

BOOK REVIEW

Michael J. Caplan,¹ M.D.

Review of: *Murder, Culture and Injustice: Four Sensational Cases in American History*

REFERENCE: Hixson WL. *Murder, culture and injustice: four sensational cases in American history*. The University of Akron Press, Akron, OH, 2001, 274 pp., \$27.95.

I trust fellow forensic scientists will agree that it is a sad state of affairs when we must rely upon a book review assignment to provide an excuse for “leisure reading”! I have always loved and devoured books about crime and murder, and in fact, I still maintain that reading Gerold Frank’s *The Boston Strangler* as a teenager is largely what propelled me into a career in forensic science. After reading Professor Hixson’s book, however, I can state honestly that if I were to have read *his* book as a teenager, I would have pursued forensic science with equal enthusiasm and vigor. I suspect that there are some budding criminologists and forensic scientists among today’s youth who will derive similar inspiration from this work.

Essentially, this book chronicles the course of four of the most celebrated murder cases and criminal trials in American history—namely, the Lizzie Borden axe murders, the kidnapping and murder of the Lindbergh baby, the Sam Sheppard bludgeoning murder, and the O.J. Simpson double-murder case. In the introduction, Professor Hixson makes the interesting observation that historians have generally given more notice to political trials than to murder cases; but he points out that the latter have much to teach us about our history as well. A theme reiterated in all of these high-profile cases is that the verdicts, although technically rendered in the courtroom, were, in reality, probably formulated “in the proverbial court of public opinion.” As a result, American justice in all of these cases was distorted and perverted, though in different ways, and ultimately undermined—its “fragile” (author’s quotes) nature exposed.

The Borden case illustrated the somber reality that the social climate and Victorian gender mores of the times could not be reconciled with the compelling circumstantial evidence that implicated Lizzie Borden as the only reasonable perpetrator of the 31 (not 81, the author corrects the reader, despite the popular rhyme!) blows with an axe delivered to her stepmother and father on the morning of August 4, 1892. What made the case so particularly charged was the combination of the frank brutality of the homicides with the notion that a woman in this case was perceived as a potential suspect rather than a victim, as was the more usual (and more socially acceptable) scenario. As the author points out, this double homicide

was not just a murder case but one which challenged the concepts of sanctity of the family, the family home, religion, and the entire Victorian social order! It was inconceivable, and moreover, entirely unacceptable under the existing social structure, that a reputable woman could commit these crimes. Although the author makes the analogy to the Simpson case in that police errors in the Borden case allowed a capable defense team to take steps which critically weakened the prosecution’s argument, it was ultimately public opinion and sentiment upon which Lizzie and her attorneys wisely capitalized and which guided Associate Justice Dewey’s charge to the jury that was really nothing more than a poorly disguised, directed motion of acquittal. The author is right on target when he states that the Borden case exemplifies the recurring theme “that prejudices and community pressures can prove stronger than even the most compelling evidence.”

In the Lindbergh baby kidnapping/murder case, referred to in popular lore as the “crime of the century,” public opinion prevented proper dispensation of justice, but not because of a lack of admittedly compelling and overwhelming evidence against Bruno Richard Hauptmann; there was more than enough physical and circumstantial evidence to convict Hauptmann of the crime. Such evidence included incriminating handwriting comparisons of Hauptmann’s exemplars to the ransom notes; marked ransom money (gold certificates found in his possession or otherwise linked to Hauptmann); and expert testimony by a wood expert who was able to trace the raw material—pine from North Carolina—to the original milling site in the South to the lumberyard in the Bronx, New York, where Hauptmann had surely bought the wood used to make the ladder (by which he gained access to the baby’s bedroom on the second floor of the Lindberghs’ home). The “presumption of guilt” that surrounded the entirety of the criminal proceedings from the moment of Hauptmann’s arrest to his execution in the electric chair simply did not permit Hauptmann to receive a fair trial under the law. Spearheading the prejudicial and biased attack was an atmosphere of xenophobia that was potentiated by Hauptmann’s German origin. The combination of anti-German feelings created by the events of World War I and the rise of Hitler and Nazi Germany polarized American public opinion against Hauptmann. These sentiments were augmented by the image of Charles Lindbergh as the fearless aviator who represented American heroism and patriotism. The author epitomizes this when he quotes prosecutor David T. Wilentz in his closing argument to the jury. “What type of man would murder the child of Charles and Anne Lindbergh? He wouldn’t be an American.” In essence, Hauptmann, despite all of

