

# THE LOEB FIRM

## *And the Origins of Entertainment Law Practice in Los Angeles, 1908–1940*

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### I. INTRODUCTION

The story of how Edwin Loeb got his start as an entertainment lawyer, like many tales told of the studio moguls who became his clients and poker partners, has multiple versions.

One account pins Edwin's first entertainment client as "Colonel" William N. Selig, an ex-sideshow operator who turned to slapstick comedies, minstrel-themed shows and westerns. In 1890, Selig moved his operation from Chicago to what became the Echo Park neighborhood of Los Angeles and began making movies, often featuring his growing collection of exotic animals. According to a former Loeb & Loeb partner, Selig retained Edwin in 1914 or 1915 to resolve some of his legal problems after meeting him at

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a social function. Upon his return to the office, Edwin reportedly told his brother, Joseph Loeb, that he had a new client for their fledgling practice. When Joseph asked what fee he'd negotiated, Edwin reportedly replied, "I put him on retainer for \$100," assuming that payment would be made annually. Much to the Loeb's surprise, however, Selig paid the brothers \$100 weekly for some period — quickly demonstrating the potential profitability of entertainment work to the bottom-line conscious Joseph.<sup>1</sup>

Another version of Edwin's start holds that movie producer David Horsely asked for Edwin Loeb's help in the 1910s after his Los Angeles lawyers had allowed default judgments to be taken against his studio, located at Washington Boulevard and Main Street. Horsely had found Loeb after writing to a New York lawyer he knew for the name of more competent local counsel. The New York lawyer in turn queried Jesse Steinhart, a San Francisco lawyer friend who was also a friend of Edwin and Joseph. Steinhart recommended the Loeb's.<sup>2</sup> One of Horsely's first matters with the Loeb's was a dispute with the producers of what were called "L-Ko Comedies."<sup>3</sup> Edwin's assistance in settling the dispute so favored Horsely that one of the opposing producers reportedly told Edwin, "The way you treated us is terrible, and if we ever need a lawyer, we are coming to you." They subsequently did.

Whether either story is fact or fable is probably beside the point. Both illustrate some of the qualities that made Edwin Loeb the city's preeminent entertainment lawyer during the early twentieth century and the Loeb & Loeb firm a major power broker in the emerging movie business and the broader Los Angeles business community.

Entertainment emerged as a specialty practice initially to service the novice movie producers and the film empires they eventually built. The Loeb firm represented the major studios, including Universal, Warner Brothers, Republic Pictures, RKO, Metro Goldwyn Mayer, Samuel

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<sup>1</sup> Interview with former Loeb partner Howard Friedman, Oct. 19, 2010 (on file with the author) [hereinafter Friedman Interview].

<sup>2</sup> This section along with much of the early history of Loeb & Loeb draws heavily on Bill Colitre, "A History of Loeb & Loeb LLP from its Inception to the Present Day," typewritten manuscript (2002) (on file with the author) [hereinafter Loeb History].

<sup>3</sup> L-Ko comedies were one- or two-reel silent caper comedies produced between 1914 and 1919.

Goldwyn Studios, United Artists, and Twentieth Century Fox. The firm — particularly Edwin — put together their early movie deals, real estate acquisitions, and distribution arrangements and often mediated their labor negotiations. As the movie business grew and diversified, new legal issues prompted further specialization within the entertainment bar: Some firms and individual practitioners focused on the “talent” — representing the actors, producers, writers and directors who contracted with the studios. Still others developed expertise in copyright, intellectual property, labor relations, and, more recently, in new media. (And some counselors have found a profitable niche in sorting out the indiscretions and misdeeds of their celebrity clients.<sup>4</sup>)

Loeb & Loeb was not involved in every deal or major event nor did it represent every studio, mogul, agency, or distribution company. But the firm’s lawyers had a hand in most of the major disputes and developments of the pre–World War II era. Moreover, as was true of other Jewish and ethnic law firms, several Loeb lawyers, including Martin Gang, George Cohen, Alan Sussman, Lawrence Weinberg, and Robert Rosenfeld, spawned their own firms, many of which became entertainment powerhouses. Loeb & Loeb’s entertainment client base still includes talent as well as movie and television producers, film funds, record companies, music publishers, private equity funds, and advertising agencies. As such, the firm’s development mirrors the broader evolution and expansion of the entertainment practice.

This article charts the origins of entertainment law sub-practice by focusing on the Loeb brothers and the major legal developments in the industry from 1908 through 1940. The brothers’ careers and the story of the firm they built nest within a large body of research about how lawyers, including those from ethnic minorities, pursue their careers. Their story underscores the work of some scholars and expands that of others.

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<sup>4</sup> Two examples are Jerry Giesler (as told to Pete Martin), *The Jerry Giesler Story* (New York: Simon and Schuster, 1960) and Milton M. Golden, *Hollywood Lawyer* (New York: Signet, 1960). Golden’s practice largely involved divorcing celebrities and producers, drunken clients whom he bailed out of jail, adulterous clients who wanted Golden’s help to squelch publicity over their dalliances along with assorted accident and other personal injury matters. Golden used pseudonyms for his clients but insisted readers of the time would know their names.

For example, as their practice and reputations grew, the Loeb brothers came to exemplify the central role that Robert Gordon<sup>5</sup> and other scholars have identified for lawyers — as writing new “rules of the road” and then employing those rules to their clients’ benefit. While many accounts of the early moguls portray them as having almost singlehandedly built their studios, the Loeb brothers and other leading practitioners were essential to the growth and success of their clients’ entertainment and corporate enterprises. By lobbying for favorable laws and regulation, navigating those legal rules on behalf of their clients and guiding them through transactions and litigation, the Loeb brothers were critical to the survival and growth of those companies. Their assistance also legitimized their business endeavors. The role of these counselors proved especially important to studio heads who sought not just wealth but respect as the new movie business tried to shake off its burlesque and sideshow roots.

Loeb & Loeb was long characterized as a “Jewish” firm, even though Joseph and Edwin were largely unobservant and they partnered with non-Jewish lawyers from their first days in practice. Nonetheless, as anti-Semitism constrained opportunities for Jewish lawyers beginning in the 1890s, the firm was the major Los Angeles firm that hired Jewish lawyers through the mid-twentieth century. Other scholars have documented the exclusion of Jewish lawyers from de facto Protestant firms in New York and other eastern and Midwestern cities; the rapid growth of Jewish (and other minority) firms “by discriminatory default”; and the eventual erosion of the religious identity of both WASP and Jewish firms beginning in the 1950s.<sup>6</sup> That pattern prevailed in Los Angeles to varying degrees at different times. Well into the 1950s, Jewish lawyers, including top graduates from prestigious law schools, were largely passed over by Gibson Dunn, O’Melveny, and the city’s other white-shoe firms.<sup>7</sup> As a result, Jewish lawyers eager to

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<sup>5</sup> See Robert W. Gordon, “Legal Thought and Legal Practice in the Age of American Enterprise,” in *Professions and Professional Ideologies in America*, ed. Gerald L. Geison (Chapel Hill: Univ. of North Carolina Press, 1983), 70–110; and Parts IV and V below.

<sup>6</sup> See, for example, Eli Wald, “The Rise and Fall of WASP and Jewish Law Firms,” *Stanford Law Review* 60 (2008): 1803.

<sup>7</sup> For example, Howard Friedman, a Yale Law School graduate who was admitted to the California bar in 1955, joined Loeb & Loeb after other major Los Angeles firms turned him down. Friedman Interview.

expand their own practices found some of the region's major business clients and social institutions out of reach.

Yet the Loeb story also reveals differences that help explain their financial success and influence within Hollywood, the local bar, and the broader Los Angeles community. When the brothers opened their doors, in 1909, Los Angeles was a pioneer town compared with San Francisco and a cultural and economic backwater, overshadowed in sophistication, population and wealth by its northern neighbor. The Los Angeles legal community was smaller and more fluid in those years. But the region's soaring economic and geographic growth would soon generate enormous opportunities for local lawyers whose ethnicity, for a time anyway, may have been less important than their skills and eagerness.

These differences worked to the advantage of the hometown Loeb boys, eager to grow their business in tandem with the city. It certainly helped that Joseph and Edwin were native Angelenos, unusual for white residents at the turn of the twentieth century, and part of an extended family with deep roots and important connections in the city. Their local pedigree enabled them to attract an A-list of banks and other business clients who might have been unwilling to trust their affairs to immigrants, Jews, or recent transplants to the area. By the 1930s and 1940s, the firm's book of business included many of the region's major corporate and nonprofit institutions.

At the same time, like Jewish lawyers in other cities, the Loeb pursued clients that WASP firms might have passed up; in other words, they hustled. The tawdry reputation of the movie industry in its early days may have repelled some attorneys in mainstream firms. But the Loeb — young and ambitious — had more reasons to take chances.<sup>8</sup>

That they were Jewish may have mattered for many of the studio heads and actors they represented. Carl Laemmle, the Warner brothers, Samuel

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<sup>8</sup> Malcolm Gladwell makes a similar point in *Outliers* when describing several New York Jewish lawyers, many the children of immigrants, who came of age during the Depression. Excluded from WASP firms in the 1950s by anti-Semitic snobbery, they turned to unglamorous legal specialties like proxy fights. By the 1970s and '80s, when that work had become highly remunerative, the established firms that had previously turned up their noses at the business became interested. As Gladwell notes, for these New York lawyers, like the Loeb brothers and their Jewish colleagues in Los Angeles, accidents of birth and standing gave them "the greatest of opportunities." Malcolm Gladwell, *Outliers: The Story of Success* (New York: Little, Brown and Co., 2008).

Goldwyn, Irving Thalberg and Louis B. Mayer were themselves Jewish immigrants or, like the Loebes, children of Jewish immigrants. As a result, they may have instinctively felt more comfortable trusting their business affairs to *landsmen*. Indeed, because some (but not all) of the other law firms that took on entertainment clients during the early twentieth century were considered “Jewish” firms, the specialty became tagged early on as a “Jewish” sub-practice,<sup>9</sup> a characterization that to a large extent remains true.

The Loeb brothers’ extensive service to the local bar as well as their philanthropic activities on behalf of secular and Jewish causes also contributed to the firm’s stature — and certainly to its bottom line. These activities helped propel both brothers and their firm onto the top rungs of Los Angeles commerce and society, and surely served to expand the firm’s business portfolio.

So while the story of the Loeb brothers — like the origins of entertainment practice — is one of skilled and ambitious Jewish lawyers, the firm’s success transcends that simple ethnic narrative. The fortunate convergence of geography, family wealth and connections, timing, and just plain moxie also explain Loeb & Loeb’s financial success and the firm’s stability, even during the worst years of the Great Depression, as well as the brothers’ lasting influence in the broader Los Angeles community. As such, this account of the firm’s early dominance in entertainment law should add texture to previous scholarship on law firm organization, the role and career arc of ethnic lawyers and the firms they created, and the economic and social development of Los Angeles.

