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BRUNO OR RICHARD HAUPTMANN: REPRESENTATIONS OF A CONVICTION IN THE LINDBERGH KIDNAPPING CASE

Rita Mitchell*

[I]f ever we needed the finest, the most balanced and honest traditions of our courts we need them now. If ever our boast of sane and unbiased dealing with our fellow man is to be put to the test, it will be put to the test in the next few weeks, when the case of the State—and the nation, and the world—against the man who is suspected of the most hideous of all the crimes in the calendar is to be brought out into the open, and heard, and weighed, and judged.

- Kathleen Norris, January 2, 1935¹

As a functional matter, trials end when the verdict is announced. Those who are deemed “innocent” are presumably welcomed back into society. Those who are “guilty” face a range of punishments. Sensational trials persist beyond their verdicts however—in representations, in our imagination, in our memories, and in popular culture. Where questions remain unanswered, many seek to discover the real “truth,” the truth that may not have been reflected in the jury’s verdict or may have eluded the trial. Sometimes concerns about truth emerge from perceived flaws in the trial process, where the hope for a fair trial is not realized. These conclusions often concern the validity of “legal truth”—whether the prosecution proved its case under the law. In other circumstances, the legacy of the trial persists because of questions about “actual truth”—whether the person convicted of the crime was factually guilty.

Concerns about legal truth and actual truth have been conflated in post-trial representations of the trial of Bruno Richard Hauptmann. To the extent that trials are performances, the Hauptmann trial, better known as the Lindbergh Kidnapping Case, was performed well according to its contemporary audience. Hauptmann was “guilty.” The prosecution “proved” its case. The guilty party was executed, thus “justice” was done. The verdict validated the contemporary American public’s certainty of Hauptmann’s guilt, a certainty that may not have been borne out by the evidence shown at trial. This trial’s performance, and particularly the roles of some of its participants, however, has been reconsidered in the seventy years since the conviction. Despite the finality of the verdict and the even greater finality of Hauptmann’s death by electrocution, this case is not fully closed. Throughout the 1980s and through to her own death in 1994, Hauptmann’s widow, Anna, proclaimed her husband’s innocence and petitioned the state of New Jersey to reopen the case on the grounds of undisclosed evidence withheld by the prosecution that would clear her husband’s name.² Dozens of individuals have come forward claiming actually to be the Lindbergh baby, including an African-American woman from New Jersey.³ Reminiscent of Anna Anderson, who claimed to be Anastasia Romanov,⁴ these individuals have raised questions about the identity of the corpse discovered in May 1932, and, in a sense, have re-opened the trial to investigation. Dozens more have confessed to the kidnapping and the murder, following Hauptmann’s execution.⁵ Every fall in

Flemington, New Jersey, the town performs a re-enactment of the trial at the county courthouse.⁶

The re-evaluations of the trial and evidence presented call into question both the conviction of Hauptmann and the conviction of the American public that Hauptmann was guilty of the crime for which he was executed.⁷ One powerful translation of this re-evaluation is the 1996 film *Crime of the Century*,⁸ which presents the trial from the defendant’s perspective in a way that the real trial did not. By focusing on the story of “Richard” Hauptmann and proclaiming his factual innocence, *Crime of the Century* operates as an alternative closing argument for the defense, one which director Mark Rydell implicitly asserts is more compelling than the defense Hauptmann actually received. Intended to counteract the prosecution’s case, the film offers a performance of the defendant’s story as “the truth.” The film also functions as a legal appeal in that it offers an opportunity to consider new evidence and problems with the original trial.⁹ Based on a book by Ludovic Kennedy,¹⁰ *Crime of the Century* embraces a modern audience’s concerns with the trial’s verdict and the fairness of Hauptmann’s trial in light of subsequently revealed evidence, contemporary prejudices, and the crusade of Anna Hauptmann to clear her husband’s name. *Crime of the Century* is thus also



This photograph was taken inside the courtroom during the Hauptmann trial. Hauptman is seated in the center. It may be found at <http://www.law.umkc.edu/faculty/projects/ftrials/Hauptmann/brunoinct.jpg>.

a response to and an appeal of both the actual trial and the competing film representation of the trial, *The Lindbergh Kidnapping Case* (1976).¹¹

The Lindbergh Kidnapping Case claims to be factually based.¹² It depicts the discovery and use of evidence against Hauptmann through the lens of the Lindberghs, police investigators, and the contemporary American public. Moreover, this film refers to Hauptmann consistently as “Bruno,” as the American press did, rather than his preferred name of Richard.¹³ In this sense, the film is historical. Hauptmann’s own narrative was minimized, if not ignored completely, at trial. The first third of the film focuses on the back-story of the kidnapping and investigation. From there, the filmmaker

proceeds through the arrest and trial towards the film's inevitable conclusion that Hauptmann was both legally and actually guilty. Unlike *Crime of the Century*, *The Lindbergh Kidnapping Case* does not function as a legal appeal. There is no new evidence, nor are there alternative conclusions to be made. Rather, the film viewed as a whole encompasses and performs what would be the prosecution's closing argument. The overwhelming message of the film, similar to the appellate opinion on the Hauptmann case in 1935, is that Hauptmann's conviction was supported by substantial evidence; the New Jersey police found the right man.¹⁴ Hauptmann's actual guilt is both "shown" and "told" throughout the film. While *The Lindbergh Kidnapping Case* does at times provide an opportunity to question the fairness of the trial, ultimately any unfairness touching on "legal innocence" is not egregious enough to merit reversal or even review. Rather Hauptmann's allegedly overwhelming actual guilt consumes the focus of the film. His very name, "Bruno," conveys his foreignness and presumed brutishness. The stay of Hauptmann's execution as represented in *The Lindbergh Kidnapping Case* is motivated by politics alone and not by belief in actual innocence.

Because these two films are unrelenting in their opposing messages of guilt and innocence, the films viewed together take on the role of persuasive narrative rhetoric that is the hallmark of the closing argument at trial. The filmmakers' attempts to be objective support each film's conviction about guilt or innocence, but do not offer the audience a separate conclusion. This article will focus on the ways in which the two films create authority to support an underlying theory of guilt or innocence. By demonstrating actual innocence or guilt, the films resemble closing arguments for the prosecution and defense. In discussions of legal innocence, however, *Crime of the Century* functions as an alternative appeal, whereas *The Lindbergh Kidnapping Case* rejects consideration of any appeal of legal guilt, reaffirming the appellate court's decision in 1935.

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It was the "biggest story since the Resurrection," according to H.L. Mencken, one of the more well-known newspaper reporters of the time.¹⁵ Jack Benny, Ginger Rogers, Ford Maddox Ford, Jack Dempsey, Clifton Webb, Walter Winchell, and Edna Ferber were among the famous courtroom attendees and reporters in town for the trial of Bruno Richard Hauptmann.¹⁶ A new airfield was built in Flemington, New Jersey to accommodate the 700 reporters and over 20,000 curiosity-seekers who arrived for the trial, as well as to provide a means for film to be flown daily to New York for developing.¹⁷ One spectator, a teenager whose father, a sheriff's deputy, secured her admission into the courtroom, commented, "Outside the courthouse, one man would sell pennies for ten cents—each penny was engraved with 'Lindbergh trial, Flemington, New Jersey'... Another man was selling little replica ladders. And all these ladies [were] around in fur coats and diamonds."¹⁸ Indeed, it was a circus, full of performances. Red tickets offered entry to those lucky few who had connections or status, and the "disappointed throng" stood outside the courthouse in the snow awaiting news from inside.¹⁹ For the town of Hopewell, as well as for the rest of America, the kidnapping of the Lindbergh baby and the trial of Bruno Richard Hauptmann

became a symbol of every parent's worst nightmare. No child was immune, and in fact, wealthy children appeared to be targets.²⁰

The circus atmosphere did not begin with the trial in January 1935, however. In terms of its practical impact, the story of the Hauptmann trial begins with the Lindberghs.²¹ In 1932, Charles Lindbergh was bigger than any movie star, any professional athlete, and any President. He was America's golden boy, superhuman and dazzling in his youth, ability, and embodiment of hope for America, particularly in the early years of the Great Depression. Writing about her father at that time, Reeve Lindbergh commented, "After he made the first nonstop solo flight from New York to Paris in 1927, in a tiny silver monoplane called *Spirit of St. Louis*, his very existence took on the quality of myth."²² This was certainly reflected in the parades and media attention surrounding the Lindberghs' movements, which reached a climax after the kidnapping. The kidnapping and alleged murder of Charles Augustus Lindbergh, Jr. was a great tragedy for the Lindberghs, and one that the American public took personally.

