

# Bruno Hauptmann Was Innocent

By Anthony Scaduto

"... Every piece of physical evidence introduced against the accused Lindbergh kidnapper at his trial was either manufactured by the police or distorted by so-called expert witnesses ..."

Documents from the files of the FBI, the New York City police, and other agencies prove that Bruno Richard Hauptmann, the Bronx carpenter executed in 1936 for kidnapping and murdering the infant son of Charles A. Lindbergh, was the victim of one of the most scandalous perversions of justice in our history.

There can be no doubt about it: Hauptmann was innocent. The documents I possess (some of which accompany this article) demonstrate that every piece of physical evidence introduced against him at the trial in Flemington, New Jersey, was either manufactured by police or distorted by so-called expert witnesses.

The documents prove that without exception every eyewitness who placed Hauptmann near the Lindbergh home around the time of the kidnapping or identified him as the man who extorted the ransom money was a liar. This includes Lindbergh himself, who committed legal perjury at least once and what I consider moral perjury several times.

The documents also prove that each of Hauptmann's alibis for key dates in the period between the kidnapping and the payment of ransom five weeks later, which the prosecution called lies, was indeed the truth. The authorities suppressed all evidence that would have supported Hauptmann.

*Adapted by the author from Scapegoat: The Lonesome Death of Bruno Richard Hauptmann, to be published by G. P. Putnam's Sons. Copyright © 1976 by Anthony Scaduto.*



The carpenter convicted: Bruno Richard Hauptmann and court members turn to hear the jury foreman pronounce the accused kidnapper "Guilty" on February 13, 1935.

It is difficult to believe that what was done to Hauptmann could actually have occurred, even back in the gang-buster thirties. All of the police officers, FBI agents, and prosecutors, after seizing upon this German immigrant who was unknowingly spending Lindbergh ransom money, appear to have made an early decision that Hauptmann was the killer of Lindbergh's son, despite strong evidence to the contrary. And they bent the evidence to conform to their judgment of Hauptmann. Not satisfied with manufacturing physical evidence against him, knowingly putting liars on the stand, and threatening Hauptmann's few defense witnesses, they also tormented him between the day of his arrest and his execution almost nineteen months later.

They tormented him, for example, by planting in the press before he was brought to trial the untruthful story that he had tried to commit suicide because he was so filled with guilt. They tormented him by having an FBI accountant swear falsely, at his trial, that Hauptmann had spent every penny of the \$50,000 ransom, and then, after his conviction, by sending a state trooper to his cell to promise Hauptmann he would not be executed if he would reveal where he had hidden the \$30,000 of the ransom that has never been found. They tormented him by suppressing his own documents so that he couldn't defend himself against the charges.

The role of the press in the torment of Hauptmann went beyond just passively receiving and printing police ver-

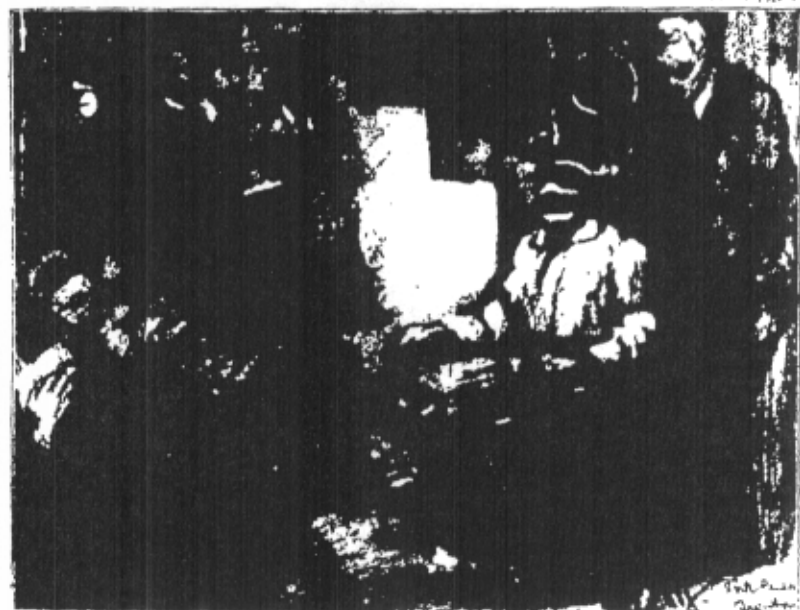
submitted by Sue Campbell



Waiting for the end: Some of the hundreds of reporters who covered the trial gather in the New Jersey State Prison to hear if Hauptmann will be granted a commutation.

**EXTRA DAILY NEWS FINAL**

# BRUNO DIES IN CHAIR



ARE SEEN DEATH SKETCHED BY ARTIST WITH CAMERA EYE. Scene at Trenton Penitentiary as Lindbergh slayer was executed. Artist S. J. Vogel made sketches in death chamber. Behind Bruno stand W. Earl Hill, in the act of execution, and Warden Combating, beside him stands the Rev. D. C. Werner. Bruno's head of a few years.

Six Full Pages of Hauptmann Case Pictures—See Pages 18, 19 and Four-Page Supplement in Center Fold

The carpenter executed: The front page of the New York Daily News of April 4, 1936. A News artist was permitted to make sketches of Hauptmann in the electric chair.

sions of their evidence. The newspapers headlined the damning news. Hauptmann had written on a board in his closet the address and telephone number of the intermediary who paid out the ransom money. How reporters assigned to the case knew that "evidence" had been written by a colleague who was hungry for a story several days after Hauptmann's arrest. But the story was never traced.