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This article proceeds as follows: Part II charts the brothers’ early years; Part III focuses on their start as practitioners. Part IV charts the central role lawyers played by writing the “rules of the road” for the nascent entertainment industry between 1900 and 1940 and then employing those rules to their clients’ benefit. I focus here on some of the early patent intellectual property disputes, censorship and the first efforts at labor organizing. The Loebes, particularly Edwin, were involved in much of the litigation and

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<sup>9</sup> Two others are Mitchell, Silverberg & Knupp and Kaplan, Livingston, Goodwin, Berkowitz & Selvin (no relation of the author).

negotiation in these areas. Part V includes observations about the role of Jewish identity in the Loeb's careers and in the Los Angeles legal community more broadly; and Part VI draws some conclusions from the Loeb's story about the role of lawyers in the movie business.

A final introductory note before we begin: Two narratives intertwine albeit imperfectly throughout this essay. The first, as noted above, locates the Loeb brothers and the firm they built at the nexus of a pioneer town poised for dramatic growth and a small, prosperous German-French Jewish community. The firm's financial success and the brothers' philanthropic activities moved them into the Los Angeles elite, reinforcing their ability to attract topflight commercial and entertainment clientele. The second narrative charts some of the new legal structures that emerged as the studios matured, including film distribution and exhibition networks, craft and talent unions, and New Deal regulatory initiatives directed at this still-young industry.

Available documents and interviews with former Loeb partners who knew the brothers and other entertainment lawyers kind enough to share their recollections permit us to explore the firm's role as entertainment law came into its own. Although few case files or case-related correspondence remain, extant first-person accounts and primary-source documents,<sup>10</sup> combined with secondary accounts of the rise of the studios and guilds as well as biographies of the major industry players, point toward inferences about the influence and involvement of Loeb lawyers in particular and entertainment practitioners more generally. Where I can document the firm's role I have done so; in other instances, I have drawn what I hope are judicious conclusions. Regardless, a fuller account remains to be written.

## II. EARLY LIFE AND EDUCATION

Leon Loeb, a native of Alsace, France, arrived in Los Angeles in 1853 and within a few years opened a dry goods store downtown. In those years, Los

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<sup>10</sup> Most helpful were six boxes containing daily logs, correspondence, litigation files, ledgers, and ephemera housed at the firm, referred to internally as the "History of Loeb & Loeb Vault Material." The Huntington Library also houses several boxes containing Joseph Loeb's personal correspondence, early firm ledger books, and ephemera.

Angeles included fewer than 5,000 residents<sup>11</sup> with whites and native Angelenos in roughly equal numbers. During the late nineteenth century, the city was a dynamic mix of Mexicans, Chinese, Japanese, African Americans, and European immigrants like Loeb;<sup>12</sup> boundaries between those ethnic groups were sometimes peaceful and porous, at other times fear and racism turned murderous.<sup>13</sup>

As a European Jew in what was then a small town, Loeb inevitably met Harris Newmark, a prominent Jewish merchant, real estate investor, philanthropist, and patriarch of one of the city's founding families. In 1879, Leon Loeb joined Newmark's family by marrying his daughter Estelle. The first of their three children, Rose, was born two years later, followed by sons Joseph in 1883, and Edwin in 1886.

That the Loeb children were born and raised in Los Angeles, near downtown and close to their influential Newmark relatives, goes a way toward understanding the brothers' later financial success. Joseph remembered playing "Indians" in the weeds with his uncle Marco (Harris Newmark's son — and Estelle's brother — who was only five years older than Joseph), and recalled how Edwin, walking their dog in the "wild" area west of Westlake (now MacArthur Park), would sink knee-deep into the pools of black crude that dotted the area.<sup>14</sup> The Newmark and Loeb families

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<sup>11</sup> *Los Angeles Almanac*, <http://www.laalmanac.com/population/po25.htm>. The City of Los Angeles was incorporated in 1850, the same year California entered the Union.

<sup>12</sup> The 1870 census counted 330 Jews or 5.76 percent of the city's population. Reva Clar, "The Jews of Los Angeles: Urban Pioneers — A Chronology," [http://home.earthlink.net/~nholdeneditor/jews\\_of\\_los\\_angeles.htm](http://home.earthlink.net/~nholdeneditor/jews_of_los_angeles.htm). That number rose to 2,500 by 1900, or 2.5 percent of Los Angeles' 102,000 residents. Jewish Virtual Library, "Los Angeles," [https://www.jewishvirtuallibrary.org/jsource/judaica/ejud\\_0002\\_0013\\_0\\_12766.html](https://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0013_0_12766.html).

<sup>13</sup> See e.g., Jean Pfaelzer, *Driven Out: The Forgotten War Against Chinese Americans* (New York: Random House, 2007); Douglas Flamming, *Bound for Freedom: Black Los Angeles in Jim Crow America* (Berkeley: Univ. of California Press, 2006); Edward J. Escobar, *Race, Police, and the Making of a Political Identity: Mexican Americans and the Los Angeles Police Department, 1900–1945* (Berkeley: Univ. of California Press, 1991); William Deverell, *Adobe: The Rise of Los Angeles and the Remaking of Its Mexican Past* (Berkeley: Univ. of California Press, 2004).

<sup>14</sup> "Joseph Loeb, Los Angeles Attorney," Interview transcript, Oral History Program, Claremont Graduate School, 1965, 1. Around this time, Leon, as a native of France, was appointed *Agent Consulaire* or French consul for Los Angeles, although he served only a few years, resigning in 1898 in protest over the Dreyfus Affair. (Loeb had become a U.S. citizen in 1870 in response to Germany's capture of Alsace during



regularly gathered for dinner, often with assorted Franco-German friends and relatives. Rose Loeb Levi's great niece, Linda Levi, recalled those evenings as lively with marathon stag card games often conducted out of sight of disapproving female relatives.<sup>15</sup>

Apart from the poker and gin rummy tutorials, the Newmarks were a major influence on both boys and their father. Joseph credits Marco, a Berkeley undergraduate when Joe was in high school, with persuading him to study law. "I was going to be an electrical engineer," he recalled in 1965. "This amuses me," Loeb added, noting how easily he changed his mind "because it shows how clearly I was really cut out to be a lawyer."<sup>16</sup> (The two men had planned to go into law practice together but Harris Newmark successfully pressured his son Marco to enter the wholesale grocery business.)

After graduating from Los Angeles High School, Joseph earned his bachelor's degree in 1905 at UC Berkeley where he was elected to Phi Beta Kappa. He took what he called "preliminary law courses" as an undergraduate "and then decided I shouldn't impose on my father by going to Harvard Law School as I intended, but go home for a year and work and then go to law school."<sup>17</sup> That



JOSEPH LOEB

*Courtesy The Huntington Library.*

underscores his family's relative affluence and, notwithstanding the financial

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the Franco-Prussian War. Loeb History, 1–2.) Loeb had succeeded Marc Eugene Meyer as consul when Meyer, grandfather of *Washington Post* publisher Katherine Graham, moved to San Francisco.

<sup>15</sup> [Linda Levi], "Loeb and Loeb, Pioneer Los Angeles Law Firm, 1909–Present," 2, <http://homepage.mac.com/lindalevi/PersonalAW/LOEB&LOEBSHISTORY.htm>.

<sup>16</sup> "Joseph Loeb, Los Angeles Attorney," 4.

<sup>17</sup> *Ibid.*, 5.

turmoil that followed the devastating Panic of 1893, the economic stability of the extended Loeb–Newmark clan.

Courtesy of Newmark family connections, Joseph Loeb became an office boy at the O'Melveny firm immediately after his college graduation. According to his oral history reminiscences, Joseph never did go to law school, instead studying for the bar while apprenticing to O'Melveny. In those years, he recalled, some offices charged would-be lawyers to apprentice but he was taken on without paying and shortly after starting work there, Henry O'Melveny began paying him ten dollars a month in return for running errands and doing clerical work. Loeb passed the bar in 1906 but stayed at the O'Melveny firm until 1907.<sup>18</sup>

Edwin took a different path to the law. He quit college in 1906 to work his way around the world on a trading ship. Leaving Los Angeles with a box of cigars and \$340 from his parents, he visited Australia, Japan, England, and France, among other countries. Letters home during this odyssey recount his travels along with his growing skill at cards.<sup>19</sup> Before he returned to Los Angeles, in the summer of 1907, Edwin had planned to join the family grocery business but once back he decided that law would be more remunerative and allow him the opportunity to work with his brother. He enrolled at USC's law school but quit soon after and like Joseph, signed on with O'Melveny, working mostly as a switchboard operator and receptionist while he began his bar studies.<sup>20</sup>

Edwin also apparently convinced his brother that they would do better on their own, so in January 1908, Joseph Loeb and another ex-O'Melveny associate, Edward G. Kuster (a Gentile), opened their own office on Main

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<sup>18</sup> *Ibid.*, 6. O'Melveny listed him among the office's "associates" following his admission to the Bar; Loeb is the only recognizably Jewish name among his contemporaries. William W. Clary, *History of the Law Firm of O'Melveny & Myers 1885–1965* (privately printed, 1966), 826–27.

<sup>19</sup> Letters of Edwin Loeb, notebook, Box 2, History of Loeb & Loeb Vault Material. At the time, an applicant had to demonstrate that two members of the bar had personally examined his legal qualifications. Loeb's certificate of admission states that H.W. O'Melveny, along with another firm attorney, attested to his ability. Clary, *History of the Law Firm of O'Melveny & Myers*, 157–58.

<sup>20</sup> Dr. Norton Stern, "Report of an Interview with Edwin J Loeb," Jan. 25, 1967, 2, History of Loeb & Loeb Vault Material.

Street.<sup>21</sup> Edwin worked as a clerk and office boy for both lawyers as he studied for the bar. When he passed, in January 1909, the firm was renamed Kuster, Loeb and Loeb. Two years after the three lawyers joined forces, Kuster retired from the firm and moved to Carmel, and the firm then became known as Loeb and Loeb. At the time, a grand total of five Jewish attorneys practiced in Los Angeles.<sup>22</sup>

### III. BEGINNING IN PRACTICE

As was true in other U.S. cities, the Loeb's lineage as the educated, native sons of successful German-French families allowed them to appear more secular, distinguishing them from more recent immigrants from Eastern Europe who, along with large numbers of Midwestern Protestants, arrived in Los Angeles after World War I. The city's Jewish population also jumped, from 2,500 in 1900 to 20,000 by 1920,<sup>23</sup> due to a large influx of Eastern European Jews. As happened in other cities, the established Jewish immigrants were often embarrassed by and disdainful of the new immigrants' lack of English, odd customs, and obvious poverty.<sup>24</sup>

Moreover, the brothers' very different personalities worked to their collective advantage from the start. Edwin was the funny one, always up for a good time, according to friends and former colleagues who described him as "magnetic," "exuberant," "a great storyteller," "loved life," and "mischievous." His gregariousness undoubtedly helped the firm attract clients in the movie business where personal relationships and a flair for the dramatic, in addition to a shared ethnic identity, perhaps counted even more than in other areas.

