

Saint Louis University Law Journal

Volume 55

Number 4 *Front Page: Notes on the Nature of the
Headline Trial (Summer 2011)*

Article 5

2011

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Recommended Citation

Cushman, Barry (2011) "Headline Kidnappings and the Origins of the Lindbergh Law," *Saint Louis University Law Journal*: Vol. 55 :
No. 4 , Article 5.

Available at: <https://scholarship.law.slu.edu/lj/vol55/iss4/5>

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HEADLINE KIDNAPPINGS AND THE ORIGINS OF THE LINDBERGH LAW

BARRY CUSHMAN*

Among the many interesting points raised by Professor Friedman's lecture is the observation that "[s]ensational trials themselves no doubt play at least some role in generating movements to change the law."¹ For example, he tells us, "[a]fter the Lindbergh affair, Congress passed a law, federalizing kidnap cases, whenever the kidnapper crossed state lines."² I'd like to spend a few moments refining and elaborating that particular claim. My first observation is just a point of friendly clarification, and that is to note that what came to be known as the Lindbergh kidnapping law was not enacted in the wake of the sensational trial of Bruno Hauptmann. As Professor Friedman has noted elsewhere, the statute was enacted in June of 1932,³ a little over three months after the abduction of the Lindbergh baby; Hauptmann was not arrested until September of 1934, and the trial took place in January and February of 1935.⁴ However, there seems to be little doubt that, as one commentator would put it in 1940, "[h]ad not Charles A. Lindbergh flown the Atlantic . . . a federal kidnaping statute might not yet have been enacted."⁵ The kidnapping of Charles A. Lindbergh, Jr. aroused public opinion⁶ and galvanized the members

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1. Lawrence M. Friedman, *Front Page: Notes on the Nature and Significance of Headline Trials*, 55 ST. LOUIS U. L.J. 1243, 1282 (2011).

2. *Id.* at 1282.

3. LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 266, 521 n.16 (1993).

4. JIM FISHER, *THE LINDBERGH CASE 184–87, 272–375* (1987). *See also* FRIEDMAN, *supra* note 3, at 399–400.

5. Robert C. Finley, *The Lindbergh Law*, 28 GEO. L.J. 908, 908 (1940).

6. *See, e.g.*, ERNEST KAHLAR ALIX, *RANSOM KIDNAPPING IN AMERICA, 1874–1974: THE CREATION OF A CAPITAL CRIME* 67 (1978); Finley, *supra* note 5, at 910; Hugh A. Fisher & Matthew F. McGuire, *Kidnapping and the So-Called Lindbergh Law*, 12 N.Y.U. L. Q. REV. 646, 646 (1935) ("It was the Lindbergh kidnapping that awakened the American people to the fact that they were face to face with a species of crime so revolting and which had assumed such proportions that it seemed that unless the menace was met fearlessly and with a determination to

of Congress to take action⁷—indeed, had they not feared that enactment of a federal statute imposing a new penalty might discourage the kidnapper from returning the child safely to his parents, the measure almost certainly would have been passed shortly after the abduction rather than months later after the remains of the unfortunate child were found.⁸ But the bill that ultimately became the Lindbergh kidnaping law was not introduced in Congress in the wake of that sensational crime, nor was it introduced by members of the New Jersey delegation that represented the Lindbergh family and the state in which the crime had been committed. Instead it had been introduced nearly three months earlier by Senator Roscoe Conkling Patterson of Missouri⁹ and Representative John Joseph Cochran of St. Louis.¹⁰ It was the Lindbergh kidnaping that roused these bills from their slumbers in the Judiciary Committees of the respective chambers, but in order to understand the reasons for their introduction, we must review a little local history.

The kidnaping of fellow denizens of the underworld—of gangsters, gamblers, book makers, and bootleggers—had been a common feature of criminal culture during the Prohibition Era.¹¹ During the Depression decade, however, kidnaping rings in such midwestern cities as Chicago, Detroit, and St. Louis began to turn their attention to the lucrative enterprise of snatching up respectable business and professional men and their families.¹² It was at this time that kidnaping became a profession for organized criminals.¹³

end it, the very sanction of the criminal law was threatened.”); *Editorials Stress Need of New Laws*, N.Y. TIMES, Mar. 3, 1932, at 10; *Kidnapping Arouses Sympathy of Nation*, N.Y. TIMES, Mar. 3, 1932, at 1; *The Lindbergh Crime as a Challenge to America*, LITERARY DIG., May 28, 1932, at 6; *World Waits Hopefully for News that the Lindbergh Baby is Safe*, N.Y. TIMES, Mar. 4, 1932, at 1.

7. 75 CONG. REC. 13,283 (1932) (statement of Rep. Fred. S. Purnell); *id.* at 13,283–84 (statement of Rep. Michener); *id.* at 13,289 (statement of Rep. Fiorello H. LaGuardia); ALIX, *supra* note 6, at 69–70; Fisher & McGuire, *supra* note 6, at 654.

8. 75 CONG. REC. 13,288 (1932) (statement of Rep. Andrew J. Montague); Horace L. Bomar, Jr., *The Lindbergh Law*, 1 LAW & CONTEMP. PROBS. 435, 436 (1934); Finley, *supra* note 5, at 910; Fisher & McGuire, *supra* note 6, at 654.

9. 75 CONG. REC. 275 (1931) (“forbidding the transportation of any person or persons in interstate or foreign commerce, kidnaped or otherwise unlawfully detained, and making such act a felony”).

10. 75 CONG. REC. 491 (1931) (“forbidding the transportation of any person or persons in interstate or foreign commerce, kidnapped or otherwise unlawfully detained”).

11. Fisher & McGuire, *supra* note 6, at 652.

12. *Id.* at 651–53; PAULA S. FASS, *KIDNAPPED: CHILD ABDUCTION IN AMERICA* 106 (1997).

13. *Forbidding the Transportation of Any Person or Persons in Interstate or Foreign Commerce, Kidnaped or Otherwise Unlawfully Detained: Hearing on H.R. 5657 Before the H. Comm. on the Judiciary*, 72d Cong. 3, 14 (1932) (statements of Rep. Cleveland A. Newton and Walter B. Weisenberger) [hereinafter *Hearing*]; ALIX, *supra* note 6, at 56–59; FASS, *supra* note 12, at 106; Finley, *supra* note 5, at 909; Fisher & McGuire, *supra* note 6, at 652; Albert Bushnell Hart, *The Modern Mafia*, 34 CURRENT HIST. 409, 410 (1931); *Kidnaping—A Growing Racket*,

Victims were carefully selected, their movements and habits studied, the ability of their families to pay large ransoms verified. Teams often ranging in size from eight to twenty people coordinated meticulous plans of abduction, custody, ransom collection, and the laundering and disposal of the “hot money.”¹⁴ A common technique was to kidnap a victim in one state and then transport him by automobile to another and perhaps yet another. The perpetrators would, thus, place themselves beyond the jurisdiction of police in the state of abduction,¹⁵ and witnesses in the state of destination lay beyond the subpoena powers of courts in sister states.¹⁶ Extradition processes were widely viewed as slow, cumbersome, and inadequate,¹⁷ and kidnapers frequently took their victims to jurisdictions in which local authorities had been bribed to look the other way or to tip them off in the event that their location had been discovered by other officers of the law.¹⁸ For these “organized criminal groups who took advantage of the inadequacy of the law,” the “millennium” had arrived.¹⁹

Because of its strategic location on the state border and the excellent highways providing favorable escape routes by car to Illinois, St. Louis became one of the favorite hunting grounds for the interstate snatch racket.²⁰ What the *New York Times* described as “perhaps the most sinister and arrogant of the kidnapping rings” began to concentrate its efforts in St. Louis in 1929.²¹

LITERARY DIG., May 23, 1931, at 11; *Kidnapping Mostly Done By Gangsters*, N.Y. TIMES, May 14, 1933, at 2; *The Marines Are Coming*, FORTUNE, Aug. 1934, at 56–57.

14. Finley, *supra* note 5, at 909; Fisher & McGuire, *supra* note 6, at 652; Colin V. Ram, Note, *Regulating Intrastate Crime: How the Federal Kidnapping Act Blurs the Distinction Between What is Truly National and What is Truly Local*, 65 WASH. & LEE L. REV. 767, 782 (2008).

15. *Hearing*, *supra* note 13, at 2 (statement of Rep. John J. Cochran); 75 CONG. REC. 13,284 (1932) (statement of Rep. John J. Cochran); Finley, *supra* note 5, at 909; Fisher & McGuire, *supra* note 6, at 653; Ram, *supra* note 14, at 782.

16. *Hearing*, *supra* note 13, at 9 (statements of Hon. Cleveland A. Newton and Rep. LaGuardia); *id.* at 20 (statement of Walter B. Weisenberger); Frank Kopelman, *Extradition and Rendition: History—Law—Recommendations*, 14 B.U. L. REV. 591, 645–47 (1934).

17. Edwin M. Abbott, *The Need for Uniform Reciprocal Criminal Laws*, 20 J. AM. INST. CRIM. L. & CRIMINOLOGY 582, 583 (1930); John W. Brabner-Smith, *The Commerce Clause and the New Federal “Extradition” Statute*, 29 ILL. L. REV. 355, 355 (1934); Michael G. Heintz, *A Refuge for American Criminals*, 18 J. AM. INST. CRIM. L. & CRIMINOLOGY 331, 332–33 (1927); Kopelman, *supra* note 16, at 642–47; Harry S. Toy & Edmund E. Shepherd, *The Problem of Fugitive Felons and Witnesses*, 1 LAW & CONTEMP. PROBS. 415, 419 (1934).

18. *Hearing*, *supra* note 13, at 5, 23–24 (statements of Hon. Cleveland A. Newton and Joseph A. Gerk, Chief of St. Louis Metropolitan Police Department); 75 CONG. REC. 13,284 (1932) (statement of Rep. John J. Cochran).