The papers kept the sensation as long as possible, because circulation jumped dramatically in the beginning and whenever a "new clue" was reported over the next 30 months. Frequent editorials chastising the police for not catching the beast who had killed Lindbergh's son created intense pressure on detectives to solve the crime, to arrest and convict someone—almost anyone—for the murder. And then along came "lone" Hauptmann, about whose guilt the public was never in doubt.

During three years of research on this case I found that most reporters and their editors accepted the "theory" presented by the police without question, and used the columns of their newspapers to orchestrate the public outcry for Hauptmann's death.

From the moment the "heavenly" child was shouted "LITTLE LINDY KIDNAPPED" over the country people began repeating what they'd seen Lindbergh's son. Many dozens of parents were held by the police until they could prove their children in their baby carriages or were actually their own. The kidnapping stories piled loose practically crank and every emotionally disturbed person in the nation. Most of them wrote letters of advice, foreboding, praise or viciousness; many of them descended on Lindbergh's home, offering clues, seeking their share of money and fame. And an entire generation of Americans growing up in the 1930s remember their parents' warnings about kidnapers who murdered Little Lindbergh and might murder any child.

The surface facts about the case are simple. The twenty-month-old son of the then most famous man in the world was stolen from the nursery of his home in Hopewell, New Jersey, at about 10:30 p.m. on the night of March 1, 1932. His kidnappers used a poorly constructed extension ladder to climb to his second-floor window, and left it behind when they fled with their victim. They left behind, in the nursery, a ransom note bearing a peculiar symbol: two interlocking circles drawn in blue ink, a solid red ball within the oval formed by the intersection of the circles, and two holes piercing the symbol.

A \$50,000 ransom, almost half

it in easy-to-spot gold certificates, was paid a month after the kidnapping. But the boy was never returned. A body, not much more than a skeleton, was found buried in the woods four miles from Lindbergh's home a little more than two months after the abduction. Lindbergh identified it as his son.

For more than two years, police investigated thousands of leads without success. Then in the autumn of 1934 they arrested a 35-year-old German immigrant carpenter, Bruno Richard Hauptmann, after tracing to him a ransom bill he had spent for a few dollars' worth of gas. Hauptmann denied knowing anything about the Lindbergh crime. But in the garage behind his home in the North Bronx, police found almost \$15,000 of the ransom. Hauptmann claimed he had been given the money by a friend, who had since died. His story was believed by no one.

At his murder trial in Flemington, New Jersey, the prosecution claimed

Hauptmann had built the kidnap ladder and had written the ransom notes; a number of eyewitnesses identified Hauptmann as having been in the vicinity of Lindbergh's home around the time of the kidnapping, and as having been the man who negotiated the payment of the ransom and received the money. Hauptmann was convicted. He was electrocuted on April 3, 1936.

Because of some ghosts of my childhood, I've always found it difficult to believe that official version. Born five days after the kidnapping, growing up in a largely Italian immigrant neighborhood where the guilt of Sacco and Vanzetti was still hotly denied, I became aware around the time I started grade school that the adults around me usually joined the name of another man to those of the Italian radicals—"They framed Sacco and Vanzetti just like they framed that German, Hauptmann."

Later, when I had become a police

reporter with a deep interest in crime and criminals, I read everything I could find on the case. And my childhood doubts were reinforced, mostly because the case against Hauptmann seemed too perfect.

But it wasn't until the spring of 1973 that I began seriously to investigate this most famous crime and most perfect case against a defendant in American history. At that time I was approached by a man, long on the fringes of organized crime, who said he had been involved with a detective who had tried to save Hauptmann's life. He said he could prove Hauptmann was innocent and also prove that the actual kidnapper was a disbarred New Jersey lawyer. I began to investigate with him in Jersey. Although survivors of the era corroborated much of his story, his proof didn't check out and no one could give me documentation. So I decided to return to the beginning, to the Bronx, where Hauptmann had lived and from which he was extradited in October, 1934, to stand trial in Jersey.

Bronx District Attorney Mario Merola found the Hauptmann file in his office, and permitted me to go through it at my leisure. Less than ten minutes after opening the first file folder I had positive documentation that the too-perfect script written by police and prosecution 40 years before had been developed from evidence that was tampered with. The evidence was a small scrap of yellow ruled paper from a legal pad on which was written:

Received from Asst. DA Breslin, the following records:

Employment card record of Richard Hauptmann, carbon copy of payroll Feb. 29, 1932, carbon copy of payroll, March 15, 1932.

The receipt went on, recording twice-monthly payroll periods through mid-April. But the second date concerned me most. When he was arrested, Hauptmann told police he'd been working on March 1, 1932, the day of the kidnapping. He was a carpenter during the final stages of construction at the Majestic Apartments on Central Park West and had worked until a little after 5 p.m. He had then washed up and taken the subway home. Though Hauptmann's alibi did not absolutely eliminate him as the kidnapper, it made the possibility remote.

Police learned from other employees of the Majestic that Hauptmann did use the subway and not his car to travel to work. Even if he quit as early as



The resting defense: Hauptmann with his lawyer, Edward J. Reilly (left), who dozed drunkenly in the courtroom during the trial. Reilly allowed his client to be whipsawed.