By contrast, Joseph was formal, steady and serious, fastidious and careful — the "consummate business lawyer," according to Howard Friedman.<sup>25</sup> In the early years, Joseph tended to the firm's finances in addition to his clients.

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<sup>21</sup> Clary believed that Loeb could have remained at that largely Gentile firm. See Clary, *History of the Law Firm of O'Melveny & Myers*, 157–58.

<sup>22</sup> Neal Gabler, *An Empire of Their Own. How The Jews Invented Hollywood* (New York: Anchor Books, 1988), 272.

<sup>23</sup> Phil Blazer and Shelley Portnoy, *Wrestling with the Angels. A History of Jewish Los Angeles* (Encino, Cal.: Blazer Communications, 2007), 136.

<sup>24</sup> Frances Dinkelspiel, *Towers of Gold. How One Jewish Immigrant Named Isaias Hellman Created California* (New York: St. Martin's Press, 2008), 5, 160–61.

<sup>25</sup> Friedman also described Joseph Loeb as "dour" and even "fatalistic."

His cash ledgers and daily logs, written in a neat slanted script, detailed mundane expenses — the cost of his *Los Angeles Times* subscription, for instance, and the walking-around cash he gave his daughters — along with client fees received and the firm's bank balances. His logs also record each day's activities — cases worked on, client conversations, successes, losses, everyday details, and memorable events. His notes on a call to City Hall about uncollected garbage cans include the phone number he dialed, for future reference, and the 26-year old's impressions of the first "aeroplane in flight" he saw.<sup>26</sup>

Where Edwin loved to party, Joseph wrote poetry and collected Horatio Alger books. Studio heads and movie stars often began their letters to Edwin with a gushing "My dear Eddie"; correspondence to and from Joseph was more formal. Edwin had a longstanding Sunday golf date with Samuel Goldwyn at the Hillcrest Country Club while Joseph represented the firm on philanthropic boards. Joseph married once; his brother three times.<sup>27</sup> Joseph's discretion, caution, and legal skills built the firm's stable of corporate clients that as much as the movie studios were mainstays of the firm's practice for decades, beginning with the brothers' partnership with Kuster.

In their first years, Kuster, Loeb and Loeb did what many beginning lawyers do: everything and anything. Joseph Loeb's daily logs from 1908 through 1912 record work on divorces, wills for relatives, real estate purchases, contract disputes, and accident cases. But the young firm had strategic advantages: a Loeb cousin married into the family of Kaspere Cohn, a local wool merchant whose immigrant savings bank eventually became Union Bank & Trust Company of California, later Union Bank of California, and one of the firm's earliest, largest and most loyal clients. Joseph eventually served on the bank's board. Edward Kuster was the nephew of

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<sup>26</sup> "Went up on the roof with Edwin and Phil Crowds watching from the streets, window and roofs." Joseph Loeb, Jan. 4 and Jan. 13, 1909 entries, 1909 daily log, handwritten, Box 6, History of Loeb & Loeb Vault Material.

<sup>27</sup> In January 1909, a week after passing the bar, Joseph married Amy Cordelia Kahn of San Francisco. The couple had two daughters, Kathleen and Margaret. On their fiftieth wedding anniversary, he presented Amy with fifty roses. Edwin married his first wife, Bessie Brenner, the following year and also had two daughters, Marjorie and Virginia. He married a second time in 1938, to Ellen Van Every. In 1957, at age 70, he "eloped" to Las Vegas with Cally Alsap with whom he'd lived for the previous ten years at the Roosevelt Hotel on Hollywood Boulevard. He died in 1970 at the age of 84.

William G. Kerckhoff, a founder of Pacific Light and Power Company, and the utility also signed on with the young Loebes. The O'Melveny firm provided steady client referrals; Harris Newmark made introductions around town and advised the brothers on many matters.<sup>28</sup> Leon Loeb's philanthropic activities yielded other business for his sons (he was on the board of the French Hospital in what is now Chinatown, one of the first hospitals to serve the city's French community).

Early courtroom victories surely also helped to build the Loebes' business and reputation. Beginning in 1909, Joseph Loeb and Kuster represented a group of local wholesalers in their effort to eliminate a hefty surcharge the railroad companies imposed on railcars bringing goods in from San Francisco. Again, family connections helped. A Newmark uncle was president of the Associated Jobbers of Los Angeles; when another attorney declined to take the case, Loeb and Kuster got the chance. The firm won before the Interstate Commerce Commission the next year, knocking out the \$2.50 per car charge and earning a whopping \$25,000 fee.<sup>29</sup>

In another early railroad case, the young firm persuaded the State Railroad Commission, now the Public Utilities Commission, to eliminate discriminatory freight rates that penalized Los Angeles. The brothers' grandfather, Harris Newmark, considered the firm's lawyering "unusually brilliant" and the case "probably the most notable of all of the cases of its kind in the commercial history of Los Angeles."<sup>30</sup> Hyperbole aside, the discriminatory freight charge was a drag on local commerce and its elimination a major impetus to the region's growth.

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<sup>28</sup> Joseph Loeb's entries in his 1908 and 1909 daily logs include several references to advice and referrals from "Grandpa." Box 6, History of Loeb & Loeb Vault Material.

<sup>29</sup> Joseph Loeb Interview, 18–19. The case eventually landed at the U.S. Supreme Court which affirmed the I.C.C.'s judgment abolishing the so-called "switching charge," and facilitating business between Los Angeles and San Francisco. The case consumed a major portion of Joseph Loeb's and Edward Kuster's time beginning in the summer of 1908 and continuing through May 1910. Typical were these entries from February 10 and 12, 1909: "Switching case all day," and "Switching case at house all evening." Joseph Loeb, 1909 daily log, handwritten, Box 6, History of Loeb & Loeb Vault Material. Loeb's May 6, 1910 entry recording the young firm's victory, after the years of long hours, was characteristically understated: "Switching case decided our favor." Loeb, 1910 daily log, Box 6, History of Loeb & Loeb Vault Material.

<sup>30</sup> Harris Newmark, *My Sixty Years in Southern California, 1853–1913* (Boston: Houghton Mifflin Co., 1930), 637.

The firm's work for Union Bank as the region dramatically expanded in population and land mass laid the foundation for much of Loeb's lending, real estate and corporate work. In 1900, Los Angeles was the nation's thirty-sixth largest city, with a population of 102,479, as compared with San Francisco which ranked 9th with 342,782 residents. Just ten years later — a year after the firm began — Los Angeles residents numbered 319,198 to San Francisco's 416,192. By 1920, the population of Los Angeles had shot up to 576,673, edging out San Francisco, with 506,673.<sup>31</sup>

Annexation vastly increased the city's land mass. By 1910, Los Angeles had acquired the "Shoestring," a narrow strip of land leading from downtown south to the Port of Los Angeles, along with the harbor cities of San Pedro and Wilmington, and Hollywood. The opening of the Los Angeles Aqueduct in 1913 and the arrival of new railroad lines prompted more annexations, including large portions of the San Fernando Valley and the Westside, such that by the early 1920s, the city had more than tripled in size.

This white-hot expansion yielded steady real estate and incorporation work on behalf of clients with such fanciful names as the Wild Rose Mining Co. and the Rawhide California Mining Co.<sup>32</sup> This early boom and the relative absence of established corporations (compared with eastern and Midwestern cities), combined with the Loeb's deep local roots, brought the young lawyers clients who would later become major power brokers — bankers, real estate developers, and oil men as well as the studio chiefs — along with individuals who provided the brothers access to existing Los Angeles elites. This pattern differed somewhat from one that scholars have described in more established legal markets where Jewish lawyers often depended on small and mid-size Jewish clients and "Jewish" corporations to sustain their practices, as well as practice areas that WASP firms considered distasteful, including litigation and bankruptcy.<sup>33</sup>

Entertainment was a significant part of the Loeb's business from the start although, as noted above, the exact origin of the firm's initial involvement

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<sup>31</sup> See U.S. Bureau of the Census, *Population of the 100 Largest Cities and Other Urban Places in the United States, 1790-1900*, Tables 13-15, June 1998, <http://www.census.gov/population/www/documentation/twps0027/twps0027.html>.

<sup>32</sup> Others included Tampico Petroleum, Midway Field Oil Co., and the San Gabriel Valley Fertilizer Co.

<sup>33</sup> See e.g., Wald, "The Rise and Fall of WASP and Jewish Law Firms," 1851-53.

is unclear. Edwin's early litigation against two brothers on behalf of David Horsely over the so-called "L-Ko Comedies" did indeed prompt the producer brothers to retain Edwin in subsequent matters as they had jokingly promised to do.<sup>34</sup> And momentarily for the Loeb's, the L-Ko producers introduced Edwin to their brother-in-law — Carl Laemmle, founder and president of Universal Studios.<sup>35</sup>

By the early 1920s and through a chain of personal connections, the firm was representing Metro-Goldwyn-Mayer, United Artists, Universal, Loews, and other studios.<sup>36</sup> Edwin had become a close friend of Louis B. Mayer and by 1924, had helped him to organize the MGM behemoth. Irving Thalberg, another of Edwin's friends, was also instrumental in the consolidation of that studio.<sup>37</sup> Thalberg had been Laemmle's private secretary in Laemmle's New York office and in 1920, Laemmle asked the 19-year old Thalberg to accompany him on a visit to his Universal Studios in California — and to help him catch up on his correspondence while onboard the cross-country train trip. Once in California, Laemmle was apparently so impressed by his underling's acuity and maturity that he asked Thalberg to stay in Hollywood to watch over the studio.

Thalberg's ascendancy at Universal, then the largest movie studio in the world, was swift. But by 1922, after a failed romance with Laemmle's daughter, Thalberg was restless. He was already close friends with Edwin, his attorney, who introduced him to Mayer at Loeb's home. Neal Gabler writes that "all parties knew this was an audition," one which Thalberg apparently passed, joining Mayer the next year as vice president and production assistant.<sup>38</sup> At the same time, friction developed between Marcus Loew, the wealthy theater chain owner, and Adolph Zukor, head of Paramount Pictures. When Zukor took over the Famous-Players Lasky Corp. he made it difficult for the Loew Theaters to acquire pictures. In response, Loew acquired the Metro Film Co. in 1920 and the Goldwyn Pictures Co.

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<sup>34</sup> See account in text at note 3 above.

<sup>35</sup> Friedman Interview.

<sup>36</sup> Joseph Loeb Interview, 20. See also Gabler, *Empire*, 220–23.

<sup>37</sup> According to Scott Eyman, Edwin Loeb was at one time also the personal attorney for both Mayer and Thalberg. See Eyman, *Lion of Hollywood. The Life and Legend of Louis B. Mayer* (New York: Simon and Schuster, 2012), 250.

<sup>38</sup> Gabler, *Empire*, 221.

in 1924. Later that year, he bought the Louis B. Mayer Picture Corp., naming Mayer as studio head and Thalberg as production supervisor. Edwin helped put the deal together.