On March 1, 1932, the blue-eyed, curly-haired infant son of aviator Charles Lindbergh and his wife, Anne Morrow Lindbergh, was kidnapped via the second-story window of their home in Hopewell, New Jersey.²³ Immediately, everyone seemed to want to help. Even Al Capone offered his assistance from his jail cell in Chicago.²⁴ A Bronx professor unknown to the Lindberghs, Dr. John F. Condon, submitted an advertisement in the Bronx Home News, a local newspaper, offering to serve as a go-between for the kidnapers and the Lindberghs.²⁵ Condon's offer was accepted by the "kidnapers," and led ultimately to some of the more powerful courtroom testimony against the defendant.²⁶ On April 2, 1932, Condon handed over \$50,000 in ransom money to the "kidnapper," who identified himself as "John," in St. Raymond's Cemetery in the Bronx.²⁷

After more than two months of searching and following hundreds of leads, most of which were erroneous, a truck driver discovered the badly decomposed remains of an infant child a few miles from the Lindbergh estate.²⁸ The skull was fractured and the body had greatly deteriorated, suggesting that it had lain there for some time.²⁹ Although the left leg, left hand, right arm, and most organs were missing, Col. Charles Lindbergh quickly identified the body as that of his son, as did nursemaid Betty Gow.³⁰ Whether an autopsy was ever performed is controversial. According to Robert R. Bryan, attorney for Anna Hauptmann in her quest to reopen the case, there was no autopsy and the body's remains were immediately cremated on Lindbergh's orders.³¹ Other sources claim that an autopsy did take place, but it was performed by a funeral home director under the supervision of an arthritic doctor who had himself been assigned to the task.³² The corpse was cremated shortly after its discovery.³³ On June 22, 1932, a short month after the discovery of the corpse, Congress passed the "Lindbergh Law," making kidnapping across state lines a felony punishable by a range of means, including death.³⁴ This law was a response not only to the Lindbergh kidnapping, but to the fear the kidnapping inspired within other parents and families in the United States.³⁵

For the next two and a half years, the search for the Lindbergh kidnapper continued.³⁶ Described as the "largest investigation history," the search involved the efforts of the

New Jersey State Police, the New York City Police, and the FBI, as well as other agencies around the world.³⁷ On September 15, 1934, a German immigrant, Bruno Richard Hauptmann, pulled up to a gas station and paid with a ten dollar gold certificate.³⁸ The country had gone off the gold standard the year before, making these certificates rare. The gas station attendant, either from general suspicion or concern about counterfeit money, wrote down the driver's license number on the bill and called the police.³⁹ The New York Motor Vehicle Bureau identified thirty-five year-old Hauptmann as the owner of the vehicle.⁴⁰ Hauptmann was arrested the following morning as he left his home in the Bronx where he lived with his wife and nine month-old son.⁴¹ The police's search of Hauptmann's garage revealed \$13,760 of the ransom money hidden behind boards in the wall, leading them to determine that they had captured the kidnapper and murderer of the Lindbergh baby.⁴² Newspapers announced to the world that the "Crime of the Century" had been solved.⁴³

The trial began on January 2, 1935.⁴⁴ In opening statements, prosecutor David F. Wilentz relied on the theory that the death of the child occurred while the kidnapper descended from the ladder, which broke under his weight causing both man and child to fall.⁴⁵ In closing arguments, the prosecution argued that Hauptmann murdered the child while in the upstairs bedroom.⁴⁶ All evidence in the case was circumstantial, and Hauptmann never confessed to the crime, either on or off the record.⁴⁷ Dr. John F. Condon, known as "Jafsie" in the press for the sounded-out acronym of his initials J-F-C, and Col. Lindbergh both testified that the voice they heard in St. Raymond's Cemetery was Hauptmann's.⁴⁸ Handwriting expert Albert S. Osborn testified that Hauptmann wrote the ransom notes.⁴⁹ A wood expert, Arthur Koehler, stated that in his expert opinion, the wood in the ladder used in the kidnapping matched that of a board found at Hauptmann's home.⁵⁰ Hauptmann's fingerprints were not found at the crime scene, nor did the police preserve any footprints beneath the window.⁵¹

David Wilentz, the newly-appointed Attorney General for the state of New Jersey, tried the case.⁵² It was his first criminal prosecution.⁵³ Hearst newspapers provided the attorney for the defense – Edward Reilly, a well-known and seasoned criminal defense attorney – in exchange for story exclusives.⁵⁴ The defense's theory turned on Isidor Fisch, another German immigrant who Hauptmann claimed left the ransom money at his house.⁵⁵ Reilly was unable to produce witnesses to contradict the prosecution's experts. Those witnesses that the defense did produce were largely discredited by the prosecution.⁵⁶ At one point during the trial, Hauptmann asked where Reilly was getting his witnesses, stating, "He is killing me."⁵⁷ Following a thirty-two day trial, Hauptmann was convicted and sentenced to death.⁵⁸ All appeals were denied, as was clemency.⁵⁹ Hauptmann refused to confess to the crime and continued to proclaim his innocence until his execution in the electric chair at 8:44 p.m. on April 3, 1936.⁶⁰

* * * * *

Crime of the Century is the story of Richard - not "Bruno" - Hauptmann, who was wrongfully accused of a horrible crime. Richard is the wrong man, in the wrong place, at the

wrong time—a truly Euripidean tragic hero. According to the film, Hauptmann's lawyer, "Death House" Reilly, so named because Reilly had not won a case in years, is a vainglorious drunk, incapable of providing a satisfactory defense. Attorney General David Wilentz badgers a thus-defenseless Hauptmann on the witness stand for his own political machinations. *Crime of the Century* indulges in tropes of the good lawyer/bad lawyer, or in this case, bad lawyer/incompetent lawyer/innocent defendant, and yet to the extent that the film functions as the defense's closing argument, the tropes may be overlooked as such and understood instead as a competing story in the trial. The film humanizes its victim, the defendant, in part by dehumanizing the prosecution, employing stereotype as a necessary narrative device. *Crime of the Century* creates specific authority for actual innocence that allows this film, when viewed against *The Lindbergh Kidnapping Case*, to function as a closing argument for the defense.

As closing arguments, these two films play show-and-tell, often *showing* the storyline that supports the desired claim, and *telling* the evidence the filmmaker wants to minimize. Presuming Hauptmann's guilt, *The Lindbergh Kidnapping Case*, made twenty years earlier, feels much more like a prosecution's closing argument. The filmmaker opens with its victims, the Lindberghs, and the crime against them. It leads the audience through the investigation, showing how the evidence builds up against the defendant. The filmmaker also demonstrates the strain that the investigation and media attention place on the Lindberghs, eventually driving them to flee to England to escape. The capture of Bruno—not "Richard"—Hauptmann (for it is indeed a capture here) allows the audience to see Hauptmann as a criminal fitting the preconceived profile. The film shows the audience that Hauptmann never acts contradictorily to its characterization of him by repeatedly reinforcing his imperviousness. He never appears nervous or afraid; he is almost inhuman. The filmmaker does not show Bruno's personal life with his family, but instead his joking interactions with the prison guards. The film shows him "lie" repeatedly on the stand while other witnesses appear reliable. Hauptmann's physical death scene is noticeably absent; instead, the electrocution scene occurs from the perspective of the crowd outside the prison. If self-reflective, this scene only questions the crowd's ferocity and not Hauptmann's guilt.