Time Book for Two

Date, Dollars

MARCH 31

79 2 1/2

NAMES

Start the through line on one

1 2 3 4 5 6 7 8 9 10 11 12

13 14 15 16 17 18 19 20 21 22 23 24

Total Time

Rate

Amount

Remarks

JAMES HULLERY

DAVE DUNN

JOS. CORNELL

WILLIAM KILGUS

LAWRENCE FURCHT

WILLIAM BRUNS

J.M. FURCHT

CONSTRUCTION

REMARKS

JAMES DAVIS

ALLEN WILSON

GEORGE KILGUS

JOS. BURNHAM

RICHARD HAUPTMANN

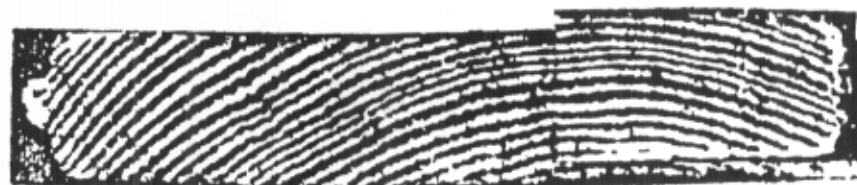
HARRY FOLEY

JAMES CULLEN

DONALD DAVIS

JOHN F. CONDON

Tainted evidence: The prosecutor claimed this time sheet proved Hauptmann was not where he said he was on March 1, 1932. The blobs next to his name, supposedly zeros showing he didn't start working until March 21, indicate tampering.



Fatal ladder: A prosecution "wood expert" proved that a rail from the kidnap ladder and a board from Hauptmann's attic were part of the same piece of lumber. But the U.S. Forestry Service later said the "expert" was absurd.

five, washed up, then took a train to the Bronx, he would have been home some time after six. He would then have had to drive out to Hopewell by 9:15. In those days, before the turnpike was built, the trip to Lindbergh's home would have taken at least three hours under normal conditions, but March 1 had been a very rainy and windy day. Even had he made it by nine that would not have given him enough time to reconnoiter the Lindbergh mansion, which the kidnapper must have done because Lindbergh, his wife, three servants, and the family dog were up and about in the fully lighted house.

Hauptmann's alibi for what he was doing on March 1 crimped the police case and so it was simply destroyed. The receipt for the payroll records proved that. At Hauptmann's extradition hearing in the Bronx, the treasurer of the Majestic management agency testified that the employment records

for that vital date no longer existed. At Hauptmann's trial, the timekeeper at the Majestic swore that the records were missing. But the receipt I found proved that those records covering the first half of March certainly did exist.

To paraphrase what Senator Sam Ervin said about Nixon's refusal to turn over the tapes to the Watergate committee, when a man suppresses evidence that it is in his power to produce, we must assume that evidence is detrimental to his cause. The tapes were detrimental to Nixon and he tried to suppress them; the payroll records were detrimental to the police, and they succeeded in suppressing them.

(Later, from police files, I was given a copy of the full receipt of which my first discovery was just a handwritten note. On the letterhead of the New York Police Department, the receipt was signed by Inspector Harry Walsh of the Jersey City police. Walsh was one of the ranking cops on the Lindbergh

investigation. His signature makes it certain those missing payroll records did go to New Jersey, although they were never produced at trial.)

The man who prosecuted Hauptmann was David Wilentz, New Jersey's attorney general at the time, later a Democratic committee chairman, now still practicing law at age 81 in Perth Amboy. It was Wilentz's witness who swore at the trial that the payroll time sheets were missing. Wilentz was present when another witness swore to the same effect at the earlier Bronx hearing. From all the available evidence, Wilentz must have known that those records were in the hands of the police after they arrested Hauptmann. For the day after the extradition hearing a man named Joseph Furcht, who had been foreman of carpenters at the Majestic, read about the missing time sheets. He came forward and gave Hauptmann's lawyer an affidavit which said the prisoner had definitely started working on March 1; Furcht said he had checked the records of the employment agency that had sent Hauptmann to him, and those records bore out his memory. Hauptmann's lawyer moved to reopen the extradition hearing; the judge turned him down.

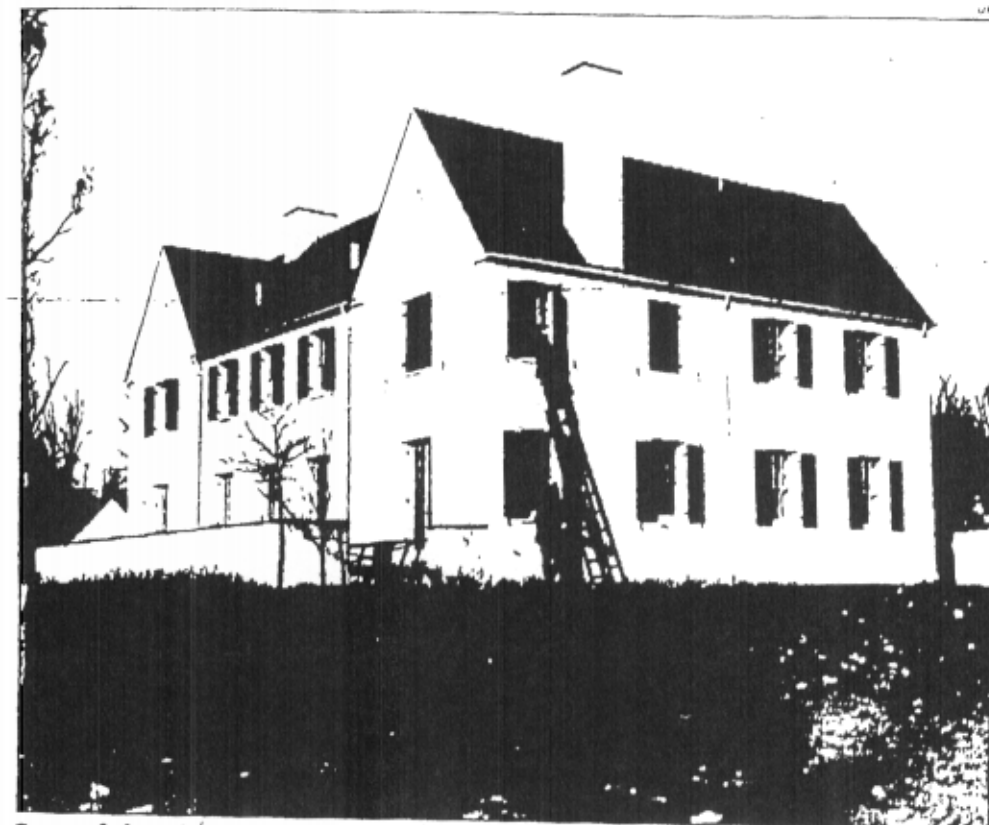
Bronx District Attorney Samuel Foley and David Wilentz, who had participated in the extradition although he wasn't licensed to practice in New York, told reporters the Furcht affidavit didn't worry them. But in trying to minimize Furcht's statement, the prosecutors revealed something remarkable.