Meanwhile, the Loeb firm had undergone its own changes. When Joseph's friend Irving Walker joined in 1914, the firm became Loeb, Walker & Loeb. In the same year, Walker married Evangeline E. Duque, from one of the oldest Los Angeles WASP families who reportedly "disapproved strongly" of his association with "a Jewish law firm."<sup>39</sup> When Walker eventually departed, in 1938, the firm became Loeb and Loeb again, later adopting its current branding as Loeb & Loeb LLP.<sup>40</sup>

During these early years, Edwin and Joseph first became involved in civic activities that reflected their individual personalities and professional interests. Their motivations were sincerely philanthropic, as evidenced by their long involvement. Yet as Parikh and Garth noted in their analysis of the career of Chicago lawyer Philip Corboy, these activities also deepened the brothers' links to local elites, further strengthening the firm's reputation and bottom line.<sup>41</sup> In 1927, Edwin and others founded the Academy of Motion Picture Arts and Sciences to honor excellence in the field and, as discussed below, to counter growing pressure for unionization from the industry's talent and craft workers. Loeb did the legal work to acquire the academy's state charter as a nonprofit organization and he is often credited with the idea of holding the Oscar awards. The first awards ceremony took place in May 1929 at the Hollywood Roosevelt Hotel where Edwin later took up residence.<sup>42</sup>

Joseph directed his energies toward the Los Angeles County Bar Association as well as a number of local charities. Originally organized in 1878 as the Los Angeles Bar Association with the goal of founding a law library, the group drifted until the early 1900s. Loeb joined in 1906 or 1907 as a brand-new lawyer and quickly became an active member. He helped

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<sup>39</sup> Loeb History, 7.

<sup>40</sup> Email from former Loeb partner Robert Holtzman, June 23, 2011 (on file with the author).

<sup>41</sup> Sara Parikh and Bryant Garth, "Philip Corboy and the Construction of the Plaintiffs' Personal Injury Bar," *Law & Social Inquiry* 30 (2005).

<sup>42</sup> See "History of the Academy," *The Academy of Motion Picture Arts and Sciences*, <http://www.oscars.org/academy/history-organization/history.html>; [Levi], "Loeb and Loeb, Pioneer Los Angeles Law Firm," 3; Loeb History, 11.



to revise the bylaws, eventually chaired the attorney discipline committee, and participated in a special committee that made recommendations on statewide court practices regarding attorney fees.<sup>43</sup> Loeb served as a trustee of the bar association from 1915 to 1921, and the Loeb firm produced two association presidents, Irving Walker in 1931 and Herman Selvin in 1951.<sup>44</sup>

#### IV. EARLY ENTERTAINMENT PRACTICE (1908–1940)

As noted above, Loeb & Loeb's earliest entertainment work involved helping to incorporate and structure a number of the major studios along with contractual matters involving those clients and others. This work drew the firm into three of the major legal issues of those early years: the long-running challenge to the Motion Picture Patents Company (MPPC), otherwise known as the Edison Trust; the Hays codes; and early efforts at industry unionization.

Legal historian Robert Gordon has identified lawyers as a driving force in the direction of large enterprises, or as what Kai Bird termed “lawyer-servant[s] to the most powerful private interests.”<sup>45</sup> That description certainly captures Edwin Loeb's role in the emerging entertainment industry and Joseph's in the Los Angeles corporate community. Gordon focuses on the innovations or “products” that nineteenth century corporate lawyers created — “the legal forms they devised rather than their presence in the boardroom.”<sup>46</sup> He stresses the legal-technological innovations lawyers made, focusing on such corporate “products” as new forms of security (e.g., preferred

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<sup>43</sup> W. W. Robinson, *Lawyers of Los Angeles: A History of the Los Angeles Bar Association and the Bar of Los Angeles County* (Los Angeles: Los Angeles Bar Assn., 1959), 155.

<sup>44</sup> The Beverly Hills Bar Association, founded in 1931, attracted a large number of entertainment practitioners, many of whom were Jewish. According to Friedman and Holtzman, Loeb & Loeb did not join the association until the firm opened its Beverly Hills office, in 1961, after acquiring the entertainment practice of Louis Blau. Blau represented Stanley Kubrick and Walter Matthau, among others. Email message to the author from Robert Holtzman, Nov. 2, 2011 (on file with the author); phone interview with Howard Friedman, Nov. 3, 2010.

<sup>45</sup> Gordon, “Legal Thought and Legal Practice”; Kai Bird, *The Chairman. John J. McCloy. The Making of An American Establishment* (New York: Simon and Schuster, 1992), 662.

<sup>46</sup> Gordon, “Legal Thought and Legal Practice,” 78–80.

stock and convertible debentures) and organization (e.g., the trust and holding company). These new “products” and institutions offered opportunities as well as risks for corporate clients that, with their lawyers’ adept guidance, could help legitimize their business enterprises, control competition, generate new revenues, and even change the course of world affairs. Development of the “poison pill” by the Wachtell Lipton firm in the 1980s is a classic example. That innovation or “product” both allowed corporations to fend off hostile tender offers and made Wachtell the go-to legal firm for takeover defenses.<sup>47</sup> Others, including Kai Bird, view power as emanating equally from high-level advice and brokering. John J. McCloy — Wall Street partner, Chase Manhattan Bank chairman, and advisor to successive presidents — is Bird’s exceptional example.<sup>48</sup> In both roles, lawyers like McCloy and the Loeb set in motion a virtuous circle of sorts, amplifying their own power and influence as they did the same for their clients.

Edwin Loeb, working on behalf of his clients, helped create much of the infrastructure of the modern entertainment industry, including agreements regarding talent representation and labor organization, film production, exhibition, arbitration, revenue and royalty distribution, and copyright. Legal innovation continued throughout the twentieth century as new media emerged (for example, television and home video systems) and, if anything, it has intensified in recent decades with Internet-based communication and entertainment.

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<sup>47</sup> See Michael J. Powell, “Professional Innovation: Corporate Lawyers and Private Lawmaking,” *Law & Social Inquiry* 18 (1993): 423 (providing a detailed history of the “poison pill”).

<sup>48</sup> The Harvard-educated McCloy had an extraordinary career and outsize influence. He was the Assistant Secretary of War from 1941 to 1945 and a crucial voice in setting — and implementing — U.S. military priorities. McCloy helped construct the legal arguments to justify the internment of Japanese Americans as well as advised on military strategy in North Africa. In 1949, McCloy became the U.S. High Commissioner for Germany, overseeing the creation of the Federal Republic of Germany and, at his direction, the campaign to pardon and commute the sentences of Nazi criminals. Originally a partner at Cravath and later Milbank, Tweed, Hadley & McCloy, he went on to become chairman of Chase Manhattan Bank, the Ford Foundation, and the Council on Foreign Relations. As an advisor to Presidents Kennedy, Johnson, Nixon, Carter and Reagan, McCloy served on the Warren Commission and was the primary negotiator on the Presidential Disarmament Committee. Bird, *The Chairman*.

## A. MPPC CHALLENGES

By the 1890s, Thomas Edison, through his Edison Manufacturing Company had acquired the rights to a new motion picture projection device, the Phantascope, which he renamed the Vitascope and marketed as an Edison invention. By 1908, when other companies had developed their own film projection systems and began to compete with Edison, he moved to copyright his productions and, in concert with nine other companies including Biograph, formed the Motion Picture Patents Company (MPPC). In an effort to control the industry and shut out smaller producers, the MPPC required competitors to buy licenses to use his cameras and filed patent infringement lawsuits against film producers, distributors and exhibitors who failed to do so. This strategy essentially reduced American production to two companies, Edison and Biograph, which used a different camera design.

Edison set a January 1909 deadline for all companies to comply with his licensing requirement, a move that drew in a number of smaller studios including Loeb client, the Selig Studios. However, several other companies, led by another Loeb client, Carl Laemmle, refused to go along. These so-called “independents” viewed the MPPC as a trust in violation of the Sherman Anti-Trust Act, and continued using unlicensed equipment and imported film stock, creating their own underground market.

Their defiance coincided with a major surge in the audience for popular entertainment and a corresponding increase in the number of nickelodeons and other theaters. The MPPC tried to bully non-licensed independents into line with patent claims. An MPPC’s subsidiary, the General Film Company, underscored that intention with violence, confiscating unlicensed equipment, trying to block distribution of unlicensed films, which eventually grew to include those produced by the Disney studio, and threatening renegade theater owners with bodily harm.<sup>49</sup>

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<sup>49</sup> Marc Elliot characterized the independent studios as “mostly immigrant Jewish filmmakers” led by Laemmle, and argued that the “goon squads” Edison hired, the suspicious nickelodeon fires, and the smashed arcades helped prod New York producers like Laemmle to migrate west and set up shop in California, out of range of Edison’s process servers. Marc Elliot, *Walt Disney: Hollywood’s Dark Prince* (New York: Birch Lane Press, 1993), 48–49. On Disney, see also, Neal Gabler, *Walt Disney. The Triumph of American Imagination* (New York: Knopf, 2006).

In court, Edison initially prevailed with judges who held that antitrust claims were not a defense to patent infringement by violating companies. Yet many independents continued to use MPPC's patented film technology, figuring that the chances of getting caught were minimal and that the profits to be reaped outweighed whatever fines or adverse judgments they might have to pay.<sup>50</sup> Some independents, including Laemmle's Independent Motion Picture Co. (the predecessor to Universal) and Adolph Zukor's Famous Players, launched their own productions and gradually shifted their focus from exhibition to production as the nickelodeon boom crested, around 1911.<sup>51</sup> By that time, there were as many independent producers as signatories to the MPPC agreement.<sup>52</sup>

As a result, when the Justice Department finally began antitrust proceedings against Edison's MPPC in August 1912, the company may have already lost much of its clout. Federal judges hammered the final nail in MPPC's coffin; following a 1915 decision finding that the company had violated Section 1 of the Sherman Act and the Supreme Court's 1918 decision to dismiss the group's appeal,<sup>53</sup> the MPPC dissolved.