¹ Assistant medical examiner, State of Delaware Office of the Chief Medical Examiner, Wilmington, DE.

the damning evidence against him, had no reasonable chance to receive a fair trial. Once again, Professor Hixson is right on the mark when he contends that the proper administration of justice is evaluated not merely by the outcome, but by the process that leads to the end result. While in the Lindbergh case, unlike in the resolution of the Borden case, the probable real perpetrator of the crime was convicted, both cases are similar in that the processes of justice were undermined by social and cultural considerations that had no substantial bearing on the facts and evidence regarding the crimes.

The Sam Sheppard case is the platform from which Professor Hixson delivers his most acrimonious indictment of the 20th century American criminal justice system, and with justification: any hopes of administering justice in the original case were negated by a combination of an entirely closed-minded, inept criminal investigation which failed to uncover evidence that would have from the outset cast reasonable doubt on Sheppard's guilt; a coroner who abused his power in conducting a McCarthian public inquest; media coverage which contributed decisively to the public's preformed verdict of Sheppard as the guilty suspect, causing U.S. District Judge Carl Weinmann to declare this "trial by newspaper . . . a mockery of justice;" the disclosure of previous adultery on the part of Sheppard about which he had not been forthcoming, and by which the prosecution manipulated societal sexual attitudes by weaving it into the motive for killing his wife; and worst of all, a public that was predetermined to judge Sheppard unfairly because class prejudices and biases led the largely working and middle class populus of Cuyahoga County, Ohio to believe that Sheppard was exploiting his wealth and status to avoid culpability for murder. In short, as Hixson claims, Sheppard was "condemned . . . before he was even indicted." Although many positive developments resulted from the case—namely, the emergence of criminalistics as a powerful discipline in forensic science, establishing the importance of physical evidence in the reconstruction of a crime (thanks largely to Dr. Paul Leland Kirk); and crucial reforms in the criminal justice system, marked by the landmark 1966 U.S. Supreme Court decision which granted protection to defendants from the "inherently prejudicial publicity" they encountered in high-profile cases—the fact remains that the decimation of an innocent man's life, and to a degree, that of his family as well, has caused this case

to portray American jurisprudence in its most ominous and unfavorable light.

The O.J. Simpson case still remains relatively fresh in the memories of forensic scientists, and its outcome is perhaps the most troubling of all in light of the frankly incontrovertible DNA evidence that established Simpson's guilt, not only beyond a reasonable doubt, but beyond "[any] doubt at all," revealing both his and the victims' blood at the crime scene, inside and outside his Bronco, and at his Rockingham estate. That is why this case especially supports the author's contention that while the crimes may be about the evidence, the cases are decided by factors that may have nothing at all to do with evidence. In the Simpson case, the racial tensions that existed in the Los Angeles community were compounded by the history and continuing pattern of racist criminal justice (recently illustrated in LA by the Rodney King incident) and by the mistrust and "total absence of credibility" of the LAPD in the black community. The constellation of these issues is what essentially led to jury nullification (ignoring the evidence in order to issue a verdict that is based upon considerations other than the facts of the case) and to Simpson's acquittal. Factors also contributing to the verdict were Simpson's formidable wealth, which allowed him the luxury of access to virtually unlimited legal and investigative resources; the failure of Marcia Clark and the prosecution team to recognize, during the jury selection process, the decisive role that the racial composition of the jury would play in the verdict; and Judge Ito's failure to take control of the courtroom and limit the trial to a reasonable length.

This book is truly a superlative treatment of four of the most high-profile criminal cases in our nation's history. Not only does it present the facts of the case in a coherent, well-organized fashion, but more importantly, it explains why the verdicts in these cases rested ultimately on issues other than the facts. By doing so, the book provides insights into the workings and shortcomings of the American criminal justice system. It is a chilling thought that Hixson leaves us with in the conclusion when he states that "egalitarianism under the law will be an ideal . . . rather than a reality" in our country. An excellent and comprehensive annotated bibliography is included at the end of the book for readers interested in exploring the individual cases in greater detail.