The Lindbergh Kidnapping Case highlights the story as it was told by the prosecution in the actual trial, even including specific language from Wilentz's closing argument in the script. Closing arguments give attorneys greater license to argue all facets of their theory of the case. In *The Lindbergh Kidnapping Case*, as an attorney would in closing argument, the filmmaker re-presents the evidence shown at trial in a methodical and calculated way, leading to the inescapable conclusion that Hauptmann was factually guilty. The dramatization surrounding certain types of evidence, such as the discovery of the ransom money, and the empathy towards the Lindberghs throughout the film contribute to what an attorney would seek to achieve in a closing argument - to create a story for the jury that sympathizes with the "victims" and damns the accused. The zealotry and ferocity of media attention as displayed in the film feels historical, but it also acts as a functional device to garner additional audience sympathy for the plight of the film's victims, the Lindberghs.

The films demonstrate the actual guilt (*The Lindbergh Kidnapping Case*) or actual innocence (*Crime of the Century*) of Hauptmann to create authority for a particular conclusion. One way in which each filmmaker creates authority is through presumptions. *The Lindbergh Kidnapping Case* begins and ends with the Lindberghs, as the entire case did for many contemporary observers. The opening scenes of the film are replete with real photographs and film clips of Lindbergh and his historic flight. "Lindbergh, the Eagle of the USA," a song composed by Howard Johnson and Al Sherman in 1927 in honor of Lindbergh's flight, serenades the audience as the opening credits appear. Through this introduction, the film immediately feels like a documentary, as though the actual footage in the first few reels will lead to more "history" of actual events. In this way, the film purports to be an historical narrative, creating a presumption of historical truth.

Following this introduction, the film makes the ironic move from historical footage to fictionalized footage so that the "real" story can begin. The audience next sees the Lindbergh home, lit up in the darkness with lights on in almost every window. The subtitle caption reads, "THE CRIME, Hopewell, NJ, March 1, 1932." The camera leads the audience inside the home, to observe Anne Morrow Lindbergh preparing for a bath. The audience does not witness the kidnapping, but instead its revelation. As a result, the film shows the emotional shock of the baby's absence from the Lindberghs' perspective, as opposed to seeing it through a less personal representation, such as a newspaper headline.

By contrast, *Crime of the Century* opens with a reenactment of the crime. A car pulls up near the Lindbergh estate, revealing two men (although there are suggestions that one could be a woman) in hats, gloves, and boots and carrying a ladder. It is a windy night and the window to the baby's room is open. The house is dark and still. One of the kidnappers climbs up the ladder while the other holds the base. As the kidnapper descends from the ladder, a rung snaps and the kidnapper slips, dropping the baby. The would-be kidnappers flee and lights illuminate the previously darkened home. When the police arrive, it is evident that there are many footprints around the ladder.

Both films assert that the ladder rung broke during the kidnapping: *Crime of the Century* shows the audience visually, and *The Lindbergh Kidnapping Case* tells the audience during the trial. In *The Lindbergh Kidnapping Case*, the media swarms around the ladder after the kidnapping, demonstrably destroying all footprint evidence from the kidnapper(s). *Crime of the Century* tells the audience that the footprints were not Hauptmann's. From these opening scenes, the immediate focus of each film is different. In *The Lindbergh Kidnapping Case*, the Lindberghs are the protagonists. The crime itself is not shown, but the film clearly identifies its victims. By contrast, the focus of *Crime of the Century* is on showing the kidnapping and how it was done and, more importantly, that it was *not* performed by Hauptmann. There are *two* kidnappers on the scene, which implicitly rejects the prosecution's theory that this was a one-man crime.

Crime of the Century does not attempt to explain how the crime was committed, or even by whom, although it implicates Isidor Fisch. The film shows Fisch handing over the shoebox of money to Hauptmann. Hauptmann takes the box and

places it on the top shelf of the closet. Fisch coughs, portending his illness and imminent death.⁶¹ But by casting Fisch, the film legitimizes his role in Hauptmann's story. The film also verifies Hauptmann's explanation of discovering the ransom money and subsequently hiding it by *showing* it happen in the film. Richard may now tell this story at trial and the film's audience can believe him. In one of the film's many poignant conversations between Richard and his wife Anna, Richard states, "I think I will go to prison just for having the money." The police officers, listening in on another conversation, between themselves declare, "He's good...must have been an actor." The film thus provides less explicit authority for Richard's story, because the audience knows what the guards do not. The discovery of the money itself is unremarkable in *Crime of the Century*, except as it provides an opportunity to show Colonel Norman Schwarzkopf's lust for a conviction.⁶² Upon learning that the police found the money in Hauptmann's home, Schwarzkopf demands that the handwriting experts be brought in, along with "that old fool Condon." As for telling Lindbergh, Schwarzkopf smiles greedily and says, "I'll tell him myself."

By contrast, the discovery of the ransom money is one of the more dramatic scenes in *The Lindbergh Kidnapping Case* because it is entirely shown and not told. The police literally tear Hauptmann's garage apart, board by board. The money is later used to attack Hauptmann's character at trial. When Wilentz asks Bruno why he did not tell his wife about the \$14,000, he points out that Bruno lost money every year until the exact day that Condon gave "John" the ransom money. In the prosecution's opening statement, Wilentz describes how Bruno quit his job on the day the ransom money was collected and spent \$400 on a radio in May of 1932, inferring that it was an extravagant purchase. Hauptmann's personal story is told by Wilentz, not by Hauptmann. Instead, Bruno's version of why he had the money is entirely marginalized and ridiculed by the visual impact on the audience of the police search and Wilentz's cross-examination. Moreover, by telling and not showing Bruno's story, it does not truly exist, whereas Richard's story is dramatized thoroughly in *Crime of the Century*.

The Lindbergh Kidnapping Case also creates authority for its historical accuracy. In addition to the historical footage in the opening credits, a study of the actual trial reveals that *The Lindbergh Kidnapping Case* includes numerous details, facts and language that the prosecution used in the actual trial. The filmmaker includes the historical fact that Jafsie initially was a key suspect in the crime.⁶³ However, in the film, this fact functions as an historical anecdote rather than as a fully considered possibility. By showing a fact that seems contrary to the film's conclusion, the filmmaker attempts to appear objective. But by not exploring this alternative, and more importantly, by not allowing the audience to explore it either, the film reinforces its own supposition of Bruno's guilt.

In *The Lindbergh Kidnapping Case*, Director Buzz Kulik puts Chekhov's gun on the wall in the first act.⁶⁴ The kidnapper who meets Condon in the graveyard during the ransom exchange, self-identified as "John," is suggestively Anthony Hopkins. While not billed as "John" in the credits (in fact, no one is), it is fairly clear that Hopkins performs the role, showing Hauptmann to be "John" in fact, as well as in the prosecution's theory.⁶⁵ This is the identification the prosecution would

argue, and did argue in 1935. *Crime of the Century* leaves this scene out entirely, moving quickly from the time of the kidnapping through to the arrest of Hauptmann in a few short minutes. Whereas *The Lindbergh Kidnapping Case* “shows” Condon negotiating \$20,000 off of the ransom total, *Crime of the Century* “shows” Fisch giving Richard the money long after the kidnapping occurred.