19. Fisher & McGuire, *supra* note 6, at 652.

20. Bomar, *supra* note 8, at 435; Finley, *supra* note 5, at 909; Ram, *supra* note 14, at 782.

21. R.L. Duffus, *Kidnapping: A Rising Menace to the Nation*, N. Y. TIMES, Mar. 6, 1932, at

Calling itself “The Lawbreakers’ Protective Association of Chicago,” the outfit sent letters to selected victims demanding payment of \$20,000 in “membership dues.”²² In 1930 alone the St. Louis area witnessed no fewer than a dozen kidnappings, some of which involved the transportation of the victim across state lines.²³ Many of those abducted were either gamblers or bookmakers, but the victims also included two grocers and a dry goods merchant.²⁴ It was reported that these cases had resulted in payment of \$175,000 in ransom, but in only two convictions.²⁵ *Time* reported in 1931 that St. Louis socialites were so fearful of abduction by gangs headed by the likes of Fred “Killer” Burke that they “le[ft] their expensive cars in their garages and [went] to parties in inconspicuous small cars.”²⁶ During 1931, there were four high-profile, “headline” kidnappings in St. Louis that particularly gripped the attention of the local community.

A. *The Orthwein Kidnapping*

On New Year’s Eve in 1930, thirteen-year-old Adolphus Busch “Buppie” Orthwein was kidnapped from the grounds of his family estate in Huntleigh Village on Lindbergh Boulevard in St. Louis County.²⁷ Orthwein was the grandson of Anheuser-Busch president August A. Busch and the great-grandson of the late Adolphus Busch, the brewery’s founder, and the kidnapping made front page news in such national papers as the *New York Times* and the *Chicago Daily Tribune*.²⁸ Orthwein was being driven to a dinner party at his grandfather’s home at seven in the evening when a lone gunman, later identified as Charles Abernathy, a destitute twenty-eight-year-old father of seven, stopped his limousine, forced the chauffeur out of the car, robbed him of \$4.50 and drove away with the boy.²⁹ Abernathy abandoned the limo at the intersection of Lindbergh and Big Bend Road, just a few blocks

22. *Id.*

23. *Dr. Kelley’s Kidnaping Thirteenth in St. Louis Area In Last 16 Months*, ST. LOUIS POST-DISP., Apr. 26, 1931, at 2A.

24. *Id.*

25. *See id.*; *see also Hearing, supra* note 13, at 4 (statement of Rep. Cleveland A. Newton), *Dr. I.D. Kelley, Kidnaped Week Ago Today, Still is Unreported, Family Says*, ST. LOUIS POST-DISP., Apr. 27, 1931, at 1A; *Rigid Search Fails to Find Any Trace of Dr. Kelley*, ST. LOUIS POST-DISP., Apr. 24, 1931, at 2A.

26. *National Affairs: Kidnapped*, TIME, Sept. 7, 1931, at 18, 19.

27. *Busch Kin Abducted in St. Louis Suburb*, N.Y. TIMES, Jan. 1, 1931, at 1.

28. *Id.*; *Kidnaped Busch Heir Home*, CHI. DAILY TRIB., Jan. 2, 1931, at 1.

29. *Orthwein Boy’s Kidnaped Is Identified and Order For His Arrest Issued*, ST. LOUIS POST-DISP., Jan. 2, 1931, at 1A [hereinafter *Orthwein Boy’s Kidnaped is Identified*].

away from the site of the kidnapping, where he transferred Orthwein to a smaller car, handcuffed him, and sped off into the night.³⁰

The following morning Abernathy's wife asked her father-in-law, Pearl Abernathy, to come to their small frame home in Webster Groves where Orthwein was being held.³¹ At about noon, the elder Abernathy called Buppie's father Percy to report that the child was safe and to make arrangements for his return to his family.³² The men set up a meeting early that afternoon among themselves and Orthwein's attorney, Harry Troll.³³ An hour after the conclusion of the meeting, Orthwein and Troll collected the boy, who was found standing alone on a country road about three miles from his home and apparently waiting for his rescuers to arrive at the designated location.³⁴ He was exhausted but cheerful, and did not appear to have been mistreated.³⁵ He had spent the night sitting in a kitchen chair with a blanket over his head.³⁶ The boy told reporters that "The man wasn't rough toward me and I wasn't frightened."³⁷ He had been offered scrambled eggs for breakfast the following morning, but they were "very dirty" so he didn't eat much.³⁸ His face and hands were grimy because he had had no opportunity to wash, and his new long trousers suit, which he was wearing for the first time, was reportedly wrinkled.³⁹ When reporters asked his five-year-old brother Jimmie what he would do if an attempt were made to kidnap him, Jimmie replied, "I'd curse him."⁴⁰ After his retrieval, young Adolphus was taken to the Busch estate at

30. BILL LHOTKA, ST. LOUIS CRIME CHRONICLES: THE FIRST 200 YEARS, 1764–1964, at 160–63 (2009); *August Busch Heir Freed By Abductor*, N.Y. TIMES, Jan. 2, 1931, at 1; *Busch Kin Abducted in St. Louis Suburb*, *supra* note 27; *Grandson of Busch Returned to Home*, WASH. POST, Jan. 2, 1931, at 1; *Kidnaped Busch Heir Home*, *supra* note 28; *Orthwein Boy's Kidnaper Is Identified*, *supra* note 29.

31. *Uncover Kidnapper of Busch Grandson*, N.Y. TIMES, Jan. 3, 1931, at 13.

32. *Kidnaped Busch Heir Home*, *supra* note 28.

33. *Id.*

34. *August Busch Heir Freed by Abductor*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28.

35. *August Busch Heir Freed by Abductor*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28; *see also Orthwein Boy's Kidnaper is Identified*, *supra* note 29.

36. *Kidnaped Busch Heir Home*, *supra* note 28; *Orthwein Boy's Kidnaper, Father and Woman Cousin are Named in Warrants*, ST. LOUIS POST-DISP., Jan. 3, 1931, at 1A; *Orthwein Boy's Kidnaper is Identified*, *supra* note 29.

37. *August Busch Heir Freed by Abductor*, *supra* note 30; *see also Grandson of Busch Returned to Home*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28.

38. *August Busch Heir Freed by Abductor*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28; *Orthwein Boy's Kidnaper is Identified*, *supra* note 29.

39. *Kidnaped Busch Heir Home*, *supra* note 28.

40. *Grandson of Busch Returned to Home*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28; *Orthwein Boy's Kidnaper is Identified*, *supra* note 29.

Grant's Farm on Gravois Road, where he slept for about an hour and a half before being taken home.⁴¹

Though the Busch family refused to provide any details concerning the transaction through which Orthwein was returned, they insisted that no ransom money had been demanded or paid.⁴² Attorney Troll did say, however, that Orthwein would stand by the statement he had made a few hours after the kidnapping "that any informant who furnished information leading to [young Adolphus's] return . . . would be rewarded generously and that absolutely no questions would be asked."⁴³ Troll stated that he and the family believed that kidnapping was not the abductor's motive, and that the abduction had been merely incidental to the hold-up.⁴⁴ He further indicated that the family had no desire to prosecute the kidnapper, as Adolphus had been returned unharmed and no ransom had been demanded.⁴⁵ Moreover, the family offered to help the abductor to find employment if he had committed the robbery owing to "extreme want."⁴⁶

St. Louis authorities had different ideas, however. The kidnapper had asked Adolphus if he were Percy Orthwein's son, which was interpreted by some to indicate a motive to extort ransom.⁴⁷ By the evening of January 2, Pearl Abernathy had confessed to police that his son Charles was the kidnapper, and the elder Abernathy had been placed under arrest as an accessory to the crime.⁴⁸ Assistant Circuit Attorney Harry W. Castlen indicated that he would prosecute the kidnapper vigorously if the authorities

41. *August Busch Heir Freed by Abductor*, *supra* note 29; *Grandson of Busch Returned to Home*, *supra* note 30; *Orthwein Boy's Kidnaper is Identified*, *supra* note 29.

42. *Kidnaped Busch Heir Home*, *supra* note 28.

43. *August Busch Heir Freed by Abductor*, *supra* note 30; *see also Grandson of Busch Returned to Home*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28; *Man Who Kidnaped Busch Heir Known*, WASH. POST, Jan. 3, 1931, at 1.

44. *August Busch Heir Freed by Abductor*, *supra* note 30; *Grandson of Busch Returned to Home*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28. However, a family friend believed that the motive for the kidnapping was ransom. *See Busch Kin Abducted in St. Louis Suburb*, *supra* note 27. Charles Abernathy also claimed that the kidnapping was incidental to the robbery when interviewed by the *St. Louis Star*. *See Orthwein Boy's Kidnaper in Clayton Jail; Family to Aid in His Prosecution*, ST. LOUIS POST-DISP., Jan. 6, 1931, at 1 [hereinafter *Orthwein Boy's Kidnaper in Clayton Jail*].

45. *Capital Offense Laid to Orthwein's Boy's Kidnaper*, ST. LOUIS POST-DISP., Jan. 7, 1931, at 3A; *Uncover Kidnapper of Busch Grandson*, N.Y. TIMES, Jan. 3, 1931, at 13. The family also had no desire to prosecute the kidnapper's father who notified the Busch family of Adolphus's whereabouts. *See People*, TIME, Jan. 12, 1931, at 44.

46. *Uncover Kidnapper of Busch Grandson*, *supra* note 45.

47. *August Busch Heir Freed by Abductor*, *supra* note 30; *Grandson of Busch Returned to Home*, *supra* note 30; *Kidnaped Busch Heir Home*, *supra* note 28.

48. *Uncover Kidnapper of Busch Grandson*, *supra* note 45. *See generally People*, TIME, *supra* note 44, at 44; *Orthwein Boy's Kidnaper in Clayton Jail*, *supra* note 44.

would supply him with sufficient evidence.⁴⁹ He was quoted as saying, “I feel prosecution is vital not only to the persons involved but also to the public welfare in the country and even throughout the State.”⁵⁰ Within the week *St. Louis Star* reporter Harry Thompson Brundidge had tracked Charles Abernathy to a hideaway in Kansas City, where he elicited a handwritten confession from Abernathy for a front-page splash before leading St. Louis officers to his location.⁵¹ On March 20, Abernathy pled guilty to the charge of kidnapping and was sentenced to ten years in the state penitentiary.⁵² He also pled guilty to the charge of robbery with a deadly weapon, for which he was sentenced to fifteen years, to run concurrently with the ten-year kidnapping sentence.⁵³

B. *The Johnson Kidnapping*

On August 3, 1931, twenty-six-year-old Oscar Johnson II was leaving the massive Missouri River estate of his mother Irene at St. Albans in Franklin County when two men armed with a sawed-off shotgun and a revolver stopped his sixteen-cylinder Cadillac roadster.⁵⁴ Johnson was the son of the late Oscar Johnson, one of the founders of the International Shoe Company—a concern distressingly familiar to generations of first-year Civil Procedure students, and one of the reasons it was said of St. Louis during this time that it was first in shoes, first in booze, and last in the American League.⁵⁵ Johnson’s assailants forced their way into his car, and one attempted to blindfold him while the other took the wheel and drove away.⁵⁶ Johnson struggled and kicked at the dashboard so vigorously that he broke the ignition key and stopped the car.⁵⁷ His captors then dragged him away from the car, beat him savagely with their weapons and fists, robbed him of the ten dollars he was carrying, and left

49. *Man Who Kidnaped Busch Heir Known*, *supra* note 43, at 1; *Orthwein Boy’s Kidnaper Is Identified*, *supra* note 29; *Uncover Kidnapper of Busch Grandson*, *supra* note 45.