The demise of the MPPC opened the way for the studio system that quickly came to dominate Hollywood production. As Alexandra Gil noted, "men like William Fox, Carl Laemmle, Adolph Zukor, Jesse Lasky, and Louis B Mayer were just small independent businessmen during the reign of the MPPC, but they began to see the opportunities available to them. Many, like Mayer and Fox, began as theater owners and exhibitors, but soon realized they liked production better."<sup>54</sup>

Although I was unable to find specific evidence of the Loeb's involvement in these patent and antitrust disputes on behalf of MPPC signatories

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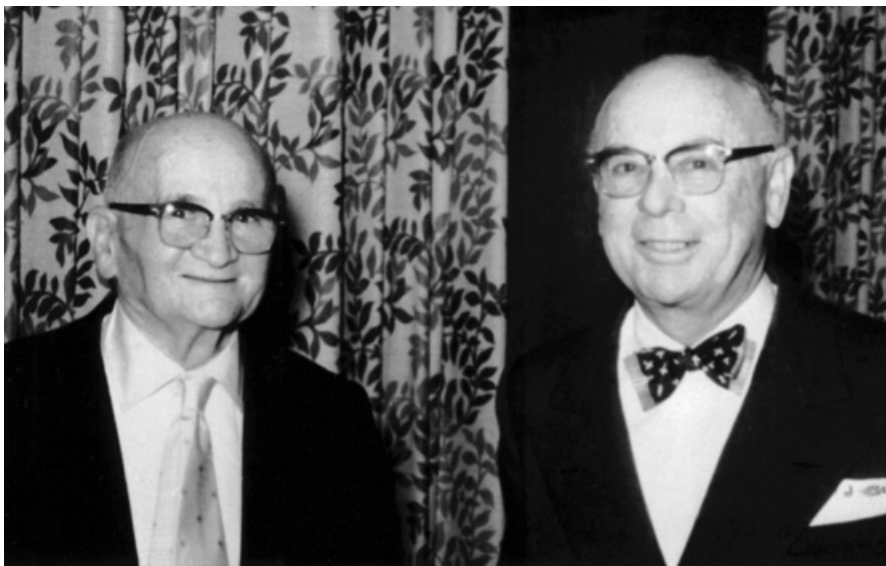
<sup>50</sup> Alexandra Gil, "Breaking the Studios: Antitrust and the Motion Picture Industry," *NYU J. Law and Liberty* 3 (2008): 93, [http://www.law.nyu.edu/ecm\\_dlv3/groups/public/@nyu\\_law\\_website\\_\\_journals\\_\\_journal\\_of\\_law\\_and\\_liberty/documents/documents/ecm\\_pro\\_060965.pdf](http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_website__journals__journal_of_law_and_liberty/documents/documents/ecm_pro_060965.pdf). On the origins of the MPPC, see also J.A. Aberdeen, "The Edison Movie Monopoly," *Hollywood Renegades Archive*, [http://www.cobbles.com/simpp\\_archive/edison\\_trust.htm](http://www.cobbles.com/simpp_archive/edison_trust.htm).

<sup>51</sup> Aberdeen, "The Edison Movie Monopoly."

<sup>52</sup> Gil, "Breaking the Studios," 94.

<sup>53</sup> *United States v. Motion Picture Patents Co.*, 225 F. 800, 808 (E.D. Pa., 1915); Gil, "Breaking the Studios," 95.

<sup>54</sup> Gil, "Breaking the Studios," 95–96.



LOEB & LOEB — EDWIN (LEFT) AND JOSEPH  
ON THE OCCASION OF EDWIN'S 75TH BIRTHDAY, 1961.

*Courtesy Loeb & Loeb LLP*

or independents, the outcome clearly freed fledgling studios and Loeb clients like Universal and Warner Brothers to ramp up production on shorts as well as the new, feature length films that began to draw audiences in the 1920s. The studios' rapid expansion and vertical integration depended on the creativity of their attorneys who devised an array of new legal instruments and protocols to facilitate this growth. Those instruments — including contracts governing talent, studio and theater acquisition, production, screening, and revenue distribution — underscore assertions by Gordon and Parikh and Garth, among others, with respect to the key role lawyers have played in other economic domains by controlling competition and generating new revenues. The Loeb firm's work in this regard enhanced the stature and wealth of their clients and, in the process, burnished the firm's reputation as a power broker operating at the highest echelons of the blossoming entertainment industry. That success, in turn, reinforced their status within the broader Los Angeles economy and legal community.

The MPPC antitrust litigation also proved to be the first battle in what became a long-running war for control of film production and theatrical distribution that would continue into the 1960s (and indeed continues today

over new forms of content delivery). While these contests may seem relatively straightforward if almost quaint compared with today's complex claims over rights, profit points, intellectual property and piracy, they involved the major law firms of the day in often vicious, bet-the-company litigation.<sup>55</sup>

Loeb & Loeb was a repeat player, with clients on both sides of the ongoing litigation. Starting in the late 1920s, the studios' effort to vertically integrate production, distribution and exhibition triggered new claims of monopoly and restraint of trade. The government accused seven major studios of controlling almost all U.S. movie theaters, either through ownership of their own chains or "block booking," forcing independent theaters to sign contracts with the studios that required them to show a given number of films.<sup>56</sup> By 1940, government and studio representatives had worked out a compromise in which the studios would retain their theaters but limit block booking. Yet dissatisfaction with this deal prompted the leading independent studios to form the Society of Independent Motion Picture Producers (SIMPP) which pushed the matter back into court. Among those independents were Loeb clients Samuel Goldwyn, Mary Pickford, and Charlie Chaplin. A New York trial court gave the independents a partial victory in 1945 but both sides appealed and in 1948, in *U.S. v. Paramount Pictures, Inc.*, the U.S. Supreme Court affirmed the earlier verdicts, finding the studios guilty of violating antitrust law. Under terms of the consent decree, the studios had to divest themselves of their theater chains and end block booking by agreeing to sell all films individually.<sup>57</sup> The case was returned to the U.S. District Court for the Southern District of New York where the parties negotiated a stipulated judgment known as the "Paramount Decree" or the "Consent Decree." Yet the litigation continued for years afterward with Loeb & Loeb a major player. Former partner Robert Holtzman, who joined the firm in the 1950s, recalled that these cases quickly came to dominate his work for the firm and that of many of his colleagues and remained a major matter.<sup>58</sup>

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<sup>55</sup> Clary, *History of the Law Firm of O'Melveny & Myers*, 505–06, 582–85. (For example, O'Melveny represented Paramount Studios during the 1920s and '30s on labor-relations and other matters).

<sup>56</sup> The majors included Paramount, Universal, MGM, Twentieth-Century Fox, Warner Bros., Columbia, and RKO.

<sup>57</sup> Gil, "Breaking the Studios," 98–118; *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948).

<sup>58</sup> Interview with Robert Holtzman, Jan. 19, 2011 (on file with the author).

## B NEW THREAT: CENSORSHIP

The demise of the MPPC freed producers from the threat of patent infringement claims yet also prompted the studio heads to join forces. Their goals were twofold: first, to create a regulatory body that would monitor quality and impose censorship standards and second, to foil efforts by talent and craft employees to organize.

Since the U.S. Supreme Court had refused, in 1915, to extend First Amendment protections to motion pictures,<sup>59</sup> state and local governments, already under pressure from religious and temperance groups, moved to bolster their earlier efforts to regulate movie content through censorship boards. Fears that movies glorified and encouraged amoral, even illegal, behavior dogged the young industry from its earliest days but took on new urgency for producers with the 1921 arrest and trial of silent-film comedian Roscoe “Fatty” Arbuckle for rape and murder. Although Arbuckle was acquitted of those charges after two mistrials, the incident is considered a major impetus for the decision by industry leaders in 1922 to preempt state and local censorship by hiring lawyer and former Postmaster General Will Harrison Hays to lead the new Motion Picture Producers and Distributors of America (MPPDA).<sup>60</sup>

Hays was tasked with “cleaning up” pictures, a role for which his conservative credentials as a Presbyterian deacon and past Republican Party chairman well suited him. His main role was to persuade individual state censor boards not to ban specific films outright and to reduce the financial impact of the boards’ cuts and edits. States imposed varying standards so studios might have to produce different versions of the same film to pass muster with multiple state censorship boards. Hays initially operated by trying to intuit what different boards might accept but by 1927 had developed a set of guidelines he called, “The Don’ts and Be Carefuls,” a list of eleven subjects to

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<sup>59</sup> *Mutual Film Corporation v. Industrial Commission of Ohio*, 236 U.S. 230 (1915).

<sup>60</sup> Arbuckle’s arrest and other scandals involving movie actors, producers, and directors prompted a spate of resolutions in 1921 and 1922 condemning sinfulness in films from the Southern Baptist Conference, the Central Conference of American Rabbis, the General Federation of Women’s Clubs, and Catholic, Episcopalian, and Methodist organizations. In 1921 alone, nearly one hundred censorship bills were introduced in the legislatures of thirty-seven states. Ben Yagoda, “Hollywood Cleans Up its Act,” *American Heritage* 31 (1980), [http://beta2.americanheritage.com/articles/magazine/ah/1980/2/1980\\_2\\_12.shtml](http://beta2.americanheritage.com/articles/magazine/ah/1980/2/1980_2_12.shtml).

be avoided in films, and twenty-six to be treated with special care. Among the “Don’ts” were “miscegenation,” “ridicule of the clergy,” and “scenes of actual childbirth;” the “Be Carefuls” included “excessive or lustful kissing, particularly when one character or another is a ‘heavy.’”<sup>61</sup>

Compliance was difficult to enforce. By 1930, Hays’ initial guidelines were superseded by the Motion Picture Production Code, drafted by a priest and lay Catholics. Under increasing pressure, producers eventually agreed to submit all scripts and completed films to the Hays office. But the staff’s decisions could be overridden by an appeals board composed of studio executives and lawyers — “who, following a philosophy of mutual back-scratching in hard times, were hardly strict constructionists.”<sup>62</sup>

The code persisted in various forms through the 1930s, successfully blocking efforts at federal censorship as well as several threatened state initiatives. But the successive codes and guidelines locked producers and their lawyers in continuous skirmishes with religious conservatives and Hays over storylines, words, and violent or provocative visuals. The advent of sound raised new challenges or opportunities, depending on one’s perspective, bringing “the clink of highball glasses, the squeal of bedsprings, [and] the crackle of fast conversation to a thousand Main Streets.”<sup>63</sup>

Censorship may have been the public rationale for the Hays office but monopoly control of the industry by the producers was its main goal, according to J. Douglas Gomery. Trade associations multiplied and flourished during the 1920s, according to Gomery, as the federal government “openly promoted” their establishment and endorsed (tacitly if not overtly) their anti-competitive goals.<sup>64</sup>

But disputes within the industry did surface, of course, particularly between distributors and exhibitors, and the Hays office assumed a major role here as well as industry spokesman and power broker. According to one estimate, there were some 500,000 to 700,000 contracts for film

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<sup>61</sup> “List of ‘Don’ts and Be Carefuls’ adopted by California Association for Guidance of Producers, June 8, 1927,” Appendix D in Raymond Moley, *The Hays Office* (Indianapolis: Bobbs-Merrill Co., 1945), 240–41.

<sup>62</sup> Yagoda, “Hollywood Cleans Up its Act.”