The voice identification evidence is the most questionable *shown* evidence in *The Lindbergh Kidnapping Case*, but perhaps unintentionally. The use of Hopkins in the graveyard scene makes the identification a sure thing. Lindbergh only heard “John” say two words—“Hey doctor.” Lindbergh arrives at the police station and listens through a door as the first three voices say “Hey doctor” in overtly American accents. The fourth voice, Hauptmann’s, repeats the words in a German accent. Lindbergh immediately identifies the voice: “John - no doubt about it.” At trial, therefore, Lindbergh states with certainty that the voice was Hauptmann’s, reaffirming the film’s conviction of Hauptmann’s guilt, as well as the historical point that Lindbergh identified Hauptmann’s voice at trial.

Crime of the Century shows Lindbergh’s uncertainty about whether he will be able to identify the voice from the graveyard. He notes that he only heard two words, spoken two and a half years previously. At the station, the “bad cop” tells Lindbergh that they need “anything [they] can get.” When Lindbergh apologizes, but does not change his mind, the “good cop” asks the question another way: whether Lindbergh can say with certainty that it was definitely not the voice from the cemetery. At trial, Lindbergh, to the prosecution’s surprise, states assertively that “it was Hauptmann’s voice.” Lindbergh’s identification of Richard follows Condon’s, whom Richard screams is a “liar.” The impact of Lindbergh’s testimony in the courtroom makes it clear that Richard is outmatched, but earnest.

The Lindbergh Kidnapping Case features a criminal psychologist whose suspect profile functions as a thread woven into the story of Hauptmann’s guilt. Early in the film, the criminal psychologist reports his conclusions about the suspect’s personality based on the ransom notes. He declares that the suspect is a man of inferior status who feels “omnipotent.” This man feels emasculated by Lindbergh, who achieved superhuman status by his successful transatlantic flight. As a result, the suspect needs to take Lindbergh’s prized possession, his son, away in order to reassert his superiority. The first scene with Hauptmann (an hour into the film) fits Hauptmann perfectly into the psychologist’s profile. The gas station attendant tells the police that he “didn’t like the look of the guy.” He describes Hauptmann as having a heavy German accent, high cheekbones, beady blue eyes, and a “smart-aleck ... superior-type attitude.”

In *Crime of the Century*, however, Richard’s first scene shows a very different image of Hauptmann. He appears within the first few minutes of the film, at a picnic with his pregnant wife and their friends. A gentle husband and expectant father, Richard rubs his wife’s belly and proclaims that his son will be a “real American.” Far from the villain Bruno cast in *The Lindbergh Kidnapping Case*, Richard Hauptmann is

shown aspiring to the American dream.

Crime of the Century does not depict any investigation of the kidnapping prior to the arrest of Hauptmann. Thus, though the criminal psychologist was an historical figure and part of the trial, he was not represented in this film. Another historical figure, included in *Crime of the Century* but excluded in *The Lindbergh Kidnapping Case*, is Detective Ellis Parker. Parker serves the same function in *Crime of the Century* that the criminal psychologist does in *The Lindbergh Kidnapping Case*, but to reach an opposite conclusion: that Hauptmann did not commit the crime. Detective Parker, hired by New Jersey Governor Hoffman in the film, discovers that the police found more than one set of footprints at the scene and that neither set matches Hauptmann’s. Before the trial begins, Parker tells Hoffman (and implicitly the audience), “I think he didn’t do it.” Parker’s early conclusions are reinforced after Richard’s conviction, when Parker visits some of the prosecution’s witnesses, particularly the Lindberghs’ neighbor, and discovers that the witnesses were bribed for their testimony. Parker also reveals to Hoffman an elaborate plot by the New Jersey police to get a conviction. Led by Schwarzkopf, the police manipulate the expert witnesses, threaten Condon with accessory charges, and manufacture the nail holes in the wood that the expert testifies must have been made by Hauptmann. Parker’s conclusion, like the filmmaker’s, is that “[t]his whole case smells like a cess pool.” The representations in the film show police misbehavior, bribery, and harassment of witnesses as it occurs. By showing rather than telling in this instance, the film creates authority for Hauptmann’s story and undercuts the evidence against him.

In *The Lindbergh Kidnapping Case*, Bruno displays indifference, calm, confidence, and even arrogance as the police search his home and interrogate him about the money and kidnapping. At trial, he continues to appear unconcerned, and responds with a smirk or an attempted joke to many of Wilentz’s questions on cross-examination. Far from demoralized, Bruno spends his time in jail chatting with the guards and doing pull-ups on his cell bars, fitting the criminal profile laid out for him in the first third of the film.

Richard Hauptmann in *Crime of the Century* is a different man entirely. The filmmaker changes the facts: the interrogation of Richard at the police station happens simultaneously to the police’s search of the Hauptmanns’, where only Anna and the baby are present. In both films, Anna Hauptmann and the baby are witnesses to the search, but in *Crime of the Century*, the search and interrogation are much more invasive. Anna Hauptmann faces the search alone, and her confusion is matched by Richard’s. During the police interrogation, Richard is bewildered, scared, and eager to please, despite the good cop/bad cop routine of the police officers and Richard’s initial lie about how much money he has at home. During the interrogation, the film *shows* the police beating Richard. In *The Lindbergh Kidnapping Case*, the fact that Hauptmann was beaten by police and while in jail are only told as part of his direct examination, and draw objections from the prosecution with a suggestion that Bruno’s statements are untrue or at least exaggerated. By telling instead of showing, *The Lindbergh*

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Kidnapping Case, functioning as the prosecution's argument, minimizes the impact of the beatings while the defense enhances it.

Furthermore, in *The Lindbergh Kidnapping Case*, Attorney General David Wilentz resurrects the criminal profiler's characterizations at trial. Observing Bruno's demeanor on the witness stand, Wilentz asserts, "You think you're a big shot, don't you?!" During the course of the trial, Bruno is shown trapped in several lies. The most dramatic example is in a sequence about the misspellings in the ransom notes. On direct examination, Reilly attempts to demonstrate that Bruno was instructed by the police to spell particular words in a certain way, causing his handwriting sample to match the ransom notes' misspellings. One of those alleged words, which Bruno spells out again during trial, is "signature." On cross-examination, Wilentz revisits this testimony, and then, in a dramatic twist, declares that *no one* ever asked Bruno to spell "signature" in any of the handwriting samples. Bruno looks surprised and ridiculous.

The handwriting evidence is represented very differently in *Crime of the Century*. Prior to the trial, the film shows the police's frustration with the handwriting experts, a father and son team. Osborn, Sr. does not believe that Hauptmann wrote the ransom notes but is willing to look at more samples. In the next scene, a police officer stands over Richard spelling out the word "ready" to him as "r-e-d-y," in order to match the notes. Richard protests and the officer yells, "Just write it!" By showing rather than telling, the film creates authority that the misspellings in the samples were forced. When the Osborns come into the station to look at the new samples, Osborn, Sr. still has doubts, until his son persuades him to focus on the misspellings: "You just don't get two people misspelling in identical ways." An officer tells Osborn, Sr. that he must testify as he sees fit, but "you are in an unusual position. Most people just have to read about this in the papers...but not you...you can actually do something." At trial, Osborn testifies that simple words were misspelled the same in both cases.

Osborn's testimony in *Crime of the Century* effectuates a hybrid of legal and factual error - legal in the sense that the jury must have gotten it wrong, and factual in the sense that the Osborns relied on a mistake of fact. Near the end of the film, Detective Parker tells Governor Hoffman that Hauptmann never wrote the notes and that the Osborns were mistaken. The Osborns testify against their own beliefs under pressure, which the film shows. Parker shows Hoffman a letter from another handwriting expert that states that Richard "couldn't have written those notes - not if his life depended on it." Thus, the filmmaker uses a combination of showing and telling to create authority for Hauptmann's actual innocence.