50. *Orthwein Boy’s Kidnaper, Father and Woman Cousin Are Named in Warrants*, *supra* note 35; *Uncover Kidnapper of Busch Grandson*, *supra* note 45.

51. LHOTKA, *supra* note 30, at 162; *Orthwein Kidnaper Jailed in St. Louis*, WASH. POST, Jan. 7, 1931, at 2; *The Press: Missouri Newshawks*, TIME, Jan. 19, 1931, at 34.

52. *Orthwein Kidnaper Sentenced to 15 Years*, ST. LOUIS POST-DISP., Mar. 20, 1931, at 1A; *Term for Busch Kidnapper*, N.Y. TIMES, Mar. 21, 1931, at 4.

53. *Orthwein Kidnaper Sentenced to 15 Years*, *supra* note 52; *Term for Busch Kidnapper*, *supra* note 52.

54. *Oscar Johnson is Beaten in Holdup Near St. Albans*, ST. LOUIS POST-DISP., Aug. 3, 1931, at 1A; *Rich St. Louis Man Fights off Two Kidnapers*, CHI. DAILY TRIB., Aug. 4, 1931, at 5; *Two Accused of Kidnaping in Attack on Johnson Heir*, ST. LOUIS POST-DISP., Aug. 4, 1931, at 1A.

55. *Oscar Johnson is Beaten in Holdup Near St. Albans*, *supra* note 54.

56. *Two Accused of Kidnaping in Attack on Johnson Heir*, *supra* note 54.

57. *Hearing*, *supra* note 13, at 3 (statement of Rep. Cleveland A. Newton); *Oscar Johnson is Beaten in Holdup Near St. Albans*, *supra* note 54; *Rich St. Louis Man Fights off Two Kidnapers*, *supra* note 54.

him.⁵⁸ Johnson managed to stumble across a cornfield to a nearby farmhouse, from which he was taken to Barnes Hospital and treated for severe scalp wounds, a deep laceration to the lip, wounds to the lower jaw, and two broken and loosened teeth.⁵⁹ Police arrested Felix McDonald, twenty-eight, whom Johnson positively identified, and Bart Davit, twenty-six, on charges of kidnapping and robbery with a deadly weapon.⁶⁰ McDonald was convicted on the robbery charge and sentenced to ten years in the penitentiary, but Davit was acquitted of the robbery in May of 1932.⁶¹

C. *The Berg Kidnapping*

On Friday, November 6, 1931, Alexander Berg, a wealthy St. Louis fur dealer with a place of business on North Main Street, was kidnapped while being driven home from the office by his chauffeur.⁶² There was heavy traffic on Lindell Boulevard that afternoon, and as the car slowly crossed Euclid Avenue, just around the corner from the Berg's home at the Park Plaza, two men jumped aboard, displayed their revolvers, and blindfolded Berg with taped goggles.⁶³ They forced Berg's chauffeur to drive to the outskirts of the city, where they moved Berg to another car and took him to a flat over a store on Easton Avenue across from Sherman Park in northwest St. Louis.⁶⁴ He was held there for four days under constant guard by three men wearing rubber

58. *Rich St. Louis Man Fights off Two Kidnapers*, *supra* note 54; *Two Accused of Kidnaping in Attack on Johnson Heir*, *supra* note 54.

59. *Fights off Two Thugs Who Try to Kidnap Him*, N.Y. TIMES, Aug. 4, 1931, at 10; *Oscar Johnson is Beaten in Holdup Near St. Albans*, *supra* note 54; *Rich St. Louis Man Fights off Two Kidnapers*, *supra* note 54.

60. *Hunt Gangster in Kidnap Plot of Wealthy Man*, CHI. DAILY TRIB., Aug. 5, 1931, at 2; *Two Accused of Kidnaping in Attack on Johnson Heir*, *supra* note 54.

61. *Davit Acquitted of Holdup in Case of Oscar Johnson*, ST. LOUIS POST-DISP., May 22, 1932, at 9A; *Prosecution Speeded in St. Louis Kidnaping*, WASH. POST, Feb. 9, 1934, at 2; *Woman is Indicted as Kidnap Leader*, N.Y. TIMES, Mar. 14, 1934, at 4; *see also Adolph Fielder Names Eight Men and Woman as Kidnapers of Dr. Kelley*, ST. LOUIS POST-DISP., Feb. 7, 1934, at 1A.

62. *Ransom Demanded for Fur Merchant*, WASH. POST, Nov. 8, 1931, at 1.

63. *Hearing*, *supra* note 13, at 3 (statement of Rep. Cleveland A. Newton); *Lawyer Agent of Kidnapers Trapped by Police; Berg Freed on Promise of \$50,000 Ransom*, ST. LOUIS POST-DISP., Nov. 11, 1931, at 1A; *Note from Kidnaped Millionaire Alex. Berg Tells Wife He is "OK"*, ST. LOUIS POST-DISP., Nov. 7, 1931, at 1A; *Press: Again, Reporter Rogers*, TIME, Nov. 23, 1931, at 25.

64. *Berg Freed By Ruse on His Kidnappers*, N.Y. TIMES, Nov. 12, 1931, at 13; *Furrier Identifies Flat of Kidnapers*, WASH. POST, Nov. 13, 1931, at 10; *Lawyer Agent of Kidnapers Trapped by Police; Berg Freed on Promise of \$50,000 Ransom*, *supra* note 63; *Press: Again, Reporter Rogers*, *supra* note 63.

gloves.⁶⁵ While in captivity Berg was forced to write a series of notes dictated by his captors, and they were delivered to his lawyer, Morris Levinson.⁶⁶

One of the notes Berg was forced to sign directed Levinson to use St. Louis criminal lawyer Paul A. Richards as a go-between.⁶⁷ Richards previously had represented one of the kidnapers, Charles Heuer, in connection with a criminal matter in St. Louis County.⁶⁸ Heuer telephoned Richards to negotiate the terms of the arrangement, under which, it was alleged, Richards would receive \$11,000 of the \$50,000 ransom money upon its payment.⁶⁹ Berg executed a promissory note payable on demand to Richards for the entire amount, which Heuer astonishingly agreed would be paid after Berg had been released.⁷⁰ Heuer instructed Richards to deliver \$11,000 of the ransom money to a Mr. Eyerkuss (a.k.a. Curtis Medlock) on North Twentieth Street; \$500 to his brother, John Heuer, on North Broadway; \$3,000 to George Peak, a convicted robber and murderer out on parole and living at the LaSalle Hotel; and to take the balance of the money to Kansas City, register at the Baltimore Hotel, and wait until someone called him and identified himself as “Blackie.”⁷¹

Levinson asked reporter John T. Rogers of the *St. Louis Post-Dispatch* to contact and engage Richards, who demanded that he be paid a \$1,000 retainer for his services—there was a dispute over whether he had requested an additional \$10,000 should he succeed in securing Berg’s release, or whether the total of \$11,000 was to come from the ransom payment.⁷² Levinson immediately became suspicious of Richards, believing that he “knew altogether too much” about the abduction and was “very closely allied with the kidnapers.”⁷³ Nevertheless, he played along until Berg was liberated at the corner of Hamilton Boulevard and Kennerly Avenue late in the evening of

65. *Berg Freed By Ruse on His Kidnappers*, *supra* note 64; *Furrier Identifies Flat of Kidnapers*, *supra* note 64.

66. *One Letter Told Levinson to Hire Paul A. Richards*, ST. LOUIS POST-DISP., Nov. 11, 1931, at 2A; *Press: Again, Reporter Rogers*, *supra* note 63; Sharon Weedon, *Ethics: The Good Old Days*, PRECEDENT, Winter 2009, at 34.

67. *Berg Freed by Ruse on His Kidnappers*, *supra* note 64.

68. *In re Richards*, 63 S.W.2d 672, 682 (Mo. 1933).

69. *To Put Richards on Trial Again After Mistrial in Berg Kidnaping*, ST. LOUIS POST-DISP., Feb. 25, 1932, at 1A; Weedon, *supra* note 66, at 34.

70. *Lawyer Agent of Kidnapers Trapped By Police; Berg Freed On Promise of \$50,000 Ransom*, *supra* note 63; Weedon, *supra* note 66, at 35.

71. *In re Richards*, 63 S.W.2d at 681; *Last of Five Kidnapers of Berg Found Guilty; Receives 25-Year Term*, ST. LOUIS POST-DISP., Apr. 14, 1932, at 1A; Weedon, *supra* note 66, at 34.

72. *In re Richards*, 63 S.W.2d at 682, 683; *To Put Richards on Trial Again After Mistrial in Berg Kidnaping*, *supra* note 69.

73. *In re Richards*, 63 S.W.2d at 682; *Law: Go Between Expelled*, TIME, Oct. 30, 1933, at 25.