<sup>63</sup> *Ibid.*

<sup>64</sup> J. Douglas Gomery, “Hollywood, the National Recovery Administration, and the Question of Monopoly Power,” *Journal of the University Film Assn.* XXXI:2 (1979): 47, 48.



exhibition entered into annually by 1922, with litigation over the terms of these deals growing rapidly. In response, the Hays office created arbitration boards composed of exhibitors and distributors in several major cities that heard complaints regarding violation of contract terms. During its first six years, the boards heard over 75,000 cases and the number of lawsuits filed in court dropped precipitously.<sup>65</sup>

For Edwin Loeb, a trusted counselor to several studio heads, the Hays office appeared to be a potential source of income along with an avenue for continued influence within the industry. In December 1931, he began to work directly for Hays; his appointment “came at the insistence of the leading producers in Hollywood and the ruling executives in the New York offices of the studios.”<sup>66</sup> Loeb temporarily suspended his law practice to take on the assignment, presumably orchestrating some of the “mutual backscratching” among producers, between distributors and exhibitors, and with the Hays office as well as with state censors and Justice Department regulators. It must have seemed like a good idea at the time since the Depression had cut into the firm’s revenue while Edwin apparently continued to spend freely on European travel and other personal indulgences.

But the Hays office, located in New York, was experiencing hard times as well, prompting Loeb to submit his resignation not long after he signed on, citing Hays’s plan to cut expenses and reduce compensation. In a series of letters to Hays, other lawyers, and studio heads, he sought to collect what he believed he was owed. In April 1932, Loeb wrote Hays that he had “rendered special services to the producers [on behalf of the Hays office] for a period of eight or nine months prior to December [1931] with the understanding that a substantial fee was to be paid to me for the same.” Loeb noted that he waived that fee, based on his understanding with Hays about his compensation once he formally joined the code office.<sup>67</sup>

“I am badly up against it as a result of not having the money,” he wrote to a New York attorney friend the following year, claiming that Hays owed

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<sup>65</sup> [anon.] “Motion Picture Arbitration System,” typewritten paper, Mar. 27, 1947, Box 6, History of Loeb & Loeb Vault Material.

<sup>66</sup> Loeb History, 12; Holtzman interview.

<sup>67</sup> Letter, Edwin Loeb to Will H. Hays, Apr. 21, 1932, Box 5, History of Loeb & Loeb Vault Material.

him \$13,946.21.<sup>68</sup> The office derived its revenue from studio payments for reviewing scripts and footage; Warner Brothers, for example, paid Hays \$1,000 weekly in 1933 for this service. With Hays holding onto cash to meet his own expenses, Loeb's friends openly lobbied on his behalf and worked behind the scenes with the firm's studio clients to secure his back pay.

Loeb took his leave at a good time. By 1933, the Depression left some studios near bankruptcy or in receivership. In the face of stepped-up pressure from the Catholic Church and the National Legion of Decency, producers agreed to disband their liberal appeals board and levy a \$25,000 fine for producing, distributing or exhibiting any picture without approval from the Hays office. That agreement would last into the 1960s.<sup>69</sup>

## C. UNION EFFORTS AND THE FOUNDING OF THE ACADEMY

### 1. *Craft workers*

The second impetus for collaboration among the studios after the MPPC's demise was to counter the first serious stirrings among industry guilds and labor unions. Here again Edwin Loeb was a key player, this time as one of the founders of the Academy of Motion Picture Arts and Sciences, which represented producers in early labor negotiations. The Loeb's initial years in practice coincided with the first major wave of union organization in

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<sup>68</sup> Letter, Edwin Loeb to Bertram S. Nayfack, Esq., May 29, 1933, Box 5, History of Loeb & Loeb Vault Material.

<sup>69</sup> The code system broke down completely with the 1966 release of "Who's Afraid of Virginia Woolf," which included the phrase "hump the hostess" and the word "screw." But deep cracks were visible by the early 1950s; as television, with its family-friendly fare, became ubiquitous, film producers fought for audiences in part by offering more sex and violence. Meanwhile, Supreme Court decisions chipped away at the code's power and rationale. As noted above, in its 1948 *Paramount* decision, the Court ruled that studios could no longer own giant theater chains, and, in 1952, it held, contrary to the 1915 *Mutual* decision, that movies were in fact included within constitutional freedom of speech guarantees. As a result, censorship was no longer a threat and independent producers could distribute films relatively easily without code approval. So when Otto Preminger's "The Moon Is Blue" was refused a seal in 1953, in part because the script included the word "pregnant," its distributor, United Artists, resigned from the MPPDA and released the film anyway. Yagoda, "Hollywood Cleans Up its Act;" Amy K. Spees, "Founder-Keeper," *Los Angeles Daily Journal Extra*, Feb. 23, 2004, 15.

Los Angeles broadly and in the new entertainment industry in particular. For example, beginning in the summer of 1909, through negotiation and short boycotts, stage employees, musicians, electricians and projectionists won higher wages and other concessions from several local theater owners.<sup>70</sup> The building trades won some victories as well; by October 1911, the Los Angeles Central Labor Council counted ninety-one affiliated organizations representing approximately 15,000 carpenters, sheet metal workers, plumbers, lathers, painters, and structural ironworkers. What Grace Stimson termed “the organizing fever” among local building trades was critical to this brief notable period of union success.<sup>71</sup>

These early successes were tempered by the bombing of the *Los Angeles Times* building in October 1910 and the guilty pleas by brothers John and James McNamara in December 1911. These events, plus the *Times*’ ceaseless campaign against the closed shop, ushered in a “trying period of readjustment, of declining membership, of waning vitality.” Within a few years, the open shop had become a distinctive feature of the city’s economy and remained so for decades to come — a stone in the shoes of the men and women who labored in the movie business.

As lifelong Republican voters,<sup>72</sup> the Loebes were likely untroubled by this anti-union push, especially since their major entertainment clients were more often the studios and theater owners, many of whom were outspoken Republicans, than the talent or craft workers. (Indeed, decades later, during the McCarthy era, the firm would loyally — and vigorously — represent their producer clients who had blacklisted writers, directors and actors suspected of Communist ties.)

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<sup>70</sup> The “moving picture machine operators” first organized in 1907. Grace Heilman Stimson, *The Rise of the Labor Movement in Los Angeles* (Berkeley: Institute of Industrial Relations, 1955), 360, 333.

<sup>71</sup> *Ibid.*, 435.

<sup>72</sup> Donald Critchlow recounts a dinner party Edwin Loeb attended in 1932 that devolved into an angry debate between supporters of Herbert Hoover and the then-presumed Democratic nominee, Al Smith. Loeb and his client Louis B. Mayer bet Irving Thalberg that Al Smith would not be the next president and put \$300 down on another bet that Hoover would win reelection. Critchlow writes that those bets “reveal just how far out of touch many studio heads [and perhaps their attorneys] were with the actual political climate of the country.” Critchlow, *When Hollywood was Right. How Movie Stars, Studio Moguls, and Big Business Remade American Politics* (New York: Cambridge Univ. Press, 2013), 15.

Despite the repercussions that followed the *Times* bombing, organizing efforts continued. Workers behind the camera won the earliest significant victories, followed by creation of talent guilds representing writers and actors. When studio production took off in the 1920s, the two strongest industry unions were the International Alliance of Theatrical Stage Employees (IATSE), which included cameramen, carpenters, grips and other backstage workers as well as theater projectionists, and the American Federation of Musicians (AFM), representing the musicians who played during silent movies. Both unions were affiliated with the AFL.<sup>73</sup>

Their first significant accomplishment was the Studio Basic Agreement, signed in November 1926 between the crafts guilds and the Association of Motion Picture Producers. The hard-won pact followed years of strikes and boycotts triggered, in part, by the studios' decision in 1921 to cut the wages of studio craftsmen and lock out between 800 and 1,200 IATSE craftsmen in an effort to break the union. This move came despite rising studio profits from movies. The basic agreement did not establish a closed shop but it granted recognition to IATSE and other craft unions, including musicians; established an eight-hour day with higher wages for Sundays and overtime; and created a mechanism for settling future disputes with producers.<sup>74</sup> Moreover, the advent of "talkies" so expanded the market for instrumentalists in Hollywood that by 1930, the musicians' local had become the third largest in its trade in the nation.<sup>75</sup>

## 2. *Talent guilds*

Creation of the Actors Equity Association in 1913 was the first significant attempt to organize talent employees, in this case, stage actors. Equity subsequently affiliated with the Associated Actors and Artistes of America that had jurisdiction over the Motion Picture Players Union representing Hollywood bit players. By the early 1920s, Equity tried to represent major film actors. The bigger film stars then belonged to the Screen Actors of America, more a social club than labor union, and with their higher compensation and visibility, they had little interest in fighting to improve the lot of their less well-paid brethren.

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<sup>73</sup> Louis B. Perry and Richard S. Perry, *A History of the Los Angeles Labor Movement, 1911-1941* (Berkeley: Institute of Industrial Relations, 1963), 320.

<sup>74</sup> *Ibid.*, 323-25.

<sup>75</sup> *Ibid.*, 326.



TWENTY FOUNDERS OF THE ACADEMY OF MOTION PICTURE ARTS AND SCIENCES IN 1927, THE YEAR OF THE ACADEMY'S FOUNDING. STANDING, LEFT TO RIGHT, ARE CEDRIC GIBBONS, J. A. BALL, CAREY WILSON, GEORGE COHEN, EDWIN LOEB, FRED BEETSON, FRANK LLOYD, ROY POMEROY, JOHN STAHL, HARRY RAPP; SEATED, LOUIS B. MAYER, CONRAD NAGEL, MARY PICKFORD, DOUGLAS FAIRBANKS, FRANK WOODS, M. C. LEVEE, JOSEPH M. SCHENCK, FRED NIBLO.

*Courtesy AMPAS.*

Moreover, with the demise of the Edison Trust, producers essentially had no bargaining unit, leaving Equity without a negotiating partner.

In 1922, producers asked Will Hays to draft a standard contract to, in effect, represent them in talent negotiations.<sup>76</sup> Although Hays declined, the request is another indication of the cozy relationship between Hays and leaders of the industry he was tasked with monitoring. However, Hays did eventually gather a committee of lawyers representing the major studios to advise him on labor matters, including Edwin Loeb and O'Melveny's Walter Tuller, representing Paramount.<sup>77</sup>

The group's immediate goal was to foil Equity's continued efforts to organize film actors, and by May 1927, producers responded by founding the Academy of Motion Picture Arts and Sciences aimed in large part at doing

<sup>76</sup> *Ibid.*, 338.

<sup>77</sup> Clary, *History of the Law Firm of O'Melveny & Myers*, 505–06.

that. As noted above, Loeb was one of the thirty-six original Academy founders and presumably did the legal work to secure the group's nonprofit state charter. In a photo of the founding members, he stands just behind actress Mary Pickford and the Academy's first president, Douglas Fairbanks, surrounded by other friends and clients including, Louis B Mayer, George Cohen, Fred Eastman and others.<sup>78</sup> Edwin's position, nearly at the center of the photo, powerfully illustrates Gordon's and Bird's characterization of lawyers as indispensable go-betweens who create infrastructures that, in turn, solidify their clients' legitimacy and stature.