After demonstrating Bruno's perjury on the stand in *The Lindbergh Kidnapping Case*, Wilentz comments that Bruno is "not laughing anymore," now that "things have gotten a little more serious." The prosecution's closing argument is the final affirmation of the criminal profile laid out in the beginning of the film - the firing of Chekhov's shot. Wilentz depicts Bruno as "public enemy number one of the world." In the actual trial, Wilentz's closing argument certainly matched the criminal profile laid out in the film.⁶⁶ In considering "what type of man could kill the child of Colonel Lindbergh and Anne Morrow," Wilentz informed the jury:

It had to be a fellow who thought he was bigger than Lindy...[who] was an egomaniac, who thought he was omnipotent...And let me tell you, men and women, the State of New Jersey, the State of New York and the Federal authorities have found that animal, an animal lower than the lowest form in the animal kingdom, public enemy Number one of this world, Bruno Richard Hauptmann; we have found him and he is here for your judgment."⁶⁷

By drawing on the trial transcript, both films make claims to historical accuracy, but to serve very different objectives. Wilentz's closing argument in *Crime of the Century* draws from the trial transcript as well, and is equally, if not more, inflammatory, but for a different sort of injustice.

The two films also attempt to create authority by specific inclusions or exclusions of evidence. In particular, there are explicit inclusions and omissions of characters and evidence that differentiate the stories told by the two films. In *Crime of the Century*, Isidor Fisch is a real person, as opposed to a representation made by Hauptmann. By showing Fisch, *Crime of the Century* offers him as evidence in support of Hauptmann's story. In contrast, in *The Lindbergh Kidnapping Case*, Fisch is not cast and is only part of the "telling," in the direct and cross-examinations of Hauptmann, probatively by the defense and cynically by the prosecution.

The role of Anna Hauptmann is also dramatically different between the two films. In *The Lindbergh Kidnapping Case*, Anna rarely speaks and when she does, it is in German. She is largely a silent, almost unnoticeable character. Scenes of Bruno, Anna and the baby focus largely on Bruno's interactions with the baby and less with his wife. But even these scenes are rare. This is contrary to the prominent role played by Anna Hauptmann in *Crime of the Century*. There, she is more reminiscent of the crusader that she became through her attempts to reopen her husband's trial.⁶⁸ These efforts took place most prominently during the twenty years between the two films.⁶⁹ Both Anna and Fisch are integral characters to the defense's story of actual innocence, and thus are shown in *Crime of the Century*, but marginalized or excluded from the prosecution's case in *The Lindbergh Kidnapping Case*.

Conversely, the wood expert Arthur Koehler is shown in *The Lindbergh Kidnapping Case* but marginalized in *Crime of the Century*. In *The Lindbergh Kidnapping Case*, his testimony links Hauptmann more closely to the crime. By contrast, Koehler is not even cast in *Crime of the Century* and the wood evidence is referenced only briefly in the prosecution's cross-examination of Richard. The examples of Koehler, Anna Hauptmann, and Fisch reinforce that where the filmmaker needs to create authority for a certain conclusion, it is through showing, not telling.

* * * * *

Crime of the Century is in many ways a meta-trial, in that it questions the actual trial, as well as representations of *The Lindbergh Kidnapping Case*. While *Crime of the Century* re-presents the trial of Hauptmann, it does so in order to explore the psychological story of Richard. In this sense, it is a new, untold version of the story—and an appeal of the old. Films are like legal appeals in that both present an opportunity to consid-

er new evidence and problems with the original trial.⁷⁰ As Professor Jennifer L. Mnookin demonstrates, in film we are able to watch a re-creation of a trial and forget what we know.⁷¹ The represented trial becomes a “depiction of *the event*” rather than a “*depiction* of the event.”⁷² Films, like trials, are constructed narratives. In a trial, the attorneys carefully select which evidence to present and which witnesses to call, and they are further bound by the rules of evidence and narrative tradition of the trial format.⁷³ Filmmakers are not bound by such rules in the re-construction of trials, as evidenced by the ability to show conversations that in a trial would be inadmissible hearsay but are necessary to the dramatic narrative of the film. Still, filmmakers must respond to other construct formulae, including considerations of time and the selection of material that, in a trial, they would have several weeks to “perform.” Both trials and films about trials, while obviously constructed performances, may “be accepted as both persuasive and true.”⁷⁴

One aspect of these two films that supplements their claims to truth is the use of real names.⁷⁵ The inclusion of historical names from the real trial instead of fictionalized versions removes one obvious layer of fiction from the film. Real names serve as a referential commitment to the audience about the veracity of the representations. Real names push the audience to consider the film as a reflection of specific facts and individuals without the creative licenses facially evident in a fictionalized representation. As a result, the filmmaker creates a partial atmosphere of a documentary within a clear fictional device. While the audience knows that it is watching a fictionalized representation controlled by the filmmaker, the effect of real names, places, and events is significant—it contributes to the suspension of belief that film audiences experience by immersion into a story, and adds an historical element to something otherwise outside of time.⁷⁶

Neither film can be an alternative legal appeal for Hauptmann in the true sense. The verdict is in, and the defendant is dead. Hauptmann pursued a legal appeal in 1935, seeking reversal of his conviction on several grounds, including: improper statements made by the prosecution during closing arguments, changes in the prosecution’s theory of the case between opening and closing that were prejudicial to the defendant, no proof of the common law crime of burglary, biased language in the jury instructions, and a verdict that was against the weight of the evidence.⁷⁷ The Court rejected each claim and reaffirmed Hauptmann’s guilt, describing his story as “incredible” and his actions “persuasive of guilt...to a moral certainty beyond a reasonable doubt.”⁷⁸ *The Lindbergh Kidnapping Case*, like the appellate opinion, is a rubber-stamp on Hauptmann’s conviction. Hauptmann’s guilt was evident by the perceived ridiculousness of his story and the evidence against him.⁷⁹ While the film reveals rare examples of where the trial might have been unfair, notably during the voice identification and representations of the angry mob shouting “Kill Hauptmann” outside the jail (reminiscent of *Inherit the Wind*), none are sufficient to undercut its conclusion. Fundamentally, *The Lindbergh Kidnapping Case* does not consider the arguable unfairness of the trial as sufficient to overturn the verdict. Any

questions or doubts about legal guilt are consumed by Hauptmann’s clear factual guilt.

However, *Crime of the Century* does try to offer the audience a chance to examine the Hauptmann trial *de novo*. The film is an appeal to overturn the conviction by the American public both that Hauptmann was actually guilty and that the jury was correct in finding him legally guilty. The film, unlike its predecessor, explicitly explores issues of legal innocence. In Governor Hoffman’s first scene, he asks whether a defendant is still innocent until proven guilty upon seeing the newspaper headline: “Lindbergh Kidnapper Jailed.” The Governor’s advisors instruct him not to tell the press that Hauptmann is entitled to a fair trial because people feel passionately about this “monster.”

In a disturbing exchange, defense attorney Edward Reilly meets with Anna Hauptmann and encourages her to lie. Reilly refers to Richard Hauptmann as “Bruno,” one in a series of indications that he is not going to offer zealous representation: “Bruno says that he received the money from a man named Fisch.” Anna agrees that it happened that way, but notes that she did not see Fisch give Richard the money, nor did she see a shoebox in their broom closet, which is where Richard said the money had been prior to Fisch’s death. Reilly and Anna then engage in the following discussion:

Reilly: Let me put it to you that you can help his case if you say that you saw him receive the shoebox.

Anna: But I did not.

Reilly: I understand...but you might have seen it. Why don’t you say you did see it?

Anna: Are you asking me to lie, Mr. Reilly?

Reilly: How can I explain this? Well now, we’re dealing here with legal truth. There is common truth and there is legal truth, and they are not, not the same thing. Common truth is just truth. Legal truth must be proved in court, and if we wish to change common truth into legal truth, we must find ways of supporting it. And to do so is not to change it into a lie, but simply to make it more convincingly true....Do you follow me?