November 10.⁷⁴ He then reported Richards to the police, who arrested him, before any ransom had been paid, on charges of aiding and abetting the kidnapers.⁷⁵ Richards's first trial in February of 1932, where he was represented by Verne Lacy, resulted in a hung jury.⁷⁶ His second trial that May produced an acquittal. But Richards's conduct in the Berg affair prompted the Missouri and St. Louis Bar Associations to petition the Missouri Supreme Court to revoke his license to practice law.⁷⁷ The revocation hearing was held in May of 1933, and in October of that year Judge Frank E. Atwood delivered the unanimous opinion disbaring him.⁷⁸ Lacy later took Richards into his office and employed him in the unauthorized practice of law.⁷⁹ This, coupled with the discovery that Lacy had bribed one of the jurors in Richards's first criminal trial, would lead to Lacy's disbarment in 1937.⁸⁰

St. Louis police eventually arrested and charged five other men with Berg's kidnapping. Ringleader Charles Heuer and his lieutenant Edward Barcume, both career criminals, were apprehended in connection with a bank robbery on November 19, 1931.⁸¹ Charles Tucker, one of the guards at the flat where Berg was held, turned state's evidence and testified against Heuer, who was convicted on February 16, 1932 and sentenced to ninety-nine years in the penitentiary.⁸² Tucker also testified against Barcume, who was convicted and sentenced to twenty-five years on March 13, 1932.⁸³ Curtis Medlock also elected to cooperate with the authorities, pleading guilty and receiving a sentence of twenty-five years on March 22, 1932; and finger man George Peak was convicted and sentenced to twenty-five years on April 13, 1932.⁸⁴

74. *Law: Go Between Expelled*, *supra* note 73, at 25; *Lawyer Agent of Kidnapers Trapped By Police; Berg Freed on Promise of \$50,000 Ransom*, *supra* note 63; *Paul Richards and Wife Held Incommunicado*, ST. LOUIS POST-DISP., Nov. 12, 1931, at 2A.

75. *Details of the Negotiations With Kidnapers' Lawyer Agent For Alexander Berg's Release*, ST. LOUIS POST-DISP., Nov. 12, 1931, at 2A; *Law: Go Between Expelled*, *supra* note 72, at 25.

76. *To Put Richards On Trial Again After Mistrial in Berg Kidnapping*, *supra* note 69.

77. *Law: Go Between Expelled*, *supra* note 73, at 25.

78. *Id.*

79. *In re Lacy*, 112 S.W.2d 594, 606 (Mo. Ct. App. 1937).

80. *Id.* at 601-04, 607.

81. *Fugitive Berg Kidnapers Captured After Robbing Bank in Missouri Town*, ST. LOUIS POST-DISP., Nov. 19, 1931, at 1A.

82. *Confessed Berg Kidnapper Turns State's Evidence, Links Heuer With Crime*, ST. LOUIS POST-DISP., Feb. 13, 1932, at 1A; *Heuer Gets 99-Year Term For Kidnaping Alex. Berg; First of Gang to be Tried*, ST. LOUIS POST-DISP., Feb. 16, 1932, at 1A.

83. *25 Year Term for Barcume, Third of Six in Berg Plot*, ST. LOUIS POST-DISP., Mar. 14, 1932, at 1A; *Berg's Guard Tells Jurors of Barcume's Part in Plot*, ST. LOUIS POST-DISP., Mar. 11, 1932, at 1A.

84. *25 Years For Kidnapping*, N.Y. TIMES, Apr. 14, 1932, at 3; *Guilty in Berg Kidnapping*, N.Y. TIMES, Mar. 23, 1932, at 3; *Last of Five Kidnapers of Berg Found Guilty; Receives 25-Year Term*, *supra* note 71; *Medlock Gets 25-Year Term For Kidnaping*, ST. LOUIS POST-DISP., Mar.

None of these crimes involved interstate transportation of the abducted person, and each was successfully prosecuted in the Missouri state courts.⁸⁵ Cases in which the victim was taken across state lines, however, were not so easily solved. One particularly high-profile kidnapping of a wealthy and prominent St. Louis citizen would present such facts.

D. *The Kelley Kidnapping*

Dr. Isaac Kelley was the city's leading ear, nose and throat specialist and a person of "high standing professionally and socially."⁸⁶ He was married to Kathleen McBride Kelley, the daughter of William Cullen McBride, a wealthy oil executive in whose honor a local Catholic high school on Kingshighway Boulevard was built with funds donated by his widow.⁸⁷ McBride and his wife also donated the funds for the construction of the altar at the Cathedral Basilica of St. Louis, and Kathleen was the first bride married in the new Cathedral in 1914.⁸⁸ Kelley was a graduate of Saint Louis University Medical School and had served as a Captain in the Medical Corps during World War I. He was a member of the University, Racquet, Bridlespur, and Bellerive Country Clubs, and had portrayed Pierre Laclede in the 1914 Pageant and Masque at Forest Park celebrating the sesquicentennial of the founding of St. Louis.⁸⁹ He was "known as a man who would meet any fight half way, who is quick to resent insult and slow to forgive an injury," and was famed for his "doggedness in retaliation."⁹⁰ Kelley's temper had once earned him an arrest on charges of assault and battery, when he punched a man who refused to move a car that was blocking the driveway to the Senate Apartments on Union Boulevard.⁹¹

On the evening of April 20, Kelley received a phone call at his home at 32 Portland Place urgently requesting his medical services for a child in Clayton.⁹² There, he was seized at gunpoint, blindfolded, and abducted.⁹³ His

22, 1932, at 1A; *Medlock to Turn State's Evidence in Berg Kidnaping*, ST. LOUIS POST-DISP., Mar. 23, 1932, at 3A.

85. See *Hearing*, *supra* note 13, at 3-4 (statement of Rep. Cleveland A. Newton); *Term For Busch Kidnapper*, *supra* note 52.

86. *The Press: Missouri Newshawks (Cont'd)*, TIME, May 11, 1931, at 54.

87. *Id.*; *Dr. I.D. Kelley Kidnapped; Lured From Home By Fake Phone Call Last Night*, ST. LOUIS POST-DISP., Apr. 21, 1931, at 1A [hereinafter *Dr. I.D. Kelley Kidnapped*].

88. *Dr. I.D. Kelley Kidnapped*, *supra* note 87; *Parish History*, CATHEDRAL BASILICA OF SAINT LOUIS, http://www.cathedralstl.org/site/index.php?option=com_content&task=view&id=32&Itemid=75 (last visited May 25, 2011).

89. *Dr. I.D. Kelley Kidnapped*, *supra* note 87.

90. *Family Has No Word Yet of Kidnaped Dr. Kelley*, ST. LOUIS POST-DISP., Apr. 23, 1931, at 1A.

91. *Id.*

92. *Dr. I.D. Kelley Kidnapped*, *supra* note 87.

93. *Dr. Kelley is Freed By Kidnapper Band*, N.Y. TIMES, Apr. 29, 1931, at 2; *Dr. Kelley Released to Post-Dispatch Man*, ST. LOUIS POST-DISP., Apr. 28, 1931, at 1A.

wife notified the police when he failed to return home that night, and the discovery of his abandoned car led authorities to conclude that he had become the area's latest kidnap victim.⁹⁴ The family formed an "executive committee" to deal with the police and the press, and appointed as its head Mrs. Kelley's brother-in-law William D. Orthwein II, a cousin of young Adolphus Busch Orthwein.⁹⁵ Over the course of the next week police followed up on a number of tips, but none bore any fruit. On the afternoon of April 25, however, a woman appeared at the Page Boulevard Police Station claiming to know where Kelley was being held.⁹⁶ The Chief of Detectives was immediately summoned to the station by the district commander, but the woman refused to talk to him.⁹⁷ Instead, she insisted on writing her information, which was that Kelley was being detained in the basement of Grant's Farm, the Gravois Road home of August A. Busch. As the *Post-Dispatch* reported, "A few questions served to show that she was mentally deficient."⁹⁸

A week after Kelley's disappearance, however, John T. Rogers of the *Post-Dispatch* received a mysterious telephone call after midnight.⁹⁹ The caller instructed him to drive to the corner of Grand and Finney Boulevards, where he was met by an armed stranger who entered Rogers's car and directed him to drive to a deserted location in East St. Louis.¹⁰⁰ Following a series of elaborate signals of flashing headlights from two other cars, the stranger told Rogers that he would find Kelley across the way in an abandoned filling station.¹⁰¹ "There's your friend," the stranger said to Rogers.¹⁰² "He's waiting for you. . . . Take him in, then turn back and take him home."¹⁰³ The stranger then jumped into one of the waiting cars and sped away.¹⁰⁴ Rogers found

94. *Dr. I.D. Kelley Kidnapped*, *supra* note 87.

95. *The Press: Missouri Newshawks (Cont'd)*, *supra* note 86, at 54; *Dr. I.D. Kelley, Kidnaped Week Ago Today, Still is Unreported, Family Says*, *supra* note 25; *No Word From Dr. Kelley or His Kidnapers, Family Spokesman Declares*, ST. LOUIS POST-DISP., Apr. 25, 1931, at 1A.

96. *No Word From Dr. Kelley Or His Kidnapers, Family Spokesman Declares*, *supra* note 95.

97. *Id.*

98. *Id.*

99. *The Press: Missouri Newshawks (Cont'd)*, *supra* note 86, at 54; John T. Rogers, *John T. Rogers Tells How He Followed Orders and Found Dr. Kelley*, ST. LOUIS POST-DISP., Apr. 28, 1931, at 6A.

100. *The Press: Missouri Newshawks (Cont'd)*, *supra* note 86, at 54; *Kidnaped Physician is Freed on Road Near East St. Louis*, ST. LOUIS POST-DISP., Apr. 28, 1931, at 1A; Rogers, *supra* note 98, at 6A.

101. *The Press: Missouri Newshawks (Cont'd)*, *supra* note 86, at 54; Rogers, *supra* note 99.

102. *The Press: Missouri Newshawks (Cont'd)*, *supra* note 86, at 54; Rogers, *supra* note 99.

103. *The Press: Missouri Newshawks (Cont'd)*, *supra* note 86, at 54; Rogers, *supra* note 99.

104. *The Press: Missouri Newshawks (Cont'd)*, *supra* note 86, at 54; Rogers, *supra* note 99.

