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## FRAMING THE CRIMINAL: TRADE SECRETS OF THE CRIME REPORTER

ANDIE TUCHER\*

As one of the rare non-lawyers in the bunch, I have to say I've been fascinated by the glimpses some of you have been affording into the trade secrets of your guild. So it seems only fair that in return I should let you in on one of the deepest darkest secrets of my own profession. Here it is: the reason so many of my fellow journalists are so eager to report on crime.

You've all heard of the Leopold and Loeb case of 1924—the two young men, renowned for their brilliance, at eighteen and nineteen already graduate students at the University of Chicago, who killed fourteen-year-old Bobby Franks for the thrill.<sup>1</sup> Their trial riveted the nation, but Clarence Darrow pleaded for mitigation of punishment in an eloquent twelve-hour oration that drew tears even from the judge, and they were sentenced to life in prison.<sup>2</sup> In 1936 Loeb allegedly made an unwelcomed homosexual advance to another prisoner, who drew a razor and slashed Lobe to death.<sup>3</sup> And Ed Lahey of the Chicago Daily News began his account of the incident this way: "Richard Lobe, a brilliant college student and master of the English language, today ended a sentence with a proposition."<sup>4</sup>

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1. See *Lobe, Leopold Tell How They Lured Boy into Car, Slew Him*, CHICAGO DAILY NEWS, May 31, 1924; see generally MAUREEN MCKERNAN, *THE AMAZING CRIME AND TRIAL OF LEOPOLD AND LOBE* (1924); Marilyn Bardsley, *Leopold & Lobe*, in *THE CRIME LIBRARY* (1998) at, <http://crimelibrary.com/loeb/loeb/loebmain.htm>.

2. See *Ed Lahey, Life for Slayers of Franks: Judge Scores Crime, Declares Boys Sane in "Mercy Sentence,"* CHICAGO DAILY NEWS, Sept. 10, 1924. The entire oration appears verbatim in MCKERNAN, *supra* note 1, at 213-306.

3. See, e.g., GREAT AMERICAN TRIALS 311 (Edward W. Knappman ed., 1994).

4. HAL HIGDON, *LEOPOLD AND LOBE: THE CRIME OF THE CENTURY* 298 (1999). The lead was reportedly pulled after one edition.

We want to do that. Every reporter worth the name wants to write just one deathless lead like that—the lead of the century, the lead old timers still reminisce about as they trade war stories over their beer in some seedy place with a bartender named Mac—a thing of perfect beauty. And there's nothing like a crime story for giving you the raw materials for it.

Ed Lahey's lead might be insurmountable, at least for literary artistry, but there are plenty of other classic styles where the competition might still be open. There's the tearjerker, memorably rendered by the late great Frank O'Malley of the late great Sun, who in 1907 began his account of the shooting of a policeman like this:

Mrs. Catherine Sheehan stood in the darkened parlor of her home at 361 West Fifteenth Street late yesterday afternoon and told her version of the murder of her son Gene, the youthful policeman whom a thug named Billy Morley shot in the forehead down under the Chatham Square elevated station early yesterday morning. Gene's mother was thankful that her boy hadn't killed Billy Morley before he died, "because," she said, "I can say honestly even now that I'd rather have Gene's dead body brought home to me, as it will be tonight, than to have him come to me and say, 'Mother, I had to kill a man this morning.'

"God comfort the poor wretch that killed the boy," the mother went on, "because he is more unhappy to-night than we are here."<sup>5</sup>

It's said that on the day the story came out, one of the riders on a Westchester commuter train rose to his feet and read this story aloud to a coach of strangers, though he couldn't quite finish it because of the catch in his throat.

There's the world-weary hardboiled lead, notably practiced by Damon Runyon of the New York American. I think his best effort may have been the first installment of his coverage of the Snyder-Gray murder trial of 1927, in which Ruth Snyder, unhappily married to an older man, persuaded her lover the corset salesman to bludgeon her sleeping

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5. Frank O'Malley, *As His Mother Looks at It: Killing of Policeman Gene Sheehan by a Thug*, NEW YORK SUN, Oct. 23, 1907, reprinted, with comment, in *A TREASURY OF GREAT REPORTING* 292-95 (Louis L. Snyder & Richard B. Morris eds. 2d ed. 1962).

husband with a sash weight.<sup>6</sup> Here's the lead:

A chilly looking blonde with frosty eyes and one of those marble, you-bet-you-will chins, and an inert, scare-drunk fellow that you couldn't miss among any hundred men as a dead set-up for a blonde, or the shell game, or maybe a gold brick.<sup>7</sup>

They were both convicted and sentenced to death, and an enterprising Daily News photographer strapped a camera under his pants leg and managed to snap a picture of Ruth Snyder at the precise moment the switch was flipped on the electric chair.<sup>8</sup> The photo of the formerly chilly looking blonde ran on the front page.