Old newspaper files report that Foley said he "believed the employment records showed that Hauptmann quit work at 1 P.M. on the day of the kidnapping." Wilentz was quoted as saying that "the police know definitely that Hauptmann did not work those hours, nor did he put in a full day of work on March 1, because they have the time-card record."



Accusers: Prosecutor David Wilentz (left), and his star witness, Dr. John F. Condon.





**Scene of the crime:** The Lindbergh home in Hopewell, with police searching for fingerprints outside the nursery from which Charles A. Lindbergh Jr. was stolen.

Both Foley and Wilentz admitted, only a couple of days after their own witness swore the time sheets didn't exist, that they knew those records were available. Yet at the trial, months later, the fiction was repeated—the time sheets were missing. Hauptmann's alibi vanished with them. And no reporter ever questioned this obvious bending of the evidence.

To prove that Hauptmann didn't actually begin working at the Majestic until March 21, authorities produced the time sheets for the last two weeks in March. A close scrutiny of those sheets, however (see illustration on page 63), reveals that they were altered to support the official version and to further destroy Hauptmann's alibi. Despite the obvious alterations, Hauptmann's inept defense attorney accepted the evidence as authentic.

It has generally been accepted by most lawyers and writers familiar with the case that Hauptmann received a fair trial. But what was in reality done to Hauptmann in Flemington was a series of injustices that would appall civil libertarians if anything comparable should take place today. The atmosphere surrounding the trial was that of a circus; it was spectacle more than justice, entertainment for the masses of newspaper readers and those who lis-

tened to radios and flocked to see the newsreels.

The jury was housed in a hotel across from the courthouse. Reporters stayed in the same hotel. Their comments on the evidence, their opinions about Hauptmann's guilt—and they were unanimous—were heard by jurors each evening in the common dining room. Four times a day the jury walked from hotel to courtroom and back, through crowds urging, "Burn Hauptmann!" Within the temple of justice itself, a few feet from the door to the courtroom, peddlers were permitted to hawk a ghoulish memento, a replica of the kidnap ladder.

Hauptmann's chief defense counsel was Edward J. Reilly, a famous lawyer two years from death (in a mental institution), who had been coasting on his earlier reputation as the best criminal lawyer in Brooklyn. Reilly's \$25,000 fee was paid by the Hearst chain, which wanted an exclusive on all the sob stuff it could milk out of Mrs. Hauptmann but which refused to print anything she said in defense of her husband because the chief, William Randolph Hearst, wished to make an example of Hauptmann.

Once Reilly pocketed his retainer, before the trial began, he had little interest in the case except to lecture reporters, over a great many drinks,

about the qualities of various kinds of liquor and of women, including the succession of busty blondes who shared his hotel chamber. Reilly frequently dozed in the courtroom.

Under those conditions, Hauptmann was a decided underdog. And with evidence suppressed, fabricated, and distorted, all possibility of counteracting the bias of the jury and the erratic behavior of his lawyer simply vanished.

But Hauptmann was suffering from an even greater handicap. In this courtroom battle of the century, as it was billed, his drunken and indifferent lawyer was matched against a man who wanted so desperately to win that he often skirted close to unethical behavior in the courtroom, subjecting Hauptmann to a cross-examination that was astonishingly venomous.

Wilentz had been told by reporters, after badgering Hauptmann for three hours at the end of the first day of cross-examination, that if he kept at it he might be able to break Hauptmann down and get him to confess from the stand. And Wilentz tried: He used every known technique to convince the jury to hate Hauptmann.

At first I thought Wilentz could be excused his excesses; for he was simply performing in the manner expected in the staged combat of a courtroom. But I wondered, later, as I read further in the transcript. After pulling Hauptmann through a rather dull explanation of his finances, Wilentz demanded:

"You are really having a lot of fun with me, aren't you?"

"No," the witness said.

"Well, you are doing very well, you are smiling at me every five minutes. . . . You think you are a big shot, don't you?"

"No. Should I cry?"

"No, certainly you shouldn't. You think you are bigger than everybody, don't you?"

"No, but I know I am innocent."

"Yes, you are the man that has the willpower. That's what you know, isn't it?"

"No," Hauptmann said once more.

Wilentz shouted: "You wouldn't tell if they murdered you?"

"Nooo . . ." a moan, Hauptmann's usually straight body beginning to slump.