Kelley at the promised location, standing alone and blindfolded, relieved and delighted that his ordeal had come to an end.¹⁰⁵

After his return, Kelley described how he had been held in the rude surroundings of multiple locations under the menacing guns of his masked kidnapers.¹⁰⁶ He spent the first night in the attic of a shack on a farm in rural St. Louis county; the following night he was taken across the river to Illinois, where he spent the balance of his confinement.¹⁰⁷ For most of his captivity “[h]e was blindfolded with taped goggles and a hood.”¹⁰⁸ He received poor food and got little sleep, but otherwise was not mistreated by his captors, who gave him detective stories and a biography of Al Capone to read during his detention.¹⁰⁹ Kelley reported that “[o]ne of his guards was a small man with a pleasant voice,” while another of his guards had a foreign accent.¹¹⁰ He was forced by his captors to write one letter telling his family that he was well, and another demanding payment of a ransom of \$150,000.¹¹¹ The former letter was never delivered to his family; the latter was.¹¹² The kidnapers were unable to successfully negotiate a ransom, however, apparently because their knowledge that the Kelley phone line was tapped by police discouraged them from sustaining telephone contact.¹¹³

The family was nevertheless forced to deny persistent rumors that a ransom of \$100,000 had been paid for Kelley’s return.¹¹⁴ The kidnapers had given neither Kelley nor Rogers any other explanation for the abduction and release.¹¹⁵ The other local papers were understandably annoyed that Rogers and the *Post-Dispatch* had been “selected to reap the glory.”¹¹⁶ Rogers’s rival Brundidge at the *Star* presumably was green with envy when he learned that Rogers reportedly received a bonus of one year’s salary—in excess of \$6,000—as a reward for his scoop.¹¹⁷ As *Time* reported it, only “Dr. Kelley’s high professional standing removed the suspicion” that the entire episode was

105. Rogers, *supra* note 99.

106. *Dr. Kelley’s Story of Experience in Kidnapers’ Hands*, ST. LOUIS POST-DISP., Apr. 28, 1931, at 1A.

107. *Kidnaped Physician is Freed on Road Near East St. Louis*, *supra* note 100.

108. *Dr. Kelley is Freed By Kidnapper Band*, *supra* note 93.

109. *Kidnaped Physician is Freed on Road Near East St. Louis*, *supra* note 100.

110. *Dr. Kelley is Freed By Kidnapper Band*, *supra* note 93.

111. *Id.*

112. *Id.*

113. *Kidnapers Suggested Two Lawyers to Kelley Family For Negotiators*, ST. LOUIS POST-DISP., Apr. 30, 1931, at 1A.

114. *Kidnaping—A Growing Racket*, LITERARY DIG., May 23, 1931, at 11; *The Press: Missouri Newshawks (Cont’d)*, *supra* note 86, at 54.

115. *Kidnaped Physician is Freed on Road Near East St. Louis*, *supra* note 100.

116. *The Press: Missouri Newshawks (Cont’d)*, *supra* note 86, at 54.

117. *Id.*

“a put-up job.”¹¹⁸ Prospects of solving the crime were dim; the trail was cold.¹¹⁹

This epidemic of kidnappings spurred St. Louis leaders to concerted action. In 1931, officers of the St. Louis Chamber of Commerce, led by President Walter B. Weisenberger, joined forces with Mayor Victor J. Miller, Chief of Police Joseph A. Gerk, and other pillars of the community to seek federal legislation targeting the scourge.¹²⁰ They selected as their spokesman former Congressman Cleveland Newton and drafted the bill that was introduced in the Senate by Senator Roscoe Patterson and in the House by Representative Joseph Cochran.¹²¹ The House Judiciary Committee held a hearing on the Cochran bill on the morning of February 26, 1932 – just four days before the kidnapping of the Lindbergh baby.¹²² The printed transcript of the hearing ran to only thirty-three pages, and thirty-one of them were consumed by the testimony of witnesses from St. Louis: Representative Cochran, former Congressman Newton, Police Chief Gerk, and Chamber of Commerce President Weisenberger.¹²³ Newton, Weisenberger, and Gerk each testified that in cases like those of Orthwein, Busch, and Berg, where the victim had not been taken across state lines, local police were able to solve the crime and bring the perpetrators to justice.¹²⁴ But in cases like Dr. Kelley’s, where the victim was taken to Illinois or beyond, local authorities had been stymied.¹²⁵

It seemed unlikely, however, that the bill would gain congressional approval.¹²⁶ Its passage was opposed by U.S. Attorney General William D. Mitchell on the grounds that it would impose additional costs on an already burdened Treasury, and might induce the states to become overly reliant on the federal government for enforcement of criminal prohibitions on kidnapping.¹²⁷

118. *Id.*

119. *5 Ex-Cuckoo Men Now in Shelton Gang Sought for Kelley Kidnaping*, ST. LOUIS POST-DISP., Apr. 29, 1931, at 1A; Tim O’Neil, *Exclusive on ‘31 Kidnapping*, ST. LOUIS POST-DISP., Apr. 25, 2010, at B4.

120. 75 CONG. REC. 13,287 (1932) (statement of Rep. Leonidas Dyer); *Hearing, supra* note 13, at 4 (statement of Rep. Cleveland A. Newton); *id.* at 14, 19 (statement of Mr. Walter B. Weisenberger); *id.* at 23 (statement of Chief Joseph A. Gerk); ALIX, *supra* note 6, at 59–60; Bomar, *supra* note 8, at 435.

121. 75 CONG. REC. 13,287 (1932) (statement of Rep. Leonidas Dyer); Bomar, *supra* note 8, at 435.

122. *Hearing, supra* note 13; Fisher & McGuire, *supra* note 6, at 653–54.

123. *Hearing, supra* note 13, at iix.

124. *Id.* at 4 (statement of Rep. Cleveland A. Newton); *id.* at 14, 19 (statement of Mr. Walter B. Weisenberger); *id.* at 23 (statement of Chief Joseph A. Gerk).

125. *Id.* at 4 (statement of Rep. Cleveland A. Newton); *id.* at 23, 25 (statement of Joseph A. Gerk, Chief of St. Louis Metropolitan Police Department).

126. Bomar, *supra* note 8, at 435–36; Finley, *supra* note 5, at 910.

127. *Hearing, supra* note 13, at 7; Bomar, *supra* note 7, at 437; Finley, *supra* note 5, at 912.

Judiciary Committee Chairman Hatton Sumners repeatedly emphasized this latter concern during the hearing, expressing hope that the states might, through cooperation and renewed dedication, successfully enforce existing statutes without federal intervention.¹²⁸

The Lindbergh kidnapping breathed new life into the bills.¹²⁹ On March 2, 1932, Senator William Warren Barbour of New Jersey rose to denounce “the ghastly tragedy that has befallen one of the most distinguished and beloved families in my State, the dastardly and cowardly kidnapping of the Lindbergh baby from its cradle last night,” and to inquire about the status of the Senate bill, which “very properly makes kidnaping a felony punishable either by death or imprisonment[.]”¹³⁰ Barbour was “sure the hearts of the people of the Nation, as well as of New Jersey, go out to this honored family in their hour of anguish,” and expressed “the hope that this shocking occurrence will help expedite the immediate passage of this or any other measure that may tend to put an end to a crime which I, as a father myself, consider the most horrible of crimes and even worse than murder.”¹³¹ Chairman Norris responded that the bill had been reported by a subcommittee of the full Judiciary Committee and was now on the Committee’s calendar.¹³² There had been no attempt to delay consideration of the bill, and there was no doubt that it would be taken up “within a very short time.”¹³³ The Senate Judiciary Committee announced a few days later that it was postponing action on the bill pending the return of the Lindbergh child, but after the baby was found dead a few miles from his home on May 12, there was no longer any reason to delay.¹³⁴ The Judiciary Committees of both houses issued favorable reports on the bill in early June.¹³⁵ On June 8, the Senate passed a version of the bill stripped of the death penalty after only a cursory debate.¹³⁶ In the House, the concerns raised by Mitchell

128. *Hearing, supra* note 13, at 7–9, 18, 22, 26–28, 30.

129. ALIX, *supra* note 6, at 69; Finley, *supra* note 5, at 910; Fisher & McGuire, *supra* note 6, at 654; *Kidnapping of Baby Speeds Federal Law*, N.Y. TIMES, Mar. 2, 1932, at 1.

130. 75 CONG. REC. 5075–76 (1932) (statement of Sen. William W. Barbour).

131. *Id.* at 5076.

132. *Id.*

133. *Id.*

134. 75 CONG. REC. 13,287 (1932) (statement of Rep. Andrew J. Montague); *id.* at 13,291 (statement of Rep. Hatton W. Sumners); ALIX, *supra* note 6, at 71–72.

135. H.R. REP. NO. 1493, at 1 (1932); 75 CONG. REC. 11,878, 11,942 (1932) (statements of Rep. Hatton W. Sumners and Rep. John J. Cochran); S. REP. NO. 76, at 1 (1932).

136. 75 CONG. REC. 12,318 (1932).

and Summers were ultimately overcome,¹³⁷ and the Senate version was passed on June 17.¹³⁸

The Kelley kidnapping remained shrouded in mystery until February of 1934, when Adolph Fiedler, a local tavern and pool-hall owner seeking to bolster his personal finances, sold the *Post-Dispatch* an exclusive story claiming that he had witnessed the hatching of the abduction plan at a series of meetings held in his disreputable Arcade Country Club in University City.¹³⁹ Fiedler was a colorful character who previously had served a turbulent tenure as a justice of the peace in Maplewood, during which he had been indicted, but never convicted, for soliciting bribes, assault and oppression in office, accepting illegal fees, embezzlement, and perjury.¹⁴⁰ But what most fascinated contemporary journalists was his unusual size—nearly every news story in which he was mentioned made reference to his weight, with estimates ranging from 325 to 515 pounds.¹⁴¹ Fiedler identified the conspirators as a group of ex-convicts and mobsters, three of whom had been gunned down in a gang fight in April of 1932: Tommy “the Rock” Hayes, the notorious leader of the Cuckoo Gang, and his associates “Willie G.” Wilbert and Harry “Pretty Boy” Lechler.¹⁴² Fiedler fingered the surviving members of the conspiracy as Felix “Hoosier” McDonald, who had been convicted of the armed robbery of Oscar Johnson and was then already serving a ten-year sentence in the penitentiary; twenty-six-year-old Bart Davit, who had been acquitted of charges of robbing Oscar Johnson; thirty-three-year-old Angelo John “the Dago” Rosegrant; John C. Johnson, a fifty-one-year-old farmer whose St. Charles County property McDonald and Davit had sublet to operate a still, and where Kelley had been held on the first night of his captivity; Tommy Wilders, affiliated with the

137. Though such concerns continued to be voiced. See 75 CONG. REC. 13,283 (remarks of Rep. Earl C. Michener); *id.* at 13,290 (remarks of Rep. Milton C. Garber); *id.* at 13,291–92 (remarks of Rep. Hatton W. Summers); *id.* at 13,304 (remarks of Rep. Loring M. Black, Jr.).