Then there's the demonically deadpan lead, a sort of "Stephen King meets Joe Friday," that the Associated Press does particularly well, as in this story datelined Boston, August, 1995: "An insurance executive was charged with tearing out his wife's heart and lungs and impaling them on a stake in a fight about overcooked ziti."<sup>9</sup>

Now this kind of exercise can be fun, assuming of course you are willing to forget for a moment that every one of these stories involved somebody's violent death. But my point here is to emphasize not just the obvious fact that it matters a lot how a journalist chooses to frame a story—but also that some of the pressures, concerns, traditions, and rivalries that have always underlain the choice of frame are special to the profession and not necessarily on the radar screens of even the most sophisticated viewers and readers. The examples I just cited can all go, for convenience, under the category of the quest for Beauty. It may be the most harmless of journalistic quests. There are others rather more dangerous, notably the quests for Truth, Justice, and the American Way.

Now I don't belong to the school of thought that argues—even takes a weird and perverse pride in arguing—that the media are worse now than they've ever been—more shallow, more sensational, more dangerous to democracy. The media, especially when it comes to crime, have

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6. See, e.g., John Zeaman, *Murders Most Tawdry and Titilating*, THE RECORD, Mar. 15, 1996, at 15.

7. INTERNATIONAL NEWS SERVICE, Apr. 19, 1927, reprinted in DAMON RUNYON, TRIALS AND TRIBULATIONS 139-44 (1991) (1946).

8. See e.g., Zeaman, *supra* note 6.

9. *Husband Charged with Butchering Wife After Spat About Overcooked Pasta*, THE ASSOCIATED PRESS, Aug. 30, 1995.

always been worse now than they've ever been. But the journalistic quest for truth has always been a particularly slippery enterprise. It's not just this post-modernist age that understands truth is relative—one of journalism's earliest moguls understood that too, understood it so well that he earned his status through a bald-faced lie launched so cunningly and repeated so righteously that for a century and a half it's been mistaken for truth and he's been mistaken for a hero. I'm talking about the first media-circus trial in America, in 1836, in which a teenaged clerk was charged with the murder of a glamorous prostitute in a fancy bordello just a couple of blocks from here, on Thomas Street.<sup>10</sup> At that time the feisty new penny press was just establishing itself in New York.<sup>11</sup> It was the first press to declare political independence rather than serving as a party mouthpiece, the first press to seek out a mass audience of ordinary citizens rather than catering to a small circle of elite politicians and businessmen, the first to emphasize human-interest news rather than financial news, ship arrivals, and party wrangling, the first to exploit the new technologies like steam printing, the telegraph, and the railroad.

So when the prostitute was found by her madam early one Sunday morning the penny editors seized on the story, and one of them, James Gordon Bennett, founder of the *New York Herald*, ran away with it.<sup>12</sup> He reported that he had entered the bordello, examined the young woman's letters, scrutinized her books and clothes, and interviewed the madam herself.<sup>13</sup> He described the marble-like beauty of the murdered woman's corpse as reminiscent of the *Venus de Medici*.<sup>14</sup> He published excerpts from her letters and her own poetry.<sup>15</sup> He raged and thundered about the awful state of morals in the city.

The persistent legend about Bennett is that he invented the art of investigative reporting on the spot, discovered that the poor clerk was an innocent scapegoat framed by corrupt police and the dead woman's madam,<sup>16</sup> and through his fearless and passionate journalism helped get

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10. See generally ANDIE TUCHER, *FROTH AND SCUM: TRUTH, BEAUTY, GOODNESS, AND THE AX-MURDER IN AMERICA'S FIRST MASS MEDIUM* (1994).