"Willpower is everything with you, isn't it?"

"No, it is—I feel innocent and I am innocent and that keeps me the power to stand up."

"Lying, when you swear to God to

tell the truth. Telling lies doesn't mean anything to you."

"Stop that!" Hauptmann was almost hysterical now. His right arm shot out to ward off the attack.

"Didn't you lie in the Bronx courthouse?"

"Stop that!"

"Didn't you lie under oath, time and time again? Didn't you?"

"No, I did not." His body straightened; he seemed to have drawn on some inner strength to get himself under control. And Wilentz shrieked: "Lies! Lies! Lies!" Meanwhile, Hauptmann's attorneys permitted the badgering to continue, seldom objecting even though this was more than cross-examination, this was an attempt to degrade Hauptmann, to force his collapse in front of those surrogates of millions of spectators, the reporters.

Reading through the transcript years later, one thing that leaps off the page is that Hauptmann made a terrible witness even when he was being gently led by his own defense lawyer. And the reason came clear during one of Wilentz's periods of thunderous badgering—"Why do you hesitate?" "Why don't you answer?" "Can't you say yes or no?"

Hauptmann finally said: "You will have to give me a chance."

"I will give you all day," Wilentz said. "But you ought to know whether you told the truth [in previous testimony]."

Hauptmann replied: "No, I have to trans—I am thinking in German and I have to translate it in American language, and it needs quite of bit of time, so excuse me."

Hauptmann was stumbling all over himself because he was mentally translating, and Wilentz was whipsawing him around the courtroom, keeping him in a state of confusion by demanding he give only yes or no answers, promising to give him a chance to explain later and then rushing forward without waiting for the explanation.

The next few documents that turned up that first day I rummaged through District Attorney Merola's files, concerned the prosecution's handwriting experts, whose testimony played a very large role in convicting Hauptmann. When I first began to seriously study this case, frankly hoping to overturn the established wisdom, I realized that one of my greatest problems was the testimony of the handwriting experts. I had no great illusions that such experts, professional witnesses, were im-

mune to error or bias—after all, one of the experts who testified against Hauptmann swore years later that Clifford Irving's forgery of Howard Hughes's signature had actually been written by Hughes. But it was hard to believe that seven of them could be mistaken.

The first awareness of that possibility came when I discovered a note from Albert S. Osborn, then the patriarch of the nation's handwriting experts. It was written to District Attorney Foley more than two weeks after Hauptmann's arrest, during which time Osborn and his son had been busily comparing Hauptmann's writing with that in the ransom letters. In his note, Osborn asked Foley:

"Do you have any of the handwriting of Mrs. Hauptmann? If she is examined again I think it would be a good plan to have her do some writing, especially of figures."

A rather strange request. Could Osborn possibly have thought Hauptmann had written the *words* in the ransom letters and then had his wife write the *numerals*? That was absurd, yet it was what Osborn's note implied. When I rechecked his testimony in the trial transcript it was clear that neither he nor any of the other experts for the prosecution had mentioned any of the numerals in any of the notes; not one of their enormous number of photo blow-ups used to convince the jury of Hauptmann's guilt illustrated any of the numerals liberally sprinkled through all the ransom notes.

With that flaw in the evidence the suspicion began to grow that the handwriting testimony might not be as unassailable as I'd feared. A second letter from Osborn increased the possibility that he and all the other experts, who had simply parroted Osborn's testimony, had bent the evidence to conform to the demands of their employer, the state.

Osborn's other letter to Foley was dated two days after Hauptmann's arrest. During his first day in custody Hauptmann had been asked to write, several dozen times, a specimen paragraph that Osborn had suggested be given to all suspects so that the experts could compare it against the ransom notes; the specimen contained numerous words found in the ransom letters.

Police rushed Hauptmann's specimen writings to Osborn, who hastily studied them and reported to Foley that Hauptmann was the author of all the ransom letters. He never wavered from that opinion, even though he still had doubts

about the "figures" two weeks later. However, in that early report to Foley in which he condemned Hauptmann as a murderer, Osborn seemed to be saying that he arrived at his conclusions after comparing the ransom letters against Hauptmann's "automobile registration cards" only. He mentioned no other pieces of Hauptmann's writings, the letters and diaries and ledgers in the hands of the police that were not written under the stress of arrest. And that was highly significant.

Osborn, in several books he'd written, and his son, in explaining years later why his firm had been so dreadfully mistaken in the Clifford Irving forgery, had both emphasized that to arrive at an accurate opinion a handwriting expert must examine samples written by a suspect around the time the questioned documents were written, so as not to be misled by the changes in style and character of writing that often occur as time passes. And they both stressed that it's imperative to compare questioned documents against a suspect's "natural" handwriting if one hopes to be scientific about a conclusion.

But Hauptmann's writings in the police station were done two and a half years after the crime. How "natural" could they have been? He had been questioned through an entire day, after seeing his apartment torn apart in a search for evidence. He was accused of murdering the son of the most famous man in the world. He was under enormous strain and suffering great fear. Then, for at least thirteen hours starting the night of his arrest and into the next morning, he had been required to write at least sixteen specimen paragraphs and perhaps a great many more, without sleep or food.

