutors and because they perceive that the system would be seriously hampered if the letter of the law was strictly followed. Sloppy practices go unchallenged until a defendant can pay for the legal talent and investigative resources that confront the routine but inadequate procedures that pass muster in more ordinary kinds of situations. A particularly pertinent observation to preface this volume is that of the novelist E. L. Doctorow in *The Book of Daniel*, a fictionalized account of the consequences for their children of the execution for espionage of Julius and Ethel Rosenberg. "If justice cannot be made to operate under the worst possible conditions of social hysteria," Doctorow writes, "what does it matter how it operates at other times?"