Barely a month after the Academy coalesced, in June 1927, producers announced their intention to slash the salaries of all non-contract players and to "ask" contract players to swallow a pay cut. Predictably, the move was a boon to Equity's organizing efforts, so much so that Fairbanks quickly stepped in and helped persuade producers to postpone the salary cuts. Under Fairbanks's leadership, the Academy began negotiations that, by December 1927, produced a basic agreement covering independent actors, writers and directors.<sup>79</sup>

Yet that contract failed to address abusive working conditions, including workdays of up to twenty hours and workweeks as long as eighty hours, lack of pay for rehearsals, and lump sum payments with no stipulated production termination date. These defects, along with the absence of compulsory arbitration of disputes, emboldened the nascent talent guilds. As sound films continued to draw New York stage actors to California — many of whom were militant unionists — dissatisfaction festered on both sides. By June 1929, Equity had called a strike and ordered all members — as well as non-member film actors — to stop working for producers who did not agree to a closed shop.

The strike lasted through the summer but ultimately failed because the more influential Hollywood actors didn't recognize Equity's claim to represent them. Once again, the Academy stepped in and by February 1930, had negotiated a new standard contract with a committee of twenty-one actors and all the major producers that remedied several of the defects in the 1927 agreement. Players won an eight-hour day with provisions for

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<sup>78</sup> [Linda Levi], "Loeb and Loeb, Pioneer Los Angeles Law Firm," 3; Loeb History, 11.

<sup>79</sup> Perry and Perry, *A History of the Los Angeles Labor Movement*, 338–39.

overtime and compulsory arbitration and, in exchange, actors agreed not to strike for the period of the contract. In February 1931, all sides voted to renew the agreement for four years.<sup>80</sup> I have not found specific evidence of Edwin's role in these negotiations but given his considerable involvement in the Academy, it's hard to imagine he was absent from the process or unhappy with the outcome.

In these early years, the Academy was both a promoter of film achievement and technical innovation as well as the producers' de facto bargaining arm. These dual roles initially worked to the producers' advantage. And while neither Edwin nor his brother were likely strong unionists, the Academy's desire for harmonious labor relations — as opposed to an all-out war to preserve the open shop — likely dovetailed with Edwin Loeb's personality and go-along-to-get-along approach to practicing law. However, as the Depression cut severely into studio profits and triggered layoffs, actors and writers chafed at what they saw as the Academy's role as, essentially, a company union. In 1933, under the aegis of the short-lived National Recovery Act (NRA),<sup>81</sup> they revived the languishing Screen Writers Guild and the Screen Actors Guild to push back against a new round of threatened salary cuts.

Edwin Loeb may have played a key role here as well. Under the NRA, an industry appointee drafted and administered the governing codes for each industry and among other responsibilities, set wages, hours and working conditions. Some former Loeb partners have speculated that Edwin's role as Will Hays' west coast chief meant he also served as the NRA's film "czar" but I found no evidence for that claim. Raymond Moley's account of the Hays office does not mention Loeb but does refer to New York lawyer Sol A. Rosenblatt, tapped by Washington as "Division Administrator" to "co-ordinate the efforts of the three branches of the industry to devise the film code."<sup>82</sup> Other

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<sup>80</sup> Ibid., 342.

<sup>81</sup> The U.S. Supreme Court declared the mandatory code provisions of the NRA to be unconstitutional in *Schechter Poultry Corp v. United States*, 295 U.S. 495 (1935).

<sup>82</sup> Moley, *The Hays Office*, 203–04. Hays' own memoirs do not mention Loeb either. Will H. Hays, *The Memoirs of Will H. Hays* (New York: Doubleday & Co., 1955). Moley himself was an interesting fellow. Recruited to Roosevelt's "Brain Trust" while a Columbia Law School professor, he advised the New York governor in his 1932 presidential run and then became a powerful figure in FDR's first administration as a speechwriter, penning such phrases as "the Forgotten Man." Moley initially lauded Roosevelt's New

accounts are consistent.<sup>83</sup> Yet even if he wasn't formally appointed as film "czar," Loeb was on the Hays payroll during this period and his role as an intermediary if not a regulator is another indication of his status as a trusted industry broker.

By 1935, the National Labor Relations Act replaced the NRA, explicitly granting employees the right to form and join unions, and obligating employers to bargain collectively with unions selected by a majority of the employees. Notwithstanding the law, labor relations remained bitterly confrontational. The Screen Actors and Screen Writers Guilds won NLRB certification by the late 1930s but anger over compensation and working conditions continued to simmer and sparked grinding organizing campaigns among new employee groups, for example, animators. Studio heads — including Loeb client Irving Thalberg<sup>84</sup> — believed they could hold the line on contract concessions.<sup>85</sup> Louis Nizer represented Fleischer Studios during the 1930s as it battled animators; Gunther Lessing, Walt Disney's longtime general counsel, carried out the company's ruthless response to animators who struck that studio in 1941.<sup>86</sup> And although many ultimately

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Deal for having "saved capitalism in eight days" but beginning in 1933 became one of the sharpest conservative critics of Democratic economic policy. In 1970, President Richard Nixon awarded Moley the Presidential Medal of Freedom.

<sup>83</sup> Gomery wrote that in July 1933 NRA head Hugh Johnson appointed Rosenblatt as deputy administrator in charge of drawing up the motion picture industry code; Gomery, "Hollywood, the National Recovery Administration, and the Question of Monopoly Power," 50. Rosenblatt is elsewhere referred to as "NRA Division Administrator" and a "loyal New Dealer." See "Cinema: Stars and Salaries," *Time*, July 30, 1934, <http://www.time.com/time/magazine/article/0,9171,754385,00.html>; Thomas Doherty, "A Code is Born," *Reason.com*, Jan. 2008, <http://reason.com/archives/2007/12/04/a-code-is-born>.

<sup>84</sup> Thalberg swore he would die before accepting the Screen Actors Guild. In 1936, Thalberg died and in 1937, the studios accepted defeat and signed the first meaningful agreement with actors according to "SAG Timeline," Screen Actors Guild, <http://www.sag.org/sag-timeline>.

<sup>85</sup> By the 1930s, the studio heads explicitly linked their fight against union representation to the broader campaign against communism and fascism, justifying efforts to achieve an open shop and, of course, the witch-hunts of the Blacklist years, per Critchlow, *When Hollywood was Right*, 42–65.

<sup>86</sup> See Tom Sito, *Drawing the Line: The Untold Story of the Animation Unions from Bosko to Bart Simpson* (Lexington: Univ. of Kentucky Press, 2006); Elliot, *Walt Disney*; Gabler, *Walt Disney*, 356–74. More than Edwin Loeb, Nizer represented celebrities as well as the studios in contract, copyright, libel, divorce, plagiarism, and antitrust



recognized the Hollywood craft unions and talent guilds, the anti-Communist witch hunts of the late 1940s and 1950s were their opportunity to retaliate, blacklisting and/or firing activist employees in an effort to weaken the unions. In some instances, studio lawyers orchestrated these anti-union campaigns.

## V. THE ROLE OF JEWISH IDENTITY

This brief review of the origins of entertainment law situates Edwin Loeb as a major player, and Joseph Loeb as a comparable authority in the Los Angeles bar and the broader business community. As such, their experience was both typical and different from Jewish lawyers in Los Angeles and elsewhere.

In his study of Wall Street law firms in the late 1950s, Erwin Smigel explored how the broader social currents of the time — especially, heightened anti-Semitism — determined the career paths of “minority” lawyers in those firms — particularly, Jewish lawyers. Those few Jewish lawyers invited to join mainline Wall Street firms typically had Ivy League pedigrees and faced a higher bar to hiring and promotion than did their Gentile counterparts. While the large Wall Street firms represented the largest corporate clients, Smigel found that smaller corporate firms founded by Jewish or other minority lawyers generally represented smaller businesses, often headed by members of the same ethnic group.<sup>87</sup> Heinz and Laumann found a parallel stratification among Chicago lawyers: Those with elite social and educational pedigrees were more likely to practice in the white-shoe firms that

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matters. His role in the Fleischer strike may have been a somewhat uncomfortable one for Nizer whose personal politics trended center-left. For instance, his efforts on behalf of John Henry Faulk, the CBS radio and television personality linked by an ultra-conservative publication to a communist conspiracy, was widely credited with breaking the back of blacklisting in broadcasting. In 1962, Nizer won a \$3.5 million libel judgment for Faulk — later reduced to \$550,000 on appeal. He also served as general counsel for the Motion Picture Association of America and helped develop the group’s movie ratings system. Eric Pace, “Louis Nizer, Lawyer to the Famous, Dies at 92,” *New York Times*, Nov. 11, 1994, <http://www.nytimes.com/1994/11/11/obituaries/louis-nizer-lawyer-to-the-famous-dies-at-92.html?src=pm>.

<sup>87</sup> Erwin O. Smigel, *The Wall Street Lawyer. Professional Organization Man?* (New York: Free Press, 1964), 65, 173–75. At the time of his research, Smigel found that African-American lawyers faced overt racism and near total exclusion from the top firms.

ministered to larger corporate and organizational clients while small-firm lawyers, often ethnic minorities or those from families with lower socio-economic status, made up another “hemisphere” and were typically left with individual clients and/or small organizations.<sup>88</sup> The Loeb brothers founded their own firm rather than try to remain with O’Melveny or the city’s other top firms, yet from their earliest days in practice could claim a roster of blue chip, corporate clients. While their representation of the first film moguls may have initially resulted in part from ethnic affinity — consistent with the pattern Smigel and Heinz and Laumann identified — the Loeb’s legal skill and creativity clearly helped propel the studios into powerful corporate conglomerates whose business the established firms soon courted.

Parikh and Garth’s study of Chicago lawyer Philip Corboy illustrates important parallels with the Loeb’s careers, namely how lawyers can change the nature of practice, often advancing their clients’ as well as their own interests. The son of poor Irish immigrants, Corboy lost out on a job with a top defense firm to a far less qualified but better-connected candidate — despite having just graduated as valedictorian of his law school class. He eventually became a personal injury lawyer, growing his practice by consciously elevating the reputation of personal injury lawyers from that of bottom-feeding ambulance chasers and creating avenues to new clients.<sup>89</sup> Through leadership roles in Illinois bar associations and the Chicago Democratic machine, by lobbying the Illinois Legislature, and through key appellate victories and steady referrals, Corboy and his partners generated an extraordinarily lucrative practice. They also helped to change ethical rules that favored business development by corporate lawyers but penalized P.I. practitioners, for example, rules allowing lawyers to pass out their business cards at country clubs but barring the practice in emergency rooms. Legislative lobbying and courtroom victories liberalized Illinois tort law by expanding the field of possible defendants in product liability, medical malpractice and construction injury cases as well as by raising the ceiling on possible recoveries.<sup>90</sup> Like Corboy’s philanthropic and legislative activities, Edwin Loeb’s professional and personal involvements, most

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<sup>88</sup> John P. Heinz and Edward O. Laumann, *Chicago Lawyers. The Social Structure of the Bar* (rev. ed.) (Evanston: Northwestern Univ. Press, 1982, 1994).