Those writings could not have been natural at all. In fact, the Osborns had warned police that only three specimens of writing should be taken from any suspect; more than that and the writing would become unnatural and scientifically useless. But those writings were used. And on further investigation, their value as evidence becomes even more questionable. Hauptmann had claimed at the trial that the police did not dictate the specimen paragraph to him, as they claimed, but had ordered him to misspell certain key words so that they would match the spelling errors and the Germanic constructions in the ransom letters. Hauptmann was called a liar. But a police officer who was in charge of the New York City aspect of the case from the beginning, and who led the team that captured Hauptmann, later wrote in his memoirs that the specimen paragraph "was handed to Hauptmann" in the police station. *Handed*, not dic-

tated, said a cop who was there. And a close friend of Hauptmann's, held briefly as a suspected accomplice, recently told me he'd been made to write the same paragraph—and the specimen had been handed to him so he could copy it accurately.

At the trial Osborn, the premiere expert of them all, testified that a careful study had been made of "a large number of writings" of Hauptmann before an opinion was reached. He explained that he had divided the writings in question into three groups—Hauptmann's *natural* writing, his *request* writing in the police station, and the ransom letters. The first two groups, lumped together as the writings *conceded* to be Hauptmann's, were compared to the ransom letters. Hauptmann wrote them all, Osborn said.

Lumped together? If the police-station writings were unnatural, as the experts themselves warned they would be viewed in every other forum outside the courtroom where Hauptmann was tried, then precisely how much of Hauptmann's truly natural writings were used as comparisons against the ransom letters? A close examination of the trial transcript and the handwriting exhibits shows this:

In helping to send Hauptmann to his death, Osborn and the other experts (ignoring their own caveats) relied on one promissory note, with Hauptmann's signature only; one insurance application, with his signature only; nine license-registration applications, each containing his signature and several other words, such as height, weight, color of hair and eyes, address—and many of those words had been written in block letters, not in script.

That was all. Eleven examples of Hauptmann's natural writing before his arrest. Eleven signatures. Less than a dozen other words from his auto applications, not counting the repetitions and the printed letters.

And yet, according to all contemporary newspaper and magazine stories, police had seized in Hauptmann's apartment about nineteen notebooks filled with his handwriting. In the suppressed documents I possess there are discussions of at least eight notebooks and ledgers. Pages from only a few of them are reproduced in documents I have, and I count 235 different words in them, in Hauptmann's hand. Police also confiscated copies of letters Hauptmann had written, five pages of his script with another couple of hundred words in them. All of this was available to the handwriting analysts.

But they condemned Hauptmann almost entirely on the "evidence" of the police-station writings, which, by their own pronouncements, they had called valueless.

The most damning evidence of all, because it was the most dramatic, was the kidnap ladder which, as Wilentz crowed to the jury, "we have hung around Hauptmann's neck."

The man most responsible for garroting Hauptmann with the ladder was a Jersey trooper, Detective Lewis Bornmann. After Hauptmann's arrest his wife fled their apartment with their infant son, Manfred, and went to live with relatives. Her lease was broken. And Lewis Bornmann, as an agent of the State Police, took over the flat. During his tenancy Bornmann made the incredible discovery that Hauptmann, after almost completing the kidnap ladder, realized he lacked a piece of lumber about six feet long and climbed into his attic to cut it from one of the floorboards.

Bornmann swore at the trial that on September 26, seven full days after Hauptmann's arrest, he went into the attic to conduct a search for more ransom money. He didn't find any. But he did notice something peculiar, something that dozens of other searchers had somehow missed—that a piece of one of the attic floorboards seemed to be missing. Investigating further, he saw a small pile of sawdust lying on wood directly under the spot where a length of board seemed to have been cut away. So he summoned Arthur Koehler of the U.S. Forestry Service, a "wood expert" assisting the police.

Koehler swore that he went into the attic upon getting Bornmann's call. With him he carried one of the up-rights of the ladder, called Rail 16 at the trial. He matched it up with the floorboard from which he suspected it had been cut and saw that the grain in the wood of the floorboard continued over to the grain in the ladder rail, conforming precisely if one "imagined" the grain flow over a two-inch missing gap and if one assumed the "slight" variations had been caused by a knot. Other members of the Forestry Service later said Koehler's testimony was absurd, but his evidence was never seriously contradicted at the trial. To the press, the public, the jury, that was the most sensational evidence against Hauptmann, and the wood "detective" has always been credited with striking one of the major blows for justice.

Of all the state's eyewitnesses who lied at the trial, beyond doubt the most corrupt was the prosecutor's star attraction, Dr. John F. Condon. Affectionately called Jafsie by the press and

his cheering public, Condon was a glib, self-centered teacher from the Bronx, in his mid-seventies. He had injected himself into the case by publishing a letter in the old *Bronx Home News* stating that he would be willing to act as intermediary between Lindbergh and the kidnapers; his sole motive, he claimed, was to return the child to its mother's arms. He was promptly contacted by an extortionist.

Condon entered into negotiations with the man, who said his name was John. They met twice, in Woodlawn Cemetery in the Bronx, where they talked for more than an hour, and in nearby St. Raymond's Cemetery the night the ransom was paid. Condon swore he got a very close look at John's face and could identify him again. At the trial, he said Hauptmann was John, and he insisted that he never had any doubt about it from the day he viewed Hauptmann in the police lineup shortly after his arrest.

A dozen documents prove that Condon repeatedly perjured himself, lying on every main point of his testimony. At the police lineup, according to the official transcript of that production, Condon did not identify Hauptmann even after speaking with him for about twenty minutes, because the extortionist's voice had been "husky" and Hauptmann's was high-pitched. After leaving the lineup room, Condon was asked by FBI agent Leon Turrou: "Have you seen him before?"

"No," Condon said. "He is *not* the man. But he looks like his brother."