138. 75 CONG. REC. 13,283–304 (1932); Finley, *supra* note 5, 910–12; Fisher & McGuire, *supra* note 6, at 654–55; see also FRIEDMAN, *supra* note 3, at 266.

139. TIM O’NEIL, *MOBS, MAYHEM & MURDER: TALES FROM THE ST. LOUIS POLICE BEAT 77* (2008); *Adolph Fiedler Names Eight Men and Woman as Kidnapers of Dr. Kelley*, *supra* note 61.

140. *Adolph Fiedler Names Eight Men and Woman as Kidnapers of Dr. Kelley*, *supra* note 61.

141. O’NEIL, *supra* note 139, at 79 (referencing weight of 515 pounds); *Adolph Fiedler Names Eight Men and Woman as Kidnapers of Dr. Kelley*, *supra* note 61 (referencing weight of 370 pounds); *Crime: Death, Skirts, Baby*, TIME, Oct. 21, 1935, at 12 (referencing weight of 350 pounds); *Names Kidnappers of St. Louis Doctor*, N.Y. TIMES, Feb. 8, 1934, at 40 (referencing weight of 370 pounds); *Old Kidnaping Jails Three Men*, WASH. POST, Feb. 8, 1934 (referencing weight of 370 pounds); *Woman is Indicted as Kidnap Leader*, N.Y. TIMES, Mar. 13, 1934, at 4 (referencing weight of 325 pounds).

142. *Gang Trio Slain by St. Louis Rivals*, N.Y. TIMES, Apr. 16, 1932, at 34; *Names Kidnappers of St. Louis Doctor*, *supra* note 141.

Shelton brothers gang; and a female ringleader called “Mrs. N.”¹⁴³ The woman was later identified as Nellie Muench, a lively redhead nicknamed “Goldie,” who lived just five blocks from the Kelleys on fashionable Westminster Place and had cooked up the scheme in order to cover various business and entertainment debts.¹⁴⁴ Muench was described as having an “animated, dynamic personality” and as “a facile and intelligent talker on many subjects, particularly music.”¹⁴⁵ She was an accomplished pianist, the owner of prize-winning show dogs, and “a prominent member of St. Louis society” despite her racy reputation as a party girl who consorted with gangsters at speakeasies, not to mention two arrests on charges of larceny, one for allegedly stealing jewelry from a guest at the Marquette Hotel.¹⁴⁶ She was the wife of respected physician and amateur cellist Dr. Ludwig Muench; the daughter of Rev. William Ross Tipton, a well-known Baptist minister in Columbia, Missouri; and the sister of then-Missouri Supreme Court Judge Ernest Tipton.¹⁴⁷ She previously had enjoyed a checkered career as the proprietor of an exclusive society boutique in the Central West End called The Mitzi Shop, where she developed a reputation for “sending bills to widows for lingerie their late husbands may have (but probably had not) purchased” for other women.¹⁴⁸ Fiedler maintained that Muench initially had suggested that the group kidnap Oscar Johnson, but because he was traveling abroad at the time, they chose Dr. Kelley instead.¹⁴⁹

Warrants for the arrest of the surviving members of the conspiracy were issued on the strength of Fielder’s affidavits.¹⁵⁰ All but Wilders, who was

143. *Adolph Fielder Names Eight Men and Woman as Kidnapers of Dr. Kelley*, *supra* note 61; *Grand Jury Call Next Week on Kelley Kidnaping*, ST. LOUIS POST-DISP., Feb. 10, 1934, at 3A; *Mrs. Nellie Muench Indicted With Convict and Gangsters on Charge of Kidnaping Dr. Kelley*, ST. LOUIS POST-DISP., Mar. 13, 1934, at 1A [hereinafter *Mrs. Nellie Muench Indicted*]; *Names Kidnappers of St. Louis Doctor*, *supra* note 141.

144. *Crime: Death, Skirts, Baby*, *supra* note 141; *Mrs. Nellie Muench Indicted*, *supra* note 143.

145. *Mrs. Nellie Muench Indicted*, *supra* note 143.

146. *Id.*; Traci Angel, *Law and Disorder*, ST. LOUIS MAG. (Feb. 2005), available at <http://www.stlmag.com/St-Louis-Magazine/February-2005/Law-and-Disorder>.

147. Angel, *supra* note 146; *Crime: Death, Skirts, Baby*, *supra* note 141; *Crime: End of a Hoax*, TIME, Jan. 4, 1937, at 12; *Mrs. Nellie Muench Indicted*, *supra* note 143.

148. LHOTKA, *supra* note 30, at 169; O’NEIL, *supra* note 139, at 77; Angel, *supra* note 146; *Mrs. Nellie Muench Indicted*, *supra* note 143.

149. *Adolph Fiedler Names Eight Men and Woman as Kidnapers of Dr. Kelley*, *supra* note 61.

150. *Id.*; *Grand Jury to Probe 3-Year Old Kidnapping*, WASH. POST, Feb. 11, 1934, at 2; *Old Kidnapping Jails Three Men*, *supra* note 141; *Three of Six Alleged Kelley Kidnapers Jailed*, ST. LOUIS POST-DISP., Mar. 20, 1934, at 1A; *Trio Arrested in Kidnaping*, WASH. POST, Mar. 21, 1934, at 24; *Woman Hunted as “Brains” of Missouri Kidnap Gang*, WASH. POST, Mar. 14, 1934, at 1.

reputed to be in Florida, were taken into custody, and all but the impecunious Johnson were released on bond.¹⁵¹ Johnson's shack fit the description Dr. Kelley had given police upon his release in 1931, and the five located conspirators were indicted on kidnapping charges on March 13, 1934.¹⁵² Upon learning of the indictments, Nellie left her home hurriedly, declaring that she was going across the river to East St. Louis to "think things over."¹⁵³ She denounced the charge as "a crime and an outrage," declaring to a reporter, "I'll take an oath on my mother's Bible that I know no more of this than you do . . . I'd a thousand times rather be indicted for murder than for this."¹⁵⁴ After a two-day tour of Southern Illinois evading authorities until she could be assured that she would be released on \$50,000 bond, Muench surrendered at the St. Louis County Courthouse.¹⁵⁵ When a deputy insisted that she remove her hat and sit still for photographing and fingerprinting, Nellie denounced him as "a hell of a guy."¹⁵⁶ Davit and Rosegrant were located through anonymous phone tips—believed by authorities to have been arranged by the suspects in order to avoid the appearance of voluntary surrender—and held without bail after Kelley positively identified Rosegrant and McDonald.¹⁵⁷ Farmer Johnson turned state's evidence, confessing to his involvement in the crime and implicating the others.¹⁵⁸ He was released on bond and, pending trial of the other conspirators, he was housed for safekeeping at the home of Deputy Sheriff Harry D. Newbold in St. Louis County. While he was sitting outside Newbold's garage on May 12, Johnson was murdered in a drive-by machine-gunning.¹⁵⁹ Muench was taken into custody for protection and questioning

151. *Adolph Fielder Names Eight Men and Woman as Kidnapers of Dr. Kelley*, *supra* note 61.

152. *Mrs. Nellie Muench Indicted*, *supra* note 143; *Negro's Shack Near St. Charles Tallies with Kelley's Prison*, ST. LOUIS POST-DISP., Feb. 8, 1934, at 1A.

153. *Woman is Indicted as Kidnap Leader*, *supra* note 141.

154. *Id.*

155. *Bail for Mrs. Muench Opposed: She and Indicted Gangsters Leave Town*, ST. LOUIS POST-DISP., Mar. 14, 1934, at 1A; *Mrs. Muench Comes in and is Released on Bond of \$50,000*, ST. LOUIS POST-DISP., Mar. 15, 1934, at 1A; *Woman Named as Kidnap Plot Brain Gives Up*, WASH. POST, Mar. 16, 1934, at 11.

156. O'NEIL, *supra* note 139, at 77; *Gives Up in Kidnapping*, N.Y. TIMES, Mar. 16, 1934, at 5; *Mrs. Muench Comes In and Is Released on Bond of \$50,000*, *supra* note 155; *Woman Named as Kidnap Plot Brain Gives Up*, *supra* note 155.

157. *Bail Denied Rosegrant After Dr. Kelley Points Him Out as Kidnaper*, ST. LOUIS POST-DISP., Mar. 28, 1934, at 1A; *Kelley Kidnap Suspect Denied St. Louis Bail*, WASH. POST, Mar. 29, 1934, at 9; *Trio Arrested in Kidnaping*, *supra* note 150.

158. *Machine Gunner Murders Negro Who Implicated Three in Kidnaping of Dr. Kelley*, ST. LOUIS POST-DISP., May 13, 1934, at 1A.

159. O'NEIL, *supra* note 139, at 79; *Kidnap Confessor Slain*, N.Y. TIMES, May 13, 1934, at 27; Louis La Coss, *Missouri Lawyers Want Clean House*, N.Y. TIMES, Oct. 21, 1934, at E6; *Machine Gunner Murders Negro Who Implicated Three in Kidnaping of Dr. Kelley*, *supra* note 158; *St. Louis Kidnaping Figure Shot to Death*, WASH. POST, May 13, 1934, at 3.

about the incident, but released by order of the Missouri Supreme Court a few hours later.¹⁶⁰ On learning of the murder Fiedler immediately went into hiding, telling friends, "It might be a good idea for me to put a few miles between myself and St. Louis."¹⁶¹

Fiedler, thereafter, was attended by a security detail and lived in the county jail for safety during the trial of the first suspect, Rosegrant.¹⁶² Fiedler was the prosecution's star witness, and Rosegrant was convicted on October 4 and sentenced to twenty years.¹⁶³ Shortly thereafter, prosecuting attorney and former professional baseball player Charles Arthur Anderson was run off the road into a ditch by a carload of mobsters who had followed him for ten miles before cursing him and leaving him for dead, bleeding and pinned under his car with a badly broken leg.¹⁶⁴ Anderson required a series of blood transfusions and was hospitalized for several months but nevertheless managed to direct the January prosecution of the recidivist McDonald from his sickbed.¹⁶⁵ McDonald was convicted and sentenced to sixty years on January 30, 1935, based in part on the testimony of Fiedler and of Dr. Kelley, who identified him at trial.¹⁶⁶ That October, Davit was sentenced to life in prison for the killing of Maplewood grocer Paul Flueck during a 1932 hold-up.¹⁶⁷ As a consequence he was never tried for his role in the Kelley kidnapping.¹⁶⁸

Owing to a change of venue prompted by extensive local publicity in St. Louis, Muench's trial was held in Mexico, Missouri, near the homes of her

160. *Held for "Protection" in Kidnapping Case*, N.Y. TIMES, May 14, 1934, at 13; *Supreme Court Judge Releases Mrs. Nellie Muench, Reduces Her \$50,000 Bond to \$25,000*, ST. LOUIS POST-DISP., May 14, 1934, at 1A.

