



This scene from the film *Compulsion* - in which Orson Welles plays a lawyer based on Clarence Darrow - recreates Darrow's actual argument in the Leopold and Loeb case.

On the 22nd of August, 1924, Darrow talked to the Court for hours in that famous argument. Throughout, he railed against the death penalty. The following roughly tracks the excerpted segment featured in this clip:

It has been argued to this court that you can do no such thing as to grant the almost divine favor of saving the lives of two boys, that it is against the law, that the penalty for murder is death; and this court, who, in the fiction of the lawyers and the judges, forgets that he is a human being and becomes a court, pulseless, emotionless, devoid of those common feelings which alone make men; that this court as a human machine must hang them because they killed.

Now, let us see. I do not need to ask mercy from this court for these clients, nor for anybody else, nor for myself; though I have never yet found a person who did not need it. But I do not ask mercy for these boys. Your Honor may be as strict in the enforcement of the law as you please and you cannot hang these boys. You can only hang them because back of the law and back of justice and back of the common instincts of man, and back of the human feeling for the young, is the hoarse voice of the mob which says, "Kill."

I need ask nothing. What is the law of Illinois? If one is found guilty of murder in the first degree by a jury, or if he pleads guilty before a court, the court or jury may do one of three things: he may hang, he may imprison for life, or he may imprison for a term of not less than fourteen years. Now, why is that the law? Does it follow from the statute that a court is bound to ascertain the impossible, and must necessarily measure the degrees of guilt? Not at all. He may not be able to do it. A court may act from any reason or, from no reason. A jury may fix anyone of these penalties as they separate.

Why was this law passed? Undoubtedly in recognition of the growing feeling in all the forward-thinking people of the United States against capital punishment. Undoubtedly, through the deep reluctance of courts and juries to take human life.

Without any reason whatever, without any facts whatever, Your Honor must make the choice, and you have the same right to make one choice as another. It is Your Honor's province; you may do it, and I need ask nothing in order to have you do it. There is the statute. But there is more than that in this case.

We have sought to tell this court why he should not hang these boys. We have sought to tell this court, and to make this court believe, that they were diseased of mind, and that they were of tender age. However, before I discuss that, I ought to say another word in reference to the question of motive in this case. If there was no motive, except the senseless act of immature boys, then of course there is taken from this case all of the feeling of deep guilt upon the part of these defendants.

There was neither cruelty to the deceased, beyond taking his life, nor was there any depth of guilt and depravity on the part of the defendants, for it was a truly motiveless act, without the slightest feeling of hatred or revenge, done by a couple of children for no sane reason.

But, Your Honor, we have gone further than that, and we have sought to show you, as I think we have, the condition of these boys' minds. Of course it is not an easy task to find out the condition of another person's mind. Now, I was about to say that it needs no expert, it needs nothing but a bare recitation of these facts, and a fair consideration of them, to convince any human being that this was the act of diseased brains.

But let's get to something stronger than that. Were these boys in their right minds? Here were two boys with good intellect, one eighteen and one nineteen. They had all the prospects that life could hold out for any of the young; one a graduate of Chicago and another of Ann Arbor; one who had passed his examination for the Harvard Law School and was about to take a trip in Europe, another who had passed at Ann Arbor, the youngest in his class, with \$3,000 in the bank.

Boys who never knew what it was to want a dollar; boys who could reach any position that was given to boys of that kind to reach; boys of distinguished and honorable families, families of wealth and position, with all the world before them. And they gave it all up for nothing, for nothing! They took a little companion of one of them, on a crowded street, and killed him, for nothing, and sacrificed everything that could be of value in human life upon the crazy scheme of a couple of immature lads.

Now, Your Honor, you have been a boy; I have been a boy. And we have known other boys. The best way to understand somebody else is to put yourself in his place. Is it within the realm of your imagination that a boy who was right, with all the prospects of life before him, who could choose what he wanted, without the slightest reason in the world would lure a young companion to his death, and take his place in the shadow of the gallows?

How insane they are I care not, whether medically or legally. They did not reason; they could not reason; they committed the most foolish, most unprovoked, most purposeless, most causeless act that any two boys ever committed, and they put themselves where the rope is dangling above their heads.

There are not physicians enough in the world to convince any thoughtful, fair-minded man that these boys are right. Was their act one of deliberation, of intellect, or were they driven by some force such as Dr. White and Dr. Glueck and Dr. Healy have told this court?

There are only two theories; one is that their diseased brains drove them to it; the other is the old theory of possession by devils, and my friend Marshall could have read you books on that, too, but it has been pretty well given up in Illinois. That they were intelligent, sane, sound, and reasoning is unthinkable. Let me call Your Honor's attention to another thing.