In one of his reports, Turrou said Condon later expanded on his reason for being unable to identify Hauptmann. Condon told the agent: "Hauptmann is *not* the man because he appears to be much heavier, different eyes, different hair. . . ."

Once he decided to positively identify Hauptmann at the trial, Condon fabricated dozens of anecdotes to bolster the identification, according to police reports. He swore from the stand that he had "studied" the extortionist's face for a long time, in Woodlawn Cemetery, and knew every feature of it even though it had been a dark night, because the man, at Condon's urging, had lowered the coat lapels behind which he had been hiding.

But in testimony before the Bronx grand jury, Condon swore he got only a fleeting look at John's face because the lapels were lowered, by accident, for only a fraction of a second.

Agent Turrou later implied that Con-



Condon had changed his mind and identified Hauptmann because police forced him to do so. Condon himself, in his memoirs—they all wrote memoirs—said that the police threatened him with arrest after accusing him of being a member of the extortion gang. And Condon also remarked to the grand jury that he was afraid of being indicted in New Jersey.

Police did seriously believe Condon was connected with a group of men and women who were the chief suspects in the case until Hauptmann was found with some of the ransom money. In May, 1933, a year after the ransom was paid, the public was required by law to turn in all gold in its possession. Someone exchanged for ordinary currency almost \$3,000 worth of gold certificates that had been a part of the ransom, using an alias and what appeared to be a phony address. Eventually, the exchange slip was traced to a German businessman, a partner in a Madison Avenue flower shop. After months of investigation, police were certain the florist, his wife, and some of their friends had been the extortionists. And one of those suspects was a friend of Condon's son-in-law, who had helped Condon during the ransom negotiations.

But police were unable to find any of the ransom or any evidence that would have enabled them to arrest these suspects, including Condon, who was questioned repeatedly and whose home was thoroughly searched several times. They were still investigating Condon and the other suspects when Hauptmann was arrested. Frustrated by their failure and smarting under public criticism, police immediately forgot their major suspects and hastened to create the case against Hauptmann.

The quality of the testimony of all the other eyewitnesses against Hauptmann was seldom better than Condon's. Each of them lied, though none of them could match Condon's flair. The cabby who delivered the first of several extortion letters to Condon positively identified Hauptmann at the trial. But he had originally given police a description of the extortionist that was nothing like Hauptmann's appearance, and he said the man did not have an accent, while Hauptmann's was so guttural, so clearly German, that an error could not have been possible. The cabby also ran around identifying dozens of men as the extortionist, including several who didn't even match his own description of the extortionist and never came close to matching Hauptmann's features. One police report called the cabby "a fruitcake."

And on it went, right up to Lindbergh.

Lindbergh's perjury concerned the

faith he swore he had placed in John Condon. During cross-examination by Hauptmann's lawyer, Lindbergh was asked repeatedly whether he had ever been suspicious about the extraordinarily quick response Condon got to his letter published in a rather small community newspaper, and whether he ever suspected Condon might be involved with the extortionists. Lindbergh insisted he had always trusted Condon. Finally, the defense attorney asked whether Lindbergh thought it possible that Condon might have "masterminded" the extortion plot. Lindbergh snapped: "I think it is inconceivable from practically any practical standpoint."

But despite all his denials, Lindbergh did have grave suspicions about Condon from the very beginning. It was never brought out at the trial, of course, but Condon was so mistrusted that Lindbergh had his personal lawyer move into a spare room in Condon's home in order to watch him at all times. And after the ransom was paid, according to an FBI report, Lindbergh said he had "doubt as to Condon's sincerity" because of serious discrepancies in Condon's stories about his meetings with the extortionist.

More important is that Lindbergh permitted authorities to spread the story that immediately after hearing Hauptmann speak in the Bronx D.A.'s office, he had identified Hauptmann's voice as the one he heard in St. Raymond's Cemetery more than two years earlier, shouting two words to attract Condon's attention. That identification was weak enough on its own—it was sharply criticized by the *New York Law Journal* as being worthless evidence—but the truth is that Lindbergh didn't actually identify the voice as Hauptmann's until a full week after hearing it, and only after police had influenced his decision by summarizing all the other "evidence" they claimed to possess. Yet Lindbergh went ahead with the distortion, identifying Hauptmann for the jury. Why did he do it? The only explanation we have is that he wished to finally end his long nightmare and to allay his wife's anxieties over the death of their infant.

Perhaps the most crucial of the suppressed evidence I located concerned the "fish story," as David Wilentz characterized Hauptmann's attempt to explain the ransom money hidden in his garage. It's pathetic, Wilentz implied. This guy is so guilty he has to blame it

all on his friend, Isidor Fisch, now conveniently dead. There is no proof that any of Hauptmann's explanations are true, Wilentz said.

Hauptmann had told police after his arrest, and he swore from the stand, that Fisch, his friend and business partner, had given him a sealed shoe box for safekeeping. Hauptmann had no idea what the shoe box contained. Fisch went to Germany for a visit late in 1933 and died there of TB a few months later. Not until the last Sunday in August, 1934, did Hauptmann recall Fisch's shoe box, which he had placed for safety on a top shelf of his kitchen closet. It had rained heavily that weekend and the roof leaked and water poured into the closet. Thoroughly soaked, the box split open when Hauptmann accidentally struck it with a broom handle.

Inside the box, he saw, were hundreds of gold certificates. He took the package to his garage, dried out some of the bills, and hid the rest. He began to spend Fisch's money because he had in the meantime learned that Fisch, his partner in stock-market and fur-pelt trading, had cheated him.