161. *Held for "Protection" in Kidnapping Case*, *supra* note 160.

162. La Coss, *supra* note 159.

163. *Directed from Sickbed, Kidnap Trial Reopens*, WASH. POST, Jan. 21, 1935, at 7.

164. *Anderson, "Baby" Legislator Gained Fame as Prosecutor*, WASH. POST, Mar. 29, 1937, at 2; La Coss, *supra* note 159; *St. Louis Official Hurt*, N.Y. TIMES, Oct. 10, 1934, at 4.

165. *Anderson, "Baby" Legislator Gained Fame as Prosecutor*, *supra* note 164; *Directed from Sickbed, Kidnap Trial Reopens*, *supra* note 163.

166. *Adolph Fiedler Testifies M'Donald Helped Plot Dr. Kelley Kidnaping*, ST. LOUIS POST-DISP., Jan. 24, 1935, at 1A; *Identified as Kidnapper*, N.Y. TIMES, Jan. 27, 1935, at 25; *Kidnapper Gets 60 Years*, N.Y. TIMES, Jan. 31, 1935, at 8; *M'Donald Guilty, Gets 60 Years in Kelley Case*, ST. LOUIS POST-DISP., Jan. 31, 1935, at 1A; *"That's the Man," Says Dr. Kelley as He Points to M'Donald*, ST. LOUIS POST-DISP., Jan. 25, 1935, at 1A.

167. *State v. Davit*, 125 S.W.2d 47, 49 (Mo. 1938); *Bart Davit Trial Tomorrow on Murder Charge*, ST. LOUIS POST-DISP., Oct. 20, 1935, at 3A; *Davit Found Guilty, Gets Life in Prison for Holdup Murder*, ST. LOUIS POST-DISP., Oct. 26, 1935, at 1A; *Women Identify Davit as Killer at Murder Trial*, ST. LOUIS POST-DISP., Oct. 24, 1935, at 1A.

168. *Gets Life Term as Killer Before Trial as Kidnaper*, CHI. TRIB., Oct. 27, 1935, at 25; *Bart Davit Under a Life Sentence*, MOBERLY MONITOR-INDEX, Feb. 11, 1936, at 1A.

father and brother.¹⁶⁹ She believed that jury would not convict her if she were a new mother, so at the age of forty-three, after twenty-three years of a childless marriage, she faked a pregnancy and worked with her lawyer Wilfred Jones to locate a baby she could claim as her own.¹⁷⁰ She first arranged to secure custody of the son of Estelle Oberg, an unmarried Minneapolis waitress who gave birth at City Hospital in St. Louis on June 29, 1935.¹⁷¹ The baby was taken to the home of Christine Krout, a local masseuse, and then transferred to the Muench home on July 10.¹⁷² The infant became ill there the following day and was taken by Jones and Muench's friend Helen Berroyer to Jewish Hospital, where he died on July 16.¹⁷³ Undeterred by this setback, Nellie found another child to fill the role, the son of Anna Ware, an unmarried domestic servant from Pennsylvania who had come to St. Louis to deliver her child.¹⁷⁴ Muench represented that the Ware child was her own, "a gift from God in my time of distress."¹⁷⁵ The trial consumed three days, during which Nellie took the stand to deny the charges, and to insist "never in my life was I ever called [Goldie]."¹⁷⁶ Meanwhile, Fiedler's reputation for veracity was subjected to withering assault by defense counsel.¹⁷⁷ Fiedler vehemently denied the charge that he had been tried for perjury on seven separate occasions, insisting that it had been no more than four, and noting with pride that he had been acquitted in each instance.¹⁷⁸

169. Angel, *supra* note 146; *Mrs. Muench*, WASH. POST, Oct. 6, 1935, at B2; *Mrs. Muench Gets Change of Venue; Trial Goes to Mexico, Audrain County*, ST. LOUIS POST-DISP., June 24, 1935, at 1A; *Muench Trial Begins*, HANNIBAL COURIER-POST, Oct. 1, 1935, at 1.

170. *U.S. Prosecutor Outlines Case Against Muenches; Defense Says Dr. Pitzman was Willing Victim*, ST. LOUIS POST-DISP., Nov. 24, 1936, at 2A [hereinafter *U.S. Prosecutor Outlines Case Against Muenches*]; *Women: "Gift of God"*, TIME, Dec. 16, 1935, at 17.

171. *U.S. Prosecutor Outlines Case Against Muenches*, *supra* note 170.

172. *Id.*

173. *Id.*; *Helen Berroyer Identified as Woman at Hospital with Jones and Price Baby*, ST. LOUIS POST-DISP., Oct. 17, 1935, at 1A; *Woman Who Registered Price Baby at Jewish Hospital Gave Name "Helen Meyers"*, ST. LOUIS POST-DISP., Oct. 11, 1935, at 3A.

174. *Crime: Death, Skirts, Baby*, *supra* note 141, at 12; *U.S. Prosecutor Outlines Case Against Muenches*, *supra* note 170.

175. *Crime: Death, Skirts, Baby*, *supra* note 141, at 12.

176. *Mrs. Muench Admits She Knows Rosegrant; Denies Guilt; Defense Rests*, ST. LOUIS POST-DISP., Oct. 3, 1935, at 1A.

177. *Fiedler in Hot Exchanges with Cross-Examiner*, ST. LOUIS POST-DISP., Oct. 1, 1935, at 1A; *Fiedler On Stand Says Mrs. Muench Took Part in Kelley Kidnaping Plot*, ST. LOUIS POST-DISP., Oct. 1, 1935, at 1A; *Mrs. Muench Bursts Into Tears when Auer Enters Court*, ST. LOUIS POST-DISP., Oct. 3, 1935, at 3A (noting that Leslie Lewis testified to the fact that "Fiedler's reputation for truth and veracity was bad").

178. *Fiedler in Hot Exchanges with Cross-Examiner*, *supra* note 177.

The jury deliberated for more than five hours over two days before acquitting Muench of the kidnapping on October 5, 1935.¹⁷⁹ She greeted the verdict with tears and then “shrill ejaculations of happiness,” hugging her husband and her lawyer and shaking hands with the jurors before striding out of the courtroom with her head held high.¹⁸⁰ But as it would turn out, Nellie had overplayed her hand. Anna Ware brought a writ of habeas corpus to recover her child, and a hearing on the matter began in St. Louis ten days after Muench’s acquittal.¹⁸¹ Dr. Marsh Pitzman, a colleague of Dr. Muench who had become Nellie’s lover, had certified that Nellie had delivered the baby she claimed as her own, but at the hearing he testified that he had not witnessed the birth and neither, it turned out, had anyone else.¹⁸² Nor could the Muenches produce any credible evidence that Nellie ever had been pregnant.¹⁸³ Throughout the three-week hearing Nellie was seen “alternately weeping and drawing heavily on an extensive vocabulary of profanity.”¹⁸⁴ After listening to testimony from eighty-six witnesses, Special Commissioner Rush Limbaugh, Sr. recommended that the young lad be returned to his natural mother, and the ensuing order of the Court of Appeals adopted his recommendation.¹⁸⁵

179. *Mrs. Muench Acquitted of Kelley Kidnaping; Jury Out Overnight*, ST. LOUIS POST-DISP., Oct. 5, 1935, at 1A; *Woman is Acquitted in Kelley Kidnaping*, N.Y. TIMES, Oct. 6, 1935, at 8.

180. *Jurors Clear Society Matron in Kidnaping*, WASH. POST, Oct. 6, 1935, at 16; *Woman is Acquitted in Kelley Kidnaping*, *supra* note 179.

181. *Anna Ware Challenges Muenches: “Bring Baby to Court; If it’s Mine I am Sure I Could Identify It”*, ST. LOUIS POST-DISP., Oct. 17, 1935, at 4A; *Court Opens Way to Settle Muench-Ware Baby Case*, ST. LOUIS POST-DISP., Oct. 8, 1935, at 1A; *Cross-Examination Fails to Shake Identification of Mrs. Muench by Anna Ware*, ST. LOUIS POST-DISP., Oct. 16, 1935, at 1A; *Gift of God*, *supra* note 170, at 17; *Girl Identifies Mrs. Muench as Jones’ Companion*, ST. LOUIS POST-DISP., Oct. 15, 1935, at 1A; *Not Sure if It is the Baby*, N.Y. TIMES, Nov. 6, 1935, at 29.

182. *Dr. Muench Admitted Worthless Nature of Birth Statements by Drs. Pitzman and Thompson*, ST. LOUIS POST-DISP., Oct. 18, 1935, at 1A; *Dr. Pitzman Testifies Color of Baby’s Hair Changed; Jones Tries to Avoid “Telling All”*, ST. LOUIS POST-DISP., Oct. 21, 1935, at 1A; *Gift of God*, *supra* note 170; *“Mrs. Muench Said Negro Maid and Stenographer Delivered the Child”*, ST. LOUIS POST-DISP., Oct. 7, 1935, at 1A; *U.S. Prosecutor Outlines Case Against Muenches*, *supra* note 170.

183. *See Baby Experts’ Testimony Refutes Muenches’ Story that Child was Born to Them*, ST. LOUIS POST-DISP., Nov. 1, 1935, at 1A; *Dr. Muench Admitted Worthless Nature of Birth Statements by Drs. Pitzman and Thompson*, *supra* note 182; *For “Entire Truth” in Muench-Ware Baby Case Inquiry*, ST. LOUIS POST-DISP., Oct. 9, 1935, at 1A; *Muench Pretense Kept Alive Only in Courtroom*, ST. LOUIS POST-DISP., Nov. 3, 1935, at 1A; *Muenches Refuse to Answer “Was a Child Born to Them?” Fearing Self-Incrimination*, ST. LOUIS POST-DISP., Oct. 15, 1935, at 1A.