11. See, e.g., Maury Klein, *When New York Became the U.S. Media Capital*, *CITY J.*, Summer 1999, at 97-112.

12. See TUCHER, *supra* note 10, at 24-25.

13. See *NEW YORK HERALD*, Apr. 11, 1836.

14. See *NEW YORK HERALD*, Apr. 13, 1836.

15. See *NEW YORK HERALD*, Apr. 13, 14, 30, 1836.

16. See TUCHER, *supra* note 10, at 222 n.8.

the suspect acquitted. The last part is true. The clerk went free and no one else was ever tried.<sup>17</sup> But I am convinced the clerk was guilty as hell anyway, and Bennett knew it. Just about everything he published about the crime was pure fantasy, made up in his own head. My book *Froth and Scum: Truth, Beauty, Goodness, and the Ax-Murder in America's First Mass Medium*<sup>18</sup> argues that Bennett's purpose in covering the story as he did was to win over the most influential and most affluent facet of the new mass audience—the urban middle class, not the working-class readers sought by other penny papers—and he figured the best way to do that was to give them a story that harmonized with what they knew—that *sounded* like truth to them. The comforting and congenial truth that whoever it was who entered the beautiful prostitute's bedroom at night, smashed her skull with an ax, and set her bedding on fire, it could *not* have been that nice young man whose people were so lovely—it had to be evil and designing people on the fringes of society who did the heinous deed.

Responsible mainstream journalists nowadays are not normally found tinkering so egregiously with the evident facts of a case. But the search for truth has been complicated even more these days by a particularly late-millennium phenomenon: so few people trust journalists to give them the truth, or even to recognize it if they sat down on it. Nearly every year the Gallup Poll asks people to rank various professions according to their integrity and trustworthiness, and journalists have learned to feel very grateful toward the used-car dealers and congressional representatives of the world who keep them from hitting rock bottom. Notice how tactfully I did not mention the lawyers.

We journalists do of course bear some of the blame for our bad rap; we can indeed be arrogant, intrusive, insensitive, and dumb. The list of the missteps of last year alone, running from Stephen Glass's fabrications to Monica madness, is evidence enough. I also harbor the heretical belief that there may in fact be such a thing as too much news—or at least too many news organizations, programs, and publications, all chasing the same stories, all shouting louder and louder to grab the public's attention above the din of everyone else shouting louder and louder to grab the public's attention—and all the while growing more and more indistinguishable.

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17. See TUCHER, *supra* note 10, at 24.

18. See TUCHER, *supra* note 10

But the public is shouting too. America has become a vastly diverse public that cherishes a vast array of beliefs, convictions, prejudices, and visions of the truth, and sees little difference between shopping around for the most satisfying truth about O.J. or Jon Benet and shopping around for the coolest-looking running shoes.

Now, of course, the rise of the Internet gives the truth-seeker a limitless mall to browse, and if you still can't find a truth you like out there you can simply write your own. Some of these are easily dismissible, like the web site that purports to have found the smoking gun in the Jon-Benet case: if you take an audio tape of the CNN interview with John and Patsy Ramsey in May 1997, says the site, and run it backwards, you will hear John saying "I done it. It's a show you're running."<sup>19</sup> But the more of these eccentrics are running loose out there playing at being journalists, the harder it is, I think, for the serious and respectable members of the profession to maintain their standards and their reputation intact.

The quest for justice is another journalistic tradition with a complicated and often sad history. I've found dozens of instances in which reporters chose not just the frame of the story but also the outcome. Out of arrogance or a desire to help or a need to goose the circulation, they took a hand in the case themselves, and quite possibly changed the end of the story in the process.

In 1897, in the midst of his fierce circulation war with Joseph Pulitzer, William Randolph Hearst turned the staff of his New York Journal into a "murder squad" dedicated to solving the mystery of the dismembered masseur that was baffling the police. They found a woman they believed was the murderer, the masseur's former lover, by tracing the oil cloth in which the body pieces were wrapped, and then rented her entire apartment building and set guards over it to keep other reporters from sharing their scoop. The paper that morning blared: "Murder Mystery Solved by Journal! The Journal, as usual, ACTS when the representatives of ancient journalism sit idly by and wait for something to turn up."<sup>20</sup>

In turn-of-the-century Chicago, when police failed to find any clear evidence implicating the woman they suspected of poisoning her

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19. *The Official Reverse Speech Web Site at*, <http://reversespeech.com/ramseys.html> (last visited April 20, 2000).

20. See W.A. SWANBERG, *CITIZEN HEARST* 124-25 (1963).

boarder, a hard-boiled reporter named Arthur Pegler, father of the red-baiting columnist Westbrook Pegler, became convinced she'd done it. So he planted a bottle of arsenic in the woman's cellar, which turned into the key piece of evidence in her conviction and led to a death sentence. When Pegler's tender-hearted accomplice ratted him out to their editor, that adaptable gentleman immediately launched a campaign pleading for mercy for the convicted killer on the grounds that she was but a frail woman and a mother at that.<sup>21</sup> Her sentence was commuted to life in prison.