Anna: No.

Reilly: (sigh) Mrs. Hauptmann, your husband is facing a murder charge. If he is found guilty, he will go to the electric chair.

Anna: Richard has told lies. I cannot defend him by telling more lies. It is your legal truth that put my husband in jail. I must trust to common truth to make him free.

But in a legal appeal, actual innocence is not always sufficient to escape legal guilt.⁸⁰ While Reilly’s methods of getting at legal truth through lies are disturbing (and are meant to be), the film itself attempts to “find ways of supporting” its common truth that Hauptmann was innocent through *showing* certain kinds of actual and character evidence throughout the film.

To the extent that *Crime of the Century* serves as an appeal, it uses considerations of legal innocence to examine the fairness of the trial. The reliability of evidence and witnesses is critical to the jury’s determination of legal guilt. By showing

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the corruption of the evidence that was actually used at trial, *Crime of the Century* makes an appeal of Hauptmann's legal guilt, at least to the level of an unfair trial. The fairness of the trial in *The Lindbergh Kidnapping Case* is much less important than in *Crime of the Century*. Instead, the former rejects the idea of an appeal, taking the position that the trial was not unfair, and even if it were, Hauptmann was factually guilty, making the fairness of the trial less significant. Not every error is a miscarriage of justice.⁸¹ The film seems to anticipate the direction of the United States Supreme Court towards a more conservative view favoring finality of judgment and allowing appeals of an "unfair" trial only where the unfairness is so egregious as to disrupt the entire criminal justice system.

By contrast, *Crime of the Century* adopts a more liberal view that innocent persons should not be in jail as a general matter, and that this defendant in particular should not have been jailed for the charged crime. Interestingly, this is an emotive (and political) appeal to the audience that is not necessarily reflected in our criminal justice system. Certainly the film suggests that Hauptmann was considered guilty well before the verdict was announced. *The Lindbergh Kidnapping Case* demonstrates popular conviction of Hauptmann's guilt before the legal conviction as well, but does not feel itself bound in the same way by philosophical notions of justice. The "justice" occurred when Hauptmann the kidnapper-murderer was captured. However, the fairness of the trial is immensely important to *Crime of the Century* because without a fair trial, the defendant's story of innocence will not be told or heard.

The absence of a confession also plays a large role in *Crime of the Century* as an appeal of Hauptmann's legal guilt. Confessions are a favored form of direct evidence,⁸² and while circumstantial evidence is enough to convict, as the Hauptmann trial demonstrates, the absence of a confession in this case is suggestive of innocence. It is hard to imagine why a man with a wife and young son would not confess or cut a deal if it would spare his life. The ready inference is that he might have been innocent and had nothing to confess. The lack of a confession has contributed to the lasting effect of this particular trial because it permits subsequent generations to reconsider whether Hauptmann was guilty. Confessions are so common, so why none in this case?

In *Crime of the Century*, a newspaper attempts to buy Hauptmann's confession for \$90,000, payable to Anna after Richard's death. After discussing the offer with Anna, Richard decides to turn it down in favor of the "truth," which is free. Richard's refusal of the offer prompts Hoffman to visit him in prison. Richard immediately tells the Governor that he is innocent. Hoffman replies that a court has tried and found him guilty. Richard then delivers his own "closing argument" to the Governor:

I will tell you the way you do things here. Poor little baby is kidnapped and murdered. Someone must die for it. You find a poor foreign carpenter who has some of the ransom money. You stop looking for everyone else. You don't believe a word he says. You don't believe his wife. You forget there were footprints of two men. You forget there were three men in the cemetery. You say, "Oh a ladder! He's a carpenter. He must have made it." Your newspapers make up lies about him—new lies every day. You find a lawyer

who thinks he's guilty, won't talk to him. You make a trial where you tell lies about him. You make everyone hate him. And why? Because someone must die for the baby, and I'm the one picked out to die.

Governor Hoffman then meets with Wilentz and Schwarzkopf in an attempt to re-open the case. Wilentz protests that Hauptmann is involved—"there's too much evidence against him." But, says the Governor, he did not murder the Lindbergh baby. "I want justice," exclaims Governor Hoffman, "and I shouldn't be begging for it from a police officer and the Attorney General!" The Governor stays Hauptmann's execution in this representation not for his own political machinations but because of his personal conviction that Hauptmann is innocent.⁸³

In making an appeal of the legal conviction and of society's conviction about Hauptmann's guilt, *Crime of the Century* employs several devices. The debate between actual and legal innocence is one. The emotive appeal is another. Whereas *The Lindbergh Kidnapping Case* focuses entirely on the effect of this crime on the Lindberghs, *Crime of the Century* makes an appeal for the Hauptmanns. The film's cover art asserts that, "The most famous kidnapping in history claimed more than one victim." Many of Richard Hauptmann's scenes depict him alone and scared in a prison cell. The scene of Hauptmann's execution is incredibly powerful, offering Samuel Barber's *Adagio for Strings*⁸⁴ as the plaintive background music while the case's worst "crime" is committed. Anna Hauptmann is the victim of the media in this representation, as the press burst into her bedroom as soon as the execution is complete, declaring, "It's over! No confession!" She screams and they photograph her in her grief.

* * * * *

The effect of all of the showing and telling, and lack of telling, has the effect of nullification, leaving the audience somewhere in the middle, unsure of which side to believe. In some ways, *Crime of the Century* as a closing argument asks for jury nullification, where the jury could go with their hearts and not with the evidence. Like a jury, the audience has had no control over the inclusions and omissions of evidence, yet is asked to render judgment and to evaluate the story's credibility and plausibility. As an emotional appeal, *Crime of the Century* is much more powerful than *The Lindbergh Kidnapping Case*, but it has two specific advantages. First, it is a fresh version of an old story for those who are no longer shocked by the kidnapping and are shocked instead by the film's portrayal of injustice. Second, *Crime of the Century* cheats. It frequently sacrifices historical honesty for dramatic effect, such as in the search of Hauptmann's home. *The Lindbergh Kidnapping Case* cheats as well in its dramatization of the Lindberghs. *Crime of the Century*'s dramatization of Hauptmann, however, changes the story in a different way, which is director Rydell's intention but also his greatest challenge.

In considering which account to believe, there are persuasive aspects to each story. Each film on its own, however, does not provide enough material to choose. The clear message of each filmmaker obfuscates the need for the audience to "play" the jury in either film. Neither film is a "you decide" representation of the trial in the way that films like *Reversal of*

Fortune are.⁸⁵ Sunny von Bulow, both the victim and omniscient narrator in *Reversal of Fortune*, teasingly informs the audience that “This is all you can know, all you can be told. When you get where I am, you will know the rest.” Like *Reversal of Fortune*, though, these films can never show us (or even tell us) “everything.” History is stalemated on the question of Hauptmann’s guilt or innocence. Many still believe Hauptmann kidnapped the baby. Others believe he was perhaps guilty of shady financial dealings but not of kidnapping. It is an open question.

Regardless of what you decide about Hauptmann’s actual guilt or innocence, what the films *do* demonstrate is an ability, within this particular medium, to enhance the credibility of a desired outcome through careful selection, exclusion, and “showing” of events. As closing arguments, the films advocate for a belief in actual guilt and actual innocence. The metaphor is imperfect, particularly because in a trial, closing arguments lead to a resolution. Viewing these two films together as arguments for the prosecution and the defense, the audience lacks satisfying resolution. It is the films’ function as a legal appeal that ultimately speaks to a kind of verdict. *The Lindbergh Kidnapping Case* condemns the notion of an appeal, but *Crime of the Century* encourages the audience to re-evaluate the performance of the Hauptmann trial through a new lens, demonstrating the impact of narrative representation on both a trial and its legacy in popular culture.