184. *Court Orders Lobby Kept Clear for Baby Hearing*, ST. LOUIS POST-DISP., Oct. 31, 1935, at 1A.

185. *Anna Ware Gets Her Baby; Court of Appeals Denies Rehearing, Makes Award*, ST. LOUIS POST-DISP., Dec. 19, 1935, at 1A; *Anna Ware Wins Baby Suit; Commissioner Finds Muenches Had Her Child*, ST. LOUIS POST-DISP., Dec. 5, 1935, at 1A; *Court of Appeals Adopts Commissioner’s Finding that Baby is Anna Ware’s*, ST. LOUIS POST-DISP., Dec. 13, 1935, at 1A; *Mrs. Muench Loses Baby*, N.Y. TIMES, Dec. 6, 1935, at 5.

Limbaugh's report denounced Nellie's claim that she had given birth to the child as "utterly false," a "deliberate and consummate deception," "a sham and a shallow pretense" concocted for the purpose of gaining sympathy from the jury at her kidnapping trial, and possibly from other "ulterior motive[s]."¹⁸⁶

Nellie's legal troubles were far from over. In April she, her husband, Wilfred Jones, and Helen Berroyer were put on trial in Kahoka for conspiring to obtain Miss Ware's child without the approval of the juvenile court.¹⁸⁷ Over the course of eight days of testimony before "a panel of open-mouthed farmers," a "livid," "scornful," "high strung," "hysterical" Nellie shouted "lustful denials" to the charges "with such a fanfare display of emotions as few farmer juries are ever privileged to witness."¹⁸⁸ On the ninth day, however, Circuit Judge Walter Higbee was forced to declare a mistrial when it was revealed that one of the jurors had been offered a bribe of \$100 to deadlock the jury.¹⁸⁹ The retrial was scheduled for August, and after thirteen hours of deliberation the new jury found Muench and her co-defendants guilty as charged.¹⁹⁰ The penalties were merely fines, however, with Nellie subjected to a levy of \$450 to add to the \$25 contempt fine with which she was punished for an outburst during the testimony of one of the witnesses.¹⁹¹ More serious sanctions awaited Muench and her co-defendants, however, as it was also revealed that Nellie had told Dr. Pitzman that the baby was his and threatened to reveal this alleged fact, thereby, inducing the wealthy bachelor to transfer to her several thousand dollars of an ultimately hoped-for \$250,000

186. *Anna Ware Wins Baby Suit; Commissioner Finds Muenches Had Her Child*, *supra* note 185.

187. For discussion of the case, see *Dr. Marsh Pitzman Testifies, Tells of Relations with Mrs. Muench; Paid her \$16,000 in Two Years*, ST. LOUIS POST-DISP., Apr. 11, 1936, at 3A; *Judge Doubts Validity of Law in Muench Case*, ST. LOUIS POST-DISP., Apr. 8, 1936, at 1A; *Mrs. Muench Bases Her Defense on Exploded Fiction She Once Refused to Relate Under Oath*, ST. LOUIS POST-DISP., Apr. 15, 1936, at 10A; *Mrs. Muench Ends Testimony; Denies Charges*, ST. LOUIS POST-DISP., Apr. 14, 1936, at 1A; *Mrs. Muench on Stand Denies Any Conspiracy*, ST. LOUIS POST-DISP., Apr. 13, 1936, at 1A; *Mrs. Muench's Testimony Monday; Tells Story First Time Under Oath*, ST. LOUIS POST-DISP., Apr. 14, 1936, at 4A; *People*, TIME, Apr. 20, 1936, at 26.

188. *Mrs. Muench*, WASH. POST, Apr. 19, 1936, at 5B.

189. *Mistrial in Muench Case; Juror Testifies \$100 Was Offered for Hung Jury*, ST. LOUIS POST-DISP., Apr. 16, 1936, at 1A; *Offer of Bribe to Juror Halts Baby Hoax Trial*, WASH. POST, Apr. 17, 1936, at 24.

190. *Mrs. Muench is Fined for "Baby Conspiracy"*, N.Y. TIMES, Aug. 23, 1936, at 26; *Mrs. Muench, The Doctor and Others in Baby Hoax Found Guilty and Fined*, ST. LOUIS POST-DISP., Aug. 22, 1936, at 1A.

191. *Matron Fined \$25 in Baby Theft Case*, WASH. POST, Aug. 11, 1936, at 4A; *Mrs. Muench is Fined for "Baby Conspiracy"*, *supra* note 190; *Mrs. Muench, The Doctor and Others in Baby Hoax Found Guilty and Fined*, *supra* note 190.

shakedown.¹⁹² As Pitzman would put it, “One side of her was attractive. The other side I feared. . . . I am now completely confident I was fooled.”¹⁹³ Nellie and her three co-defendants were charged with multiple counts of mail fraud for the scheme, and Nellie was sentenced in 1936 to ten years in prison and a \$5000 fine.¹⁹⁴ Her husband also received a \$5000 fine to go along with an eight-year sentence.¹⁹⁵ Her lawyer was sentenced to ten years and Berroyer to five.¹⁹⁶ Prior to her sentencing Nellie confessed, against the advice of counsel, that she was guilty of faking the birth of a son and had done so to hold the love of Dr. Pitzman.¹⁹⁷ Another stratagem toward this end had been to threaten to commit suicide on the front steps of Pitzman’s home.¹⁹⁸ Nellie exonerated her husband from any involvement in the hoax and continued to deny any scheme to extort money from her former paramour, whose “purse was always open to me.”¹⁹⁹ Yet she admitted, “I have disgraced my brother . . . and ruined my husband. If I had not been such a hussy, none of the[se] things . . . could have happened.”²⁰⁰ The Eighth Circuit affirmed the convictions, and Nellie went off

192. *Dr. Aaron Levy Says Mrs. Muench Threatened Him*, ST. LOUIS POST-DISP., Nov. 26, 1936, at 3A; *Judge Doubts Validity of Law in Muench Case*, *supra* note 187; *Mrs. Thomasson Injects New Yarn in Muench Trial*, ST. LOUIS POST-DISP., Apr. 9, 1936, at 1A; *U.S. Prosecutor Outlines Case Against Muenches*, *supra* note 170.

193. LHOTKA, *supra* note 30, at 175–76; *Dr. Pitzman Tells of ‘Crossing Line’ With Mrs. Muench*, ST. LOUIS POST-DISP., Apr. 10, 1936, at 1A.

194. *4 Found Guilty in “Gift of God” Baby Fraud Plot*, WASH. POST, Dec. 21, 1936, at 7; *4 in Baby Hoax Sent to Prison for Mail Fraud*, WASH. POST, Dec. 27, 1936, at 8; *Mrs. Muench Gets 10-Year Sentence*, N.Y. TIMES, Dec. 27, 1936, at 5; *Mrs. Muench, Three Aids in Jail After Sentencing; She and Jones Get 10 Years*, ST. LOUIS POST-DISP., Dec. 27, 1936, at 1A; *Muenches, Jones and Mrs. Berroyer Found Guilty of Mail Fraud*, ST. LOUIS POST-DISP., Dec. 20, 1936, at 1A.

195. *4 in Baby Hoax Sent to Prison for Mail Fraud*, *supra* note 194; *Mrs. Muench Gets 10-Year Sentence*, *supra* note 194; *Mrs. Muench, Three Aids in Jail After Sentencing; She and Jones Get 10 Years*, *supra* note 194; *Mrs. Thomasson First Witness in Muench Retrial*, ST. LOUIS POST-DISP., Aug. 7, 1936, at 1A.

196. *4 in Baby Hoax Sent to Prison for Mail Fraud*, *supra* note 194; *Mrs. Muench Gets 10-Year Sentence*, *supra* note 193; *Mrs. Muench, Three Aids in Jail After Sentencing; She and Jones Get 10 Years*, *supra* note 194.

197. *Baby Swindle Figure Clears Mate of Blame*, WASH. POST, Dec. 24, 1936, at 4; *Mrs. Muench Gets 10-Year Sentence*, *supra* note 193; John T. Rogers, *Mrs. Muench Confesses Baby Hoax; Helen Berroyer and Jones Guilty, Too, She Says*, ST. LOUIS POST-DISP., Dec. 23, 1936, at 1A.

198. *Dr. Pitzman Gives Account of Row with Mrs. Muench*, ST. LOUIS POST-DISP., Nov. 25, 1936, at 1A.

199. *Mrs. Muench Gets 10-Year Sentence*, *supra* note 193; *Mrs. Muench, Three Aids in Jail After Sentencing; She and Jones Get 10 Years*, *supra* note 194.

200. Rogers, *supra* note 197.

to Alderson while Ludwig headed for Leavenworth.²⁰¹ Ludwig divorced Nellie during her incarceration, and when she was released from prison in 1944 she moved to Kansas City, where she worked as a nurse and lived in a rooming house before passing away on August 28, 1982, at the age of 91.²⁰²

CONCLUSION

Contemporary observers doubted with good reason that the federal kidnapping statute would have been enacted but for the Lindbergh abduction. But the Lindbergh affair alone will not suffice to explain the form that the federal response took. For the Lindbergh baby was found murdered fewer than four miles from his home, and there was no evidence that he had been transported across a state line.²⁰³ Had the Lindbergh Law been in effect when young Charles Lindbergh was kidnapped, it would not have applied to the crime. But the bill that was before the Judiciary Committees when the crime of the century was committed provided a ready means of reacting to the pressing public demand that Congress do something in the face of such an atrocity. And that bill was at hand owing to the response of St. Louis leaders to the headline kidnappings perpetrated by the midwestern snatch racket.

201. *Muench v. United States*, 96 F.2d 332 (8th Cir. 1938); O'NEIL, *supra* note 141, at 80; "Gift of God" Baby Case Ruled Fraud, WASH. POST, Apr. 29, 1938, at 7; *Mrs. Muench, Three Aids in Jail After Sentencing; She and Jones Get 10 Years*, *supra* note 194.

202. O'NEIL, *supra* note 141, at 80.

203. *Lindbergh Baby Found Dead Near Home; Murdered Soon After the Kidnapping 72 Days Ago And Left Lying in Woods*, N.Y. TIMES, May 13, 1932, at 1.