While there are still many responsible journalists who believe in working closely with law enforcement—Edna Buchanan of the *Miami Herald* has been one prime example—we don't expect these days to find journalists of the mainstream press actually messing with the evidence.

Which is one reason the recent Case of the Leaking Independent Counsel is so surreal. That Kenneth Starr's office leaked grand-jury testimony to reporters seems clear, and that in so doing it broke some laws is also probable. But now the very same reporters who received the stolen goods, so to speak—who were the recipients of the leaks, who felt compelled to give play to the prosecutor's side of the case—are now reporting on the investigation into the leaks as if they'd had as much personal connection to them as they did to JonBenet.

And then there's the journalistic quest for the American Way, and this one bothers me perhaps most of all.

Many journalists do, of course, take the First Amendment seriously. Many also take the First Commandment seriously: I mean the first commandment of journalism, the old adage that the duty of the press is to afflict the comfortable and comfort the afflicted. That the press has a special responsibility to look out for the little guy, to give a voice to those who might otherwise be voiceless. Back in 1833, the *New York Sun* established itself as the very first successful penny paper<sup>22</sup> by taking a stand then considered quite radical: that anyone, even the humblest laborer, had as much right to know what was going on in the world as the richest nabob, as much right to express an opinion as the proudest blue-blood. And in fact they got the prostitute's murder right—they recognized that the accused clerk was in fact guilty—but they were not in the

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21. See OLIVER PILAT, PEGLER, *ANGRY MAN OF THE PRESS* 46 (1963).

22. See, e.g., William A. Babcock, *U.S. Newspapers: A Continuing Story*, *THE CHRISTIAN SCIENCE MONITOR*, Sept. 25, 1990, at 10.



least surprised that money, power, and influence triumphed over justice in the end.

James Gordon Bennett soon took up the same cry in his *Herald*: that he was there to be “a friend of the human race, to support the cause of the oppressed against the oppressor, to put down the vulgar aristocracy of paper wealth by the noble aristocracy of civil liberty itself.”<sup>23</sup> If that language sounds familiar, you have doubtless been doing a lot of surfing on the Net, which in the eyes of many devotees is fulfilling all the noblest ideals of the press: it’s democratizing knowledge by sidestepping the control of the elite and opening up a universe of information to anyone with a modem. You may even have been fingered as a reader of the *Drudge Report*, the Internet gossip sheet that has become as symbolic of the Clinton scandal as the semen-stained dress. Matt Drudge, who seems to make up his mind whether he’s a journalist or not depending on the status of the libel suit against him, has for the past year been proclaiming himself just that sort of champion. At a speech to the National Press Club in June, 1998, he presented himself as the penny press’s lineal descendant. “We have entered an era vibrating with the din of small voices,” he said. “The Net gives as much voice to a 13-year-old computer geek like me as to a CEO or a Speaker of the House. We all become equal—and you would be amazed what the ordinary guy knows.”<sup>24</sup>

Drudge may indeed be the love child of the penny press—but James Gordon Bennett’s *Herald* is the father, not the genuinely democratic *New York Sun*. Because recall, that the same Bennett who declared himself a friend of the human race and a supporter of the oppressed also declared himself, in the columns of his best-selling newspaper, the friend of a murderer and the supporter of an oppressor. To save the accused young clerk and to pander to his middle-class friends, Bennett grievously and purposefully betrayed the language of egalitarianism.

And while there is indeed some really wonderful journalism coming out of the Net, there are also the *Drudges* of the world, who claim that they are serving not just truth and justice but also, and especially, the American way when they tell us that Sidney Blumenthal is supposed to be a wife-beater, that the distinguishing characteristic Paula Jones saw on Clinton’s genitals was a golden eagle tattoo, and that Clinton may have had a love child with a black prostitute. These people—I’d rather not call them journalists—get their biggest thrill not in dazzling those old-

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23. ISAAC C. PRAY, *MEMOIRS OF JAMES GORDON BENNETT AND HIS TIMES* 267 (1855).

timers over their beer at Mac's place but in scooping them, rushing to print or air or over the Net with an iffy story that another news organization was holding for what were quite probably valid journalistic reasons. This turns truth on its head and justice on its ear, and it perverts the language of the American way. There's nothing beautiful about it.