From the stand, Hauptmann begged the judge to help him find the evidence to confirm his story, evidence that had been in his home when police raided it. That evidence included letters from Fisch's brother in Germany which said Fisch had told the family about their business partnership before he died, and a large ledger book in which Hauptmann had recorded every penny of the transactions conducted by their partnership. Wilentz told the court he could not find any such evidence. And Hauptmann's witnesses, who said they saw Fisch hand Hauptmann a wrapped package the size of a shoe box, were not believed. The story appeared to be the lies of a desperate man.

However, there can be little doubt that Hauptmann was telling the truth and that the documents were suppressed to create a perfect case. I found the letters from Fisch's brother that clearly state Hauptmann and Fisch had been business partners, a 65-page FBI report of Hauptmann's finances in which the missing ledger book is discussed at length, plus dozens of other police and FBI reports. All of them support Hauptmann.

Some of those reports show that Fisch was most certainly a swindler, that he borrowed money from Hauptmann's friends on the pretense that he was a sharp businessman getting

“...Hauptmann was offered an out. He could have lived by creating any sort of fiction...”

wealthy on his investments, and never repaid them. Several police reports and the letters from Fisch's brother demonstrate that detectives knew Fisch and Hauptmann had been business partners. Other investigators knew Fisch had swindled Hauptmann by writing out phony invoices for the purchase of furs that had never been bought.

Closer to the Lindbergh case itself, police also learned that Fisch had given a steamship agent \$2,000 in Lindbergh ransom money when he bought a quantity of Deutsche marks and his boat passage almost a year before Hauptmann's arrest. The police also knew that shortly after the ransom money had been collected by an extortionist, Fisch was offering to sell “hot” money to a Bronx ex-convict. None of this evidence was ever given to the jury.

There is an enormous amount of evidence in the police lab reports to support Hauptmann. The lab report on four ransom bills submitted for analysis a few months before Hauptmann says he found his hoard showed that stuck to these early bills were “a number of gold or brass dust particles” suspended in “oil or grease.”

But the lab reports on the bills Hauptmann was definitely known to have spent show that they differ from the earlier bills. On Hauptmann's bills, suspended in oil or grease, chemists found not gold or brass particles, but traces of emery dust. In Hauptmann's garage was an emery wheel on which he sharpened his tools. There was no equipment on which gold or brass could have been worked, nor was there any trace of gold or brass dust.

In several other important respects, the lab reports make it rather conclusive that someone other than Hauptmann passed many of the earlier ransom bills. And the FBI accounting report shows quite clearly that Hauptmann never moved any of the ransom money through his stock-market and bank accounts, that he never spent any of the ransom on trips to places where he was unknown, but instead spent a few easily identifiable bills in neighborhood stores.

The FBI accounting report was very important in my conclusion that Hauptmann had been a scapegoat because it provided a great amount of evidence that was never used and of course was never made available to Hauptmann's defense. And it puts the lie to the way the prosecutor fulfilled that requirement of all dramatic scripts, the motive for the crime. Prosecutor

Wilentz had stated—and he proved through the testimony of an FBI accountant—that Hauptmann had kidnapped Lindbergh's son and extorted the ransom because he had lost every penny of his life savings in the stock market by the end of 1931. Hauptmann was broke; that was the motive.

The fact is, according to the accounting report, that the Hauptmanns had at least \$10,000 in savings by the end of 1929. In that year, Hauptmann began speculating in the market. Between his first stock purchase and the day of the kidnapping, a period in which Hauptmann had been a very cautious speculator, he had suffered losses of less than \$500.

The prosecution also “proved” through the testimony of the same FBI accountant that after collecting the ransom Hauptmann had lost almost every penny of the \$50,000 ransom in the market. But the accounting report shows that his total losses from 1929 up to the day of his arrest amounted to only \$5,200 in five years of trading—little more than \$1,000 a year.

After the appeals courts in their wisdom decided the trial had been fair and the verdict just, Hauptmann was offered a chance to save his life. Although Wilentz insisted the evidence pointed to an overwhelming guilt, he agreed to join New Jersey's governor, Harold Hoffman, who had some doubts about that guilt, in offering a deal. If Hauptmann would confess, if he would lead them to the rest of the ransom money and to his accomplices—if, in effect, he would tell them any story at all—Wilentz would join Hoffman in asking the Board of Pardons to commute the death sentence to life.

Hauptmann was offered an out. He could have lived by creating any sort of fiction. Almost any reasonable story would have saved his life. Instead he told the governor, “I have said it all, I am innocent. There is nothing else I could tell.”

Hauptmann turned down the deal even though, in his own mind, he seemed to believe he was being offered a full pardon and not simply a commutation. “I will refuse a pardon because I'm not guilty,” he told his wife about his refusal to fabricate a story in return for his life. And four decades later Mrs. Hauptmann explained:

“He would refuse a pardon because a pardon is for when you're guilty—like President Nixon. My husband wanted justice.”

↑  
**Alas, Poor Reilly**

Anthony Scaduto seems to be following the revisionist fad of rewriting history. Having lived through the Lindbergh-trial era, I can vouch for the hysteria the case engendered. But Scaduto made an error when he said that Hauptmann's chief defense counsel, Edward J. Reilly, died in a mental institution two years after the trial. Reilly was very much alive in 1943, at which time I knew him well!

*John Rae*  
Manhattan

\*  
**Mr. Scaduto replies:** Mr. Rae is correct. Edward J. Reilly did not die until December, 1946. However, he was committed to the Brooklyn State Hospital for the Insane two years after the trial, which is the main point I wanted to make.