<sup>89</sup> Parikh and Garth, “Philip Corboy.”

<sup>90</sup> *Ibid.*

notably his work on behalf of the Academy of Motion Picture Arts and Sciences, allowed movie producers to shed their early sleazy reputation and established their attorneys as key industry players.

Yet when laid against the Loeb's history, previous scholarship on lawyers' careers does not fully account for the influence of time, place, and birth. True, the brothers' successes and those of their firm flowed from the two men's considerable legal and personal skills, and, like Corboy, from their record of philanthropy and civic involvement. In this, the Loeb's were no different than successful attorneys everywhere who consciously cultivate their "book of business" by leveraging their business and social contacts and through good works. But the brothers were also remarkably fortunate in their family connections, their ability to straddle the shifting ethnic lines in Los Angeles, and to have entered law practice at a moment when religious identity may have been less salient in Los Angeles than in other cities.

The brothers' sincere philanthropic interests were an important element in Loeb & Loeb's success. Joseph Loeb was an active board member of the Los Angeles Bar Association from his first years in practice and remained involved throughout much of his career.<sup>91</sup> The local bar was only one of dozens of civic, educational, and corporate groups to which he devoted significant time, energy and money over his career.<sup>92</sup> Edwin Loeb concentrated his charitable and philanthropic involvement more narrowly on the entertainment industry where he may have been motivated as much by *bonhomie* as a sense of professional obligation.<sup>93</sup> Joseph and to a

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<sup>91</sup> Joseph Loeb retired from active practice in 1970 and died in 1974.

<sup>92</sup> That long list includes Town Hall (Board of Governors), Los Angeles Tuberculosis and Health Association (Board of Directors), Welfare Federation of Los Angeles (Board of Directors), University of California Alumni Association, Friends of Claremont Colleges, Friends of the Huntington Library, Indian Defense Association (Los Angeles Board of Directors), California State Board of Education (gubernatorial appointee), American National Red Cross, Los Angeles Athletic Club, California Republican League, Union Bank (Director), Los Angeles Civic Light Opera Association (Board of Governors), Arthritis Foundation (Founder and first president, Southern California Chapter), and the Community Chest.

<sup>93</sup> His activities included the Motion Picture Relief Fund of America, Inc. (Life Member) and the Academy of Motion Picture Arts and Sciences (Life Member). He was also active in the Los Angeles Athletic Club, the Los Angeles Stock Exchange, and the California Yacht Club.

lesser extent Edwin were also active in Jewish philanthropies including the United Jewish Welfare Fund, the Federation of Jewish Welfare Funds, the American Jewish Association, the Jewish Orphan's Home of Southern California (now Vista Del Mar Child Care Services), B'nai B'rith of Los Angeles, the American Jewish Committee, National Conference of Christians and Jews, and Cedars of Lebanon Hospital. For both men, civic and philanthropic involvement provided entrée to and eventually significant influence in Los Angeles' increasingly Gentile legal and business institutions.

Notwithstanding their Jewish charitable activities, the brothers' religious identity was complicated. As noted above, neither brother considered himself a practicing Jew. Edwin often described himself as an atheist.<sup>94</sup> Former Loeb partners characterized Edwin and Joseph as having consciously cultivated a "non-Jewish image." With only a handful of Jewish lawyers in Los Angeles when Joseph Loeb first hung his shingle, non-Jewish lawyers including partner Edward Kuster were part of the firm from the earliest days. Others included Irving Walker, Carl Levy, a Catholic (despite his name), Dwight Stephens, John Cole, and Leon Levi, the firm's long-term managing partner who was a Seventh Day Adventist. Beyond a commitment to recruiting the best lawyers regardless of religion, those hires may have also reflected a desire, perhaps unconscious, to dilute their "Jewishness," in order to attract the broadest array of corporate clients. Neal Gabler and others have noted that the studio heads also deliberately downplayed their Judaism as a defense against anti-Semitism and allegations of dual loyalty as well as to draw the broadest audience for their movies. Yet when

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<sup>94</sup> At Edwin Loeb's 70th birthday, Rabbi Edgar Magnin of the Wilshire Blvd Temple exhorted him, in front of the assembled guests, "All right, it's time to return to the fold." Holtzman recalled that Loeb was annoyed. Holtzman interview. The Loeb's grandniece Linda Levi grew up with a similar distance from institutional Judaism.

As far as organized religion goes it was almost non-existent in our family. I knew that I was Jewish, but we never went to temple, never celebrated Jewish holidays, and seldom ate Jewish food. In fact we celebrated Christmas with a big tree. I always went to school on Jewish holidays. All my young life, on Christmas Eve, and Christmas day, our friends and relatives had parties, open houses and many had big trees. Most of them were Jewish and if they had a religious affiliation they were likely to be Reform Jews.

Linda Levi, "Growing up as a 'Newmark' in Los Angeles, 1935-1950. A Memoir," *Western States Jewish History*, XXXIX:3 (Spring 2007): 75-76, [http://lindalevi.org/history/Growing\\_up\\_a\\_Newmark\\_in\\_Los\\_Angeles\\_1935-1950\\_by\\_Linda\\_Levi.pdf](http://lindalevi.org/history/Growing_up_a_Newmark_in_Los_Angeles_1935-1950_by_Linda_Levi.pdf) (23-24).

Adolf Hitler rose to power, some, like Carl Laemmle, helped to rescue many European Jews — at some risk to his reputation and fortune.<sup>95</sup>

As white Protestants became an overwhelming majority by the early twentieth century, groups that had once mingled freely began to go their separate ways. Discrimination and ostracism was not as severe in Los Angeles as elsewhere but social exclusion, which had been merely “noticeable” in previous years, now became more apparent.<sup>96</sup> Harris Newmark was a charter member of the California Club but resigned when the club began to exclude Jews.<sup>97</sup> The immigrant Jewish studio heads, so anxious to prove themselves as Americans, felt that sting particularly keenly. Like the Loebes, many tried to avoid outward displays of religion, but when they were still excluded from the mainstream social and civic organizations, they created their own, including the Hillcrest Country Club and the Concordia Club, along with a number of benevolent societies.

Far more serious than being rejected for club membership was employment discrimination. While exclusion and “quotas” were not as strict as in other cities, jobs in WASP banking, retail, and insurance establishments were generally off limits to Los Angeles Jews. Elective office was also generally beyond reach.<sup>98</sup> Notwithstanding very real discrimination, the Los Angeles bar may have been more open to Jewish attorneys than in New York

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<sup>95</sup> Neal Gabler, “Laemmle’s List: A Mogul’s Heroism,” *New York Times*, Apr. 11, 2014, <http://www.nytimes.com/2014/04/13/movies/unlike-his-peers-a-studio-chief-saved-jews-from-the-nazis.html>.

<sup>96</sup> Dinkelspiel, *Towers of Gold*, 160–61. In elementary school, Linda Levi “became aware of anti-Semitism in my neighborhood and my school. Most of the kids on the 800 block of Rimpau [in Hancock Park], the ones I played with, were Catholic. I understood that our friendship began and ended with playing sports. I was never invited into their homes, and I felt their parents were remote. If I wanted to play with one, I either joined a game or went in front of their houses and yelled out ‘Billy’ can you play? Of course the situation was wise [sic] versa. They were never asked into my house.” Levi, “Growing up,” 84 (32).

<sup>97</sup> The *Los Angeles Blue Book*, also known as the *Society Register of Southern California*, listed 44 Jewish members in 1890, 22 in 1921 and none for many years thereafter. Jewish Virtual Library, “Los Angeles.”

<sup>98</sup> That was less true during the 1870s when city voters elected Isaiah M. Hellman as treasurer (1877) and Emil Harris as police chief (1878). “The Jews of Los Angeles.” Appointive office, however, may have been different. For instance, in 1943 Governor Earl Warren appointed Joseph to the California State Board of Education where he served until 1956.

City, Chicago or even San Francisco. In addition, the Loeb's early successes, deep personal and familial connections, their longstanding ties to Gentile firms such as O'Melveny as well as their own roster of non-Jewish partners gave the firm establishment respectability. So when anti-Semitism intensified in Los Angeles, the Loeb's continued to flourish. As such, Loeb & Loeb doesn't fit easily into one practice "hemisphere," but instead, from its first decades, combined big clients and smaller ones, mainline corporations as well as "ethnic" enterprises.

## VI. THE LOEB FIRM AND THE ORIGINS OF ENTERTAINMENT LAW PRACTICE IN LOS ANGELES

The entertainment industry, like the Loeb firm, emerged in Los Angeles from a serendipitous mix of timing, sun and personal connections. Climate and wide-open opportunity lured the immigrants who would build the major studios at the same moment that a desire to escape Edison's infringement suits propelled them from New York and other eastern cities. The Loeb brothers were waiting for them in their office at the corner of Fourth and Main Streets, eager and affable, and already making a go of their small practice.

In many respects, the story of the Loeb firm as entertainment law pioneers and traditional corporate counselors conforms to the empirical findings of scholars who have examined the rise of law firms. Yet, the brothers' family heritage along with the role of geography and the historical moment in which they lived suggest a narrative that is more complex and less easily pigeonholed.

That they were Jewish may have initially helped draw many of the Loeb's entertainment clients, but as the mist-shrouded stories of Edwin's first clients indicate, not all of those early clients were Jewish nor, apparently, was it determinative that Edwin and Joseph were. Apart from religious or cultural ties, then, the brothers' family network and their effectiveness in front of and behind the scenes cemented their success. While Edwin's politics were generally more consonant with those of his clients than opponents on the picket lines or in court, his skill as a conciliator and dealmaker, even during early bitter labor battles, burnished his personal reputation and that of his firm. Loeb clients were key players in the early major industry disputes including the wrangling over industry integration, distribution agreements,

and unionization. Edwin acted as both the glue and grease in these matters. By bringing parties together, forging agreements, softening the impact of the Hays codes, defusing labor hostilities, he and his counterparts helped the industry to expand. In this regard, he played a role no different from that of successful corporate attorneys everywhere who facilitate, moderate and counsel their clients.

As movies became a major cultural force in the early twentieth century, Loeb and other early entertainment practitioners could claim credit for helping legitimize a business long considered disreputable. Their success also enhanced their practices and personal influence, allowing them to attract new clients in that industry and beyond. But the reverse was also true: that the Loeb brothers could early on claim mainstream corporate clients including local banks, real estate, mining, oil and railway companies, further enhanced their reputation and power with their studio clients.

The story of Hollywood's rise is often told as a form of singular accomplishment: The studio chiefs traveled west, built their dream factories, and their acumen and labors — theirs and theirs alone — made them rich and powerful beyond measure. Even in Neal Gabler's thorough account of the Jewish studio heads,<sup>99</sup> the critical role that Edwin Loeb and his contemporaries played in their clients' success by building the infrastructure of one of the most legalized industries is largely absent.

I hope this modest effort is a first step toward a fuller narrative.

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<sup>99</sup> Gabler, *Empire*.