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¹ See Kathleen Norris, *Novelist Sketches the Trial Scene*, N.Y. TIMES, Jan. 3, 1935, available at <http://www.nytimes.com/books/98/09/27/specials/lindbergh-novelist.html> (setting the scene for Bruno Richard Hauptmann’s trial).

² See William E. Geist, *Mrs. Hauptmann’s Cause*, N.Y. TIMES, Oct. 20, 1981, at B2 (noting that Anna Hauptmann’s petition alleged that 34,000 pages of FBI documents pertaining to the case had been manufactured and exculpatory evidence had been withheld); see also Wayne King, *Defiant Widow Seeks to Reopen Lindbergh Case*, N.Y. TIMES, Oct. 5, 1991, at A24 (noting that Anna Hauptmann alleged her husband was framed).

³ See Becky Batcha, *This Case Never Closes*, N.Y. TIMES, June 29, 2003, at 14NJ (reporting that sixteen people have claimed to be the Lindbergh baby).

⁴ The Grand Duchess Anastasia (Romanov) was the youngest daughter of Tsar Nicholas II and Empress Alexandra of Russia. The entire royal family is believed to have been executed on July 17, 1918 by the Bolsheviks. In the 1920s, a young woman in Berlin claimed to be Anastasia, and spent the rest of her life proclaiming this identity. Peter Kurth, *ANASTASIA: THE RIDDLE OF ANNA ANDERSON* (Back Bay 1986) (chronicling the story of

Anna Anderson and her claim).

⁵ See Batcha, *supra* note 3 (noting the discovery of a seemingly authentic confession note from an unknown third party).

⁶ See Nicole Morella, *Back On Trial*, COURIER NEWS, Sept. 16, 2003, at 1E (announcing the thirteenth annual reenactment of the Lindbergh kidnapping trial).

⁷ See LUDOVIC KENNEDY, *THE AIRMAN AND THE CARPENTER* (Penguin Books 1986) (claiming that the New Jersey police framed an innocent Hauptmann).

⁸ *CRIME OF THE CENTURY* (Home Box Office 1996). The discussion of the film in this article represents the author’s own observations and impressions. During discussions of this film, Hauptmann is referred to as “Richard.” There will not be citations to the film every time its content is discussed. Rather, when appropriate any additional third party sources will be identified.

⁹ See Jennifer L. Mnookin, *Reproducing a Trial: Evidence and Its Assessment in Paradise Lost*, in *LAW ON THE SCREEN*, 153, 154 (Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey, eds., Stanford Univ. Press 2005) (identifying the potential for films about a murder, a trial, and its aftermath to function as “a form of legal and political advocacy”).

¹⁰ Kennedy, *supra* note 7.

¹¹ *THE LINDBERGH KIDNAPPING CASE* (Columbia Pictures Television 1976). The discussion of the film in this article represents the author’s own observations and impressions. During discussions of this film, Hauptmann is referred to as “Bruno.” There will not be citations to the film every time its content is discussed. Rather, when appropriate any additional third party sources will be identified.

¹² The film’s cover art purports that it is a fact-based representation of the Lindbergh kidnapping trial. *Id.*

¹³ Hauptmann, a German immigrant, used his second name, Richard, after immigrating to the U.S. The press covering the trial chose to refer to Hauptmann as “Bruno,” thus highlighting his status as ‘foreign.’ See Geist, *supra* note 2 (noting that Anna Hauptmann identified her husband as “Richard,” not “Bruno”).

¹⁴ See *New Jersey v. Hauptmann*, 180 A. 809 (N.J.L. 1935) (rejecting the sixteen points of error raised, as well as all other petitions).

¹⁵ See Douglas Linder, *The Trial of Bruno Hauptmann: An Account*, available at <http://www.law.umkc.edu/faculty/projects/ftrials/Hauptmann/AccountHauptmann.html>. H.L.

Mencken is best known for his scathing, satirical report of the Scopes trial, which he coined as the “Monkey” trial.

¹⁶ Robert R. Bryan, *The Execution of the Innocent: The Tragedy of the Hauptmann-Lindbergh and Bigelow Cases*, 18 N.Y.U.L. REV. L. & SOC. CHANGE 831, 836 (1990/1991).

¹⁷ *Id.* The publicity of the Hauptmann trial has been exhaustively studied and the role of press activities in this trial was investigated by the American Bar Association. Robert Bryan represented Anna Hauptmann in her lawsuit to reopen the case. See also Linder, *supra* note 15.

¹⁸ Jon Blackwell, *1932: Crime of the Century*, THE TRENTONIAN, available at <http://www.capitalcentury.com/1932.html>. The teenager, Thelma Miller, now 89, recently turned over her scrapbooks of the trial to the state police museum. See Larry Higgs & Kathy Johnson, *Lindbergh Keepsakes Reveal ‘Trial of the Century’*

Frenzy, COURIER NEWS, Sept. 26, 2003, at 1A (reflecting an interview with Thelma Miller).

¹⁹ Norris, *supra* note 1.

²⁰ See *Chatwin v. United States*, 326 U.S. 455, 462-63 (1946) (discussing the origins of the Federal Kidnapping Act, passed in 1932 “against a background of organized violence” in which “victims were selected from among the wealthy with great care and study”).

²¹ *The Lindbergh Kidnapping Case* begins and ends its telling with the Lindberghs. *Crime of the Century* minimizes the kidnapping and excludes the two and a half year investigation so that it may focus entirely on the Hauptmann story, which has largely gone untold.

²² Reeve Lindbergh, *Charles Lindbergh*, TIME, June 14, 1999, available at <http://www.time.com/time/time100/heroes/profile/lindbergh01.html>.

²³ Linder, *supra* note 15.

²⁴ See NJ.com’s website on the Lindbergh Trial available at <http://www.nj.com/lindbergh/index.ssf?/lindbergh/crime.html> (noting that Capone offered a \$10,000 reward for information that would lead to the safe return of the child, and said that if he were released, he and his “henchmen” would locate the kidnaper).

²⁵ See Linder, *supra* note 15 (noting that Condon offered \$1,000 of his own money in addition to any reward offered by the Lindberghs).

²⁶ *Id.* Dr. Condon and Col. Lindbergh both identified Hauptmann as the man whose voice they heard in the cemetery during the payment of \$50,000 in ransom money. This identification, particularly Lindbergh’s, had a powerful impact on the jury. Condon also became a crowd favorite once Hauptmann was arrested, since he ceased to be a police suspect himself.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Never-to-be-Forgotten*, TIME (May 23, 1932), available at <http://www.time.com/time/magazine/article/0,9171,743741,00.html>.

³⁰ *Id.*

³¹ Bryan, *supra* note 16, at 835.

³² See Russell Aiuto, *The Theft of the Eaglet*, available at http://www.crimelibrary.com/notorious_murders/famous/lindbergh/invest_5.html?sect=7 (noting that the funeral home director was not medically trained, but conducted the autopsy under the supervision of an aged, arthritic county physician).

³³ *Id.*

³⁴ 18 U.S.C.S. §1201 (2005), based on Act June 22, 1932, ch. 271, §§1, 3, 47 Stat. 326. Several authors suggest that this law was not passed until after the trial concluded, but the legislative history demonstrates that it was passed on June 22, 1932.

³⁵ *Chatwin*, 325 U.S. at 455.

³⁶ See Bryan, *supra* note 16, at 835.

³⁷ *Id.*

³⁸ Linder, *supra* note 15.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* The ransom money had been marked so that it could be traced.

⁴² *Id.*

⁴³ Francis A. Jamieson, *Lindbergh Mystery Solved*, *Say*

Officials Here; New York Suspect Seized with \$13,750 Ransom, THE WASHINGTON POST, Sept. 21, 1934.

⁴⁴ Linder, *supra* note 15.