Why did they kill little Bobby Franks? Not for money, not for spite; not for hate. They killed him as they might kill a spider or a fly, for the experience. They killed him because they were made that way. Because somewhere in the infinite processes that go to the making up of the boy or the man something slipped, and those unfortunate lads sit here hated, despised, outcasts, with the community shouting for their blood.

Mr. Savage, with the immaturity of youth and inexperience, says that if we hang them there will be no more killing. This world has been one long slaughterhouse from the beginning until today, and killing goes on and on and on, and will forever. Why not read something, why not study something, why not think instead of blindly shouting for death?

Kill them. Will that prevent other senseless boys or other vicious men or vicious women from killing? No! It will simply call upon every weak-minded person to do as they have done. I know how easy it is to I talk about mothers when you want to do something cruel. But I am thinking of the others, too.

I know that any mother might be the mother of little Bobby Franks, who left his home and went to his school, and who never came back.

I know that any mother might be the mother of Richard Loeb and Nathan Leopold, just the same. The trouble is this, that if she is the mother of a Nathan Leopold or of a Richard Loeb, she has to ask herself the question: "How come my children came to be what they are? From what ancestry did they get this strain? How far removed was the poison that destroyed their lives? Was I the bearer of the seed that brings them to death?" Any mother might be the mother of any of them. But these two are the victims.

No one knows what will be the fate of the child he gets or the child she bears; the fate of the child is the last thing they consider.

I am sorry for the fathers as well as the mothers, for the fathers who give their strength and their lives for educating and protecting and creating a fortune for the boys that they love; for the mothers who go down into the shadow of death for their children, who nourish them and care for them, and risk their lives, that they may live, who watch them with tenderness and fondness and longing, and who go down into dishonor and disgrace for the children that they love.

All of these are helpless. We are all helpless. But when you are pitying the father and the mother of poor Bobby Franks, what about the fathers and mothers of these two unfortunate boys, and what about the, unfortunate boys themselves, and what about all the fathers and all the mothers and all the boys and all the girls who tread a dangerous maze in darkness from birth to death?

Do you think you can cure the hatreds and the maladjustments of the world by hanging them? You simply show your ignorance and your hate when you say it. You may here and there cure hatred with love and understanding, but you can only add fuel to the flames by cruelty and hate.

Darrow's argument was successful. Judge Caverly spared the lives of Nathan Leopold and Richard Loeb. Instead of sentencing the two young men to death, he gave them "life plus 99 years." The "life" sentence was for murdering Bobby Franks. The "99 years" was for kidnapping him.

ISSUES and QUESTIONS to CONSIDER

Darrow did not live long-enough to learn what the U.S. Supreme Court did in 1972. In a case called *Furman v Georgia*, the Justices voted 5 to 4 to invalidate all then-existing death penalty laws in America. The key finding was that state laws, throughout the country, were arbitrary when compared to one another.

In 1977, another U.S. Supreme Court case (*Gregg v. Georgia*) restored the death penalty. Now there are two phases in a capital case: The first phase determines guilt; the second phase determines punishment. In the penalty phase, jurors must make specific findings on the presence or absence of mitigating and aggravating factors regarding the defendant's crime.

Had Judge Caverly sentenced Leopold and Loeb to die, they would have been hanged. Today, most American executions are carried-out by lethal injection.

The U.S. Constitution does not allow "cruel and unusual punishment." Do you think the method of execution matters in determining whether the death penalty is constitutional? Why or why not?

Is Darrow's argument against the death penalty persuasive? He specifically tells the Judge that if Leopold and Loeb were to hang, the Judge must order it. What was Darrow trying to accomplish by taking that approach?

Should America keep or discard the death penalty? Support your position in a short essay.

Credits:

Leopold and Loeb - Darrow's Final ArgumentImage depicting Clarence Darrow, arguing against the death penalty in the Leopold and Loeb trial, online courtesy Library of Congress.

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Attacking the Death Penalty - Clarence Darrow

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Leopold and Loeb - Darrow's Final Argument

Clip from "[Compulsion](#)," a 1959 film based on the story of Leopold and Loeb.
Online, courtesy YouTube.

Director:

Richard Fleischer

Producer:

Richard D. Zanuck

Screenplay by:

Richard Murphy

Based on the book, *Compulsion*,
By Meyer Levin

Starring:

Orson Welles - Jonathan Wilk

Diane Varsi - Ruth Evans

Dean Stockwell - Judd Steiner

Bradford Dillman - Artie Strauss

E.G. Marshall - District Attorney Harold Horn

Martin Milner - Sid Brooks

Richard Anderson - Max Steiner

Gavin MacLeod - Padua, Horn's Assistant

Music:

Lionel Newman

Cinematography:

William C. Mellor

Editing:

William H. Reynolds

Distributor:

Twentieth Century-Fox Film Corporation

Release date:

April 1, 1959

Run Time:

103 minutes

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