⁴⁵ *Id.*

⁴⁶ See Linder, *Summation of Mr. Wilentz for the Prosecution (Feb. 12, 1935)*, available at <http://www.law.umkc.edu/faculty/projects/ftrials/Hauptmann/wilentzsumm.htm>. The defendant tried to use this inconsistency as grounds for an appeal, but the Court of Appeals rejected this argument. The charge actually submitted to the jury at trial was based on a theory of homicide in the perpetration of a burglary. *Hauptmann*, 180 A. at 809.

⁴⁷ Linder, *supra* note 15.

⁴⁸ See Aiuto, *supra* note 32 at §10 (noting the positive identifications of Hauptmann by Condon and Lindbergh during the trial).

⁴⁹ See *New Jersey v. Hauptmann (cont’d)*, TIME (January 21, 1935), available at www.time.com/time/magazine/article/0,9171,787942,00.html (noting that Osborn “told the jury that the only man in the world who could have written the note[s]...was...Hauptmann”).

⁵⁰ Linder, *supra* note 15.

⁵¹ Linder, *Testimony of Joseph Wolfe*, available at www.law.umkc.edu/faculty/projects/ftrials/Hauptmann/wolfetes.html.

⁵² See Linder, *Biography of David Wilentz*, available at <http://www.law.umkc.edu/faculty/projects/ftrials/Hauptmann/wilentz.html>.

⁵³ *Id.*

⁵⁴ See Linder, *Biography of Edward Reilly*, available at <http://www.law.umkc.edu/faculty/projects/ftrials/Hauptmann/Reilly.html> (noting that the New York Evening Journal, a Hearst newspaper, won the “bidding war” for the exclusive story in exchange for paying for counsel).

⁵⁵ Linder, *supra* note 15.

⁵⁶ *Id.*

⁵⁷ See Linder, *supra* note 53 (adding that after the trial, Reilly unsuccessfully tried to collect additional attorney’s fees from Anna Hauptmann).

⁵⁸ Linder, *supra* note 15.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Fisch returned to Germany in the winter of 1933. He died in Leipzig, German on March 29, 1934, prior to Hauptmann’s arrest. See Linder, *Biography of Isidor Fisch*, available at <http://www.law.umkc.edu/faculty/projects/ftrials/Hauptmann/fisch.html>.

⁶² Colonel Norman Schwarzkopf, father of General Norman Schwarzkopf, was the head of the New Jersey State Police at the time of the investigation. See Linder, *supra* note 15. In *Crime of the Century*, he is a megalomaniac.

⁶³ See Aiuto, *supra* note 32 (noting that Schwarzkopf “tapped Condon’s telephone, opened his mail, dug holes in his yard, and stripped the wallpaper of his study walls”).

⁶⁴ See Alan M. Dershowitz, *Life Is Not a Dramatic Narrative*, in *LAW’S STORIES*, 99 (Peter Brooks & Paul Gerwitz, eds., Yale Univ. Press 1998) (describing a theory, based on a comment of playwright Anton Chekhov’s, that if you hang a gun on the wall in the first act, it must be fired in a later scene).

⁶⁵ The credits include an actor billed as “Jon.” This is a reference to the Lindberghs’ second son, Jon, who appears in the latter half of the film. The man “John” from the graveyard is not listed in the credits.

⁶⁶ Linder, *Summation of Mr. Wilentz*, *supra* note 46.

⁶⁷ *Id.*

⁶⁸ Geist, *supra* note 2.

⁶⁹ *Id.*

⁷⁰ See Mnookin, *supra* note 9 at 154 (arguing that such films can be a form of legal intervention, as well as a study in how the choices of what and how to film can affect the telling).

⁷¹ See *id.* at 155-57 (identifying the impact of a film on the observer by raising questions about truth, perspective, and proof).

⁷² *Id.* at 157.

⁷³ Robert Harriman, *Performing the Laws: Popular Trials and Social Knowledge*, in RHETORIC, MASS MEDIA, AND THE LAW: CRITICAL STUDIES OF POPULAR TRIALS, 29 (Robert Harriman, ed., Univ. of Alabama Press 1990).

⁷⁴ *Id.* at 191.

⁷⁵ Other films representing famous trials, such as COMPULSION (20th Century Fox 1959) and SWOON (American Playhouse 1992) for the Leopold and Loeb trial, and INHERIT THE WIND (Lomitas Productions Inc. 1960) for the Scopes trial, fictionalize the representations of the trial by changing the names of the key characters. This offers the filmmaker more artistic license to make representations beyond the scope of the actual trial without discrediting himself or herself.

⁷⁶ See Mnookin, *supra* note 9, at 157 et seq. (discussing the conflation of truth and fiction in the context of legal documentary films).

⁷⁷ *Hauptmann*, 180 A. at 809.

⁷⁸ *Id.* at 441.

⁷⁹ However, in *Crime of the Century*, Richard’s “Fis(c)h story” is just ridiculous enough to be true.

⁸⁰ In *Herrera v. Collins*, 506 U.S. 390 (1993), the Supreme Court held that actual innocence alone is not an independent claim for relief. The defendant in this case was convicted of capital murder. Ten years later he filed a habeas petition arguing that he was actually innocent of the crime and that the crime had been committed by his then-deceased brother. Actual innocence is a factor, but alone is not sufficient. The *Herrera* actual innocence standard under the Eighth Amendment is a very high standard, given the criminal justice system’s interest in finality of judgments.

⁸¹ See generally *Wainwright v. Sykes*, 433 U.S. 72 (1977) (holding that procedural defaults generally waive the right to habeas corpus review); *Strickland v. Washington*, 466 U.S. 668 (1984) (holding that in order to prove ineffective assistance of counsel sufficient for review, a defendant must show that the lawyer’s performance was objectively unreasonable and that there is a reasonable probability that the errors affected the outcome). Defendants can recover under *Strickland* only for substantial mistakes that greatly harm the defendant.

⁸² See Mnookin, *supra* note 9 at 156-57, 160 et seq. (demonstrating, from the baseline view that confessions are a privileged form of direct evidence in the law, that in the documentary film PARADISE LOST: THE CHILD MURDER AT ROBIN HOOD HILLS (Home Box Office 1996), traditional norms of “reliable”

evidence are inverted so that the confession appears unreliable).

⁸³ The role of Hoffman in *Crime of the Century* is also an appeal of *The Lindbergh Kidnapping Case*’s portrayal of Hoffman.

⁸⁴ SAMUEL BARBER, *Adagio for Strings*, on BARBER’S ADAGIO (Sony 1990).

⁸⁵ REVERSAL OF FORTUNE (Sovereign Press 1990) (A film adaptation of the 1985 book of the same title by Alan Dershowitz about the trial of Claus von Bulow).

10 Of The Best Trial Movies of The Twentieth Century *

1. The Passion of Joan of Arc (1928)
2. “M” (1931)
3. Twelve Angry Men (1957)
4. The Wrong Man (1957)
5. Paths of Glory (1958)
6. Anatomy of a Murder (1959)
7. Inherit the Wind (1960)
8. Judgment at Nuremberg (1961)
9. The Trial (1962)
10. To Kill a Mockingbird (1963)

* This list is drawn from an article by Patric M. Verrone, “The 12 Best Trial Movies,” originally published in the ABA Journal/November 1989. The complete article and accompanying discussion can be found at: <http://www.supremecourt.ne.gov/students-teachers/movies.shtml>

Top Rated “Crime” Films*

1. The Godfather (1972)
2. The Godfather: Part II (1974)
3. Pulp Fiction (1994)
4. Twelve Angry Men (1957)
5. Cidade Deus (2002)
6. The Usual Suspects (1995)
7. Goodfellas (1990)
8. Momento (2000)
9. The Silence of the Lambs (1991)
10. Fight Club (1999)

* Based on Reader Votes on IMBD (Internet Movie Database, inc.) website, available at: <http://imdb.com/